Non-tariff Measures and Non-tariff Barriers in the SAARC Region

Training Manual
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Training Manual

Supported by:
Living with unresolved issues, protectionist policies and in an environment of imprecision, intra-regional trade and investment has continued to remain rather insignificant in the South Asian region. Despite the fact that the region is blessed with munificent natural resources, the region is one of the major markets in the world, the intense geographical proximity among the member countries that provides direct channels for connectivity and the region being home to the most dynamic, energetic and young population across the globe, the South Asian journey to regional integration remains inert due to prevalence of over-regulations and inefficient infrastructure, Non-Tariff Barriers, and the opportunities in trade and investment remain largely unexplored.

While SAFTA stresses upon reduction in tariff barriers, the consequent benefits may be impeded due to the prevalence of Non-Tariff Measures that encumbers the intra-regional trade and investment flows. NTMs can include various bureaucratic or legal issues that could involve and create hindrances to trade, these include import licensing, rules for the valuation of goods at customs, pre-shipment inspection, rules of origin, and trade related investment measures. Even though the term “Non-Tariff Measure” needs to be defined clearly, it is imperative to address NTBs under the regional and bilateral trade liberalization initiatives in South Asia as well. Whether there is a Most Favoured Nation status or a preferential trade agreement between South Asian countries, the existence of NTMs will inhibit intra-regional trade.

It is vital to empathize the fact that, trade in the SAARC region will suffer, due to presence of NTMs. The SAARC member countries, in order to move forward, need to identify country specific constraints, which can be addressed through mutual cooperation under SAFTA and entail the active participation of public-private leadership, stakeholders and development partners, using innovative approaches to address NTMs and harness opportunities to removal and reduction of prevailing NTMs across the region.

The problems of NTMs and NTBs in trading within South Asia are not new, thus the effort to address the problems needs to be a continuous process as a part of smooth trade facilitation across the region. But identifying NTMs and NTBs is always a challenging task due to complexity of their nature. Without rightly identifying any NTM or NTB, it is not possible to take appropriate remedial steps. Against such a backdrop, the SAARC Trade Promotion Network (TPN) has come up with an initiative to establish a ‘NTM Desk’ in leading trade bodies of all the SAARC countries two years ago. By establishing national SAARC NTM Desks, SAARC TPN has initiated the process of identifying and advocating the elimination of the NTMs across the region. The prevalence of large number of NTMs need skilled and trained personnel to identify, validate and advocate for the elimination or reduction of the NTM. Therefore, capacity development of individuals and institutions remain vital for the identification and elimination of NTMs, which ultimately will add to the efforts to enhance the depressingly low volume of regional trade.

The “Trainers Manual on NTBs and NTMs in the SAARC Region” is the result of a unique collaboration between National Institute for Micro, Small and Medium Enterprises, (ni-msme), SAARC Trade Promotion Network and the Deutsche Gesellschaft fuer Internationale Zusammenarbeit GmbH. National Institute for Micro, Small and Medium Enterprises recognizing the need of capacity building and to strengthen the existing skills and capacities for identification and advocacy for removal of NTMs, has pioneered in taking the initiative of capacity building for trade facilitation, by developing the “Trainers Manual on NTBs and NTMs in the SAARC Region”.

This manual is the result of decades long experience of ni-msme in human capacity building, well-thought out processes and hard work by the team comprising of M. Chandrasekhar Reddy Director General, National Institute for Micro, Small and Medium Enterprises, (ni-msme), Prof. JayakarRao Gutty, Faculty Member, School of Enterprise Management, Dr.DibyenduChoudhury, Faculty Member, School of Enterprise Management and Prof. E. MuraliDarshan, Former Professor IIFT, JNTU-H and NIPER-H

I believe that the “Trainers Manual on NTBs and NTMs in the SAARC Region” will augment the ongoing efforts of the relevant institutions and individuals to curb the Non-Tariff Barriers which happen to be the Barriers to Prosperity across the SAARC region.

Zubair Ahmed Malik, Spokesperson of Working Group Human Capacity Development of SAARCTPN
India the largest trading partner in South Asia, occupies 70% of the SAARC region, and is the biggest and the most developed industrialised trading partner in the SAARC region. It is both, geographically and economically bigger when compared to the remaining six nations of the SAARC region. India plays a very important and a vital role in the SAARC region in terms of trade and bilateral relations. India has a greater responsibility in leading all the SAARC nations into a stronger economy in trade and in building a Regional Economic Cooperation in South Asia. The present study reveals that there are enormous opportunities for forging closer economic relations among SAARC countries. These opportunities could be fully utilised through the processes of trade liberalisation and industrial restructuring which are complementary to each other. The SAARC Preferential Trade Arrangement (SAPTA) is the first step in trade liberalisation. However, the scope of SAPTA has to be sufficiently widened in order to derive substantial benefits from preferential trading agreements.

I feel and believe that the many challenges in trade between SAARC nations can be brought down, and this will happen only when the NTMs and NTBs are identified and resolved amicably between the nations. The efforts put in by GIZ is quite appreciative, of starting the NTM desks in the SAARC nations and the trainings conducted with the expert help of ni-msme and chambers of commerce of the SAARC countries is a promising step. In order to build a stronger economy and improve the quality of life, trade agreements and pacts can be one of the ways and means and this trainer’s manual will be helpful to all the individuals and institutions in creating awareness of the trade barriers between SAARC nations and help in building better relations amongst the SAARC nations. My best wishes to the team and to all those who will make use of this manual.

K.K Jalan,
Secretary to Govt of India
Ministry of MSME

Through the initiatives of “Make in India” and “Start-up India” launched by Hon’ble Prime Minister, Government of India, it is expected to bring a large number of manufacturers to India, creating a favourable environment for its own people to establish industries. The SAARC countries can be their big markets. The measure may also help to bring down the trade barriers and restrictions.

I would like to take this opportunity in appreciating the time and efforts put in by the faculty members and their partners in bringing this “Trainers manual on NTBs and NTMs in SAARC Region” into the foray, to be a ready reckoner in training the trainers on NTMs and NTBs. This is a unique and remarkable combination of experts from the industry and academics to bring out this manual and I am confident that it would help in creating a greater understanding regarding the trade relations between the SAARC nations.

I would like to congratulate all the participants from Sri Lanka, Bangladesh and Bhutan who had benefited of the training of trainers and training to the importers and exporters, held in their respective countries with the use of this manual.
ni-msme, National Institute for Micro, Small and Medium Enterprises, an organisation under the Ministry of Micro, Small and Medium Enterprises, Government of India, is a pioneer institute in the field of entrepreneurship in India and has made significant contributions towards enterprise promotion and development. It has the history of pioneering into international market through its research, consultancy and training expertise. It had trained 9080 executives from 142 countries of the world, especially into SME sector. It had also trained many executives of developing nations in Global trade and International Business. As a trainers training institute, it has trained trainers from every faculty of management, engineering, finance, international business, TQM, ISO and Six Sigma etc.. It has to its credit of introducing the term “Entrepreneurship” in India for the first time and in introducing the first ever “Entrepreneurship model” in India.

Non-tariff measures (NTMs) are generally defined as policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both. “Non-tariff barriers” (NTBs) encompass a range of government actions pertaining to trade. The impact of tariffs and measures taxes or duties charged on particular classes of imports or exports is readily apparent. But, the impact of NTBs and NTMs is generally difficult to measure and quantify. In SAARC nations, measures are taken to reduce the trade barriers between them and the establishment of NTM desks by SAARC TPN members is a welcome step. The bilateral and multilateral trades between countries need to be focused and all measures have to be taken to reduce the barriers to trade.

NTM desks in SAARC countries need to work hard to clearly identify NTMs and NTBs and exchange of information will also be helpful to narrow the differences over defining of NTMs and NTBs among the member-countries. Ultimately, it will help enhance regional trade which is still low compared to other regional trade blocks. Addressing NTBs and NTMs will reduce the cost of trade across the region and ultimately, consumers will be benefited. Training the personnel and people associated with NTMs and NTBs will be a major step in bringing awareness amongst nations and trade partners.

Since the trainers’ manual is believed to serve as a ready reckoner, ni-msme developed this manual in association with GIZ to train the trainers on NTBs and NTMs, as well as on identifying and developing the competencies of the trainers involved in international trade. This manual will provide guidelines, instructional methodologies, information etc., to enable trainers to impart the necessary training to the potential trainers in international trade.

ni-msme has worked uncompromisingly on this manual and Prof. Jayakar Rao Gutty, Dr. Dibyendu Choudhury, Faculty Members of School of Enterprise Management and Prof. E. Murali Darshan, through their expertise and diligence has been the force behind drafting the manual.

I have therefore, much pleasure in presenting this “Trainers Manual on NTBs and NTMs” to all the trainers and readers and hope that it will be a useful tool in developing and sharpening the training skills on NTBs and NTMs. I also hope that this manual may be widely and wisely used across the borders.

I wish success to all those who are involved in such endeavours and encourage them to use this manual in their work. I would also appreciate everyone to give ideas and suggestions to improve this manual.

M. Chandrasekhar Reddy
Director General
National Institute for Micro, Small and Medium Enterprises, (ni-msme)
Hyderabad, India
I would like to take this opportunity to express my profound gratitude and deep regard to Shri. M. Chandrasekhar Reddy, Director General, ni-msme, Hyderabad, India, for his guidance, valuable feedback and constant encouragement in preparing the manual.

I owe a deep regard and sincere thanks to Dr. G.U.K Rao, Director, School of Enterprise Development, Dr. G.P. Vallabh Reddy, Chief Administrative Officer ni-msme, Mr. Zubair Ahmed Malik and all the working group members of SAARC TPN, Mr. Bandhopadhyay, FISME, Ms. Susanna Albrecht, Ms. Rebecca Gonzalez and Mr. Manuel Neumann of GIZ, my colleague Dr. Dibyendu Choudhury for their suggestions and insights. I would like express my sincere thanks to Professor Enelli Murali Darshan (Former Professor IIFT, JNTU-H and NIPER-H), for his maximum inputs in drafting this manual.

Prof. Jayakar Rao Gutty
Faculty Member
School of Enterprise Management
National Institute for Micro, Small and Medium Enterprises, (ni-msme)
Hyderabad, India
## SESSION PLANNING AND PROGRAMME DETAILS

1. Training overview/ Benchmark interaction
2. An Introduction to the International Business and multilateral Trading System and the WTO
3. General Agreement on Trade in Services (GATS)
4. WTO and Regional Trade Agreements (RTAs)
5. Introduction to NTMs and NTBs in SAARC
6. Dispute Settlement Mechanism in the WTO
7. Current economic structure and growth in recent trade policies - Export/Import policies – Sri Lanka
8. Developing countries and the TBT Agreement - Focus to Sri Lanka
10. Free trade agreements research analysis of 4th Global economic summit 2014, WTO negotiations
11. A Guide to WTO Related Information
12. Introduction to standards and non-tariff barriers in trade
13. Pillars of learning – an overview
14. Soft Skills – Presentation skills
15. SWOT analysis of a trainer

## REFERENCE MATERIAL

1. An Introduction to the International Business Multilateral Trading System and the WTO
2. Importance of International Trade and Multilateral Trading System
3. Evolution of the Multilateral Trading System: From GATT to WTO
4. World Trade Organisation (WTO): Objectives and Functions
5. WTO Agreements
6. The Cancun round of WTO in 2003
7. General Agreement on Trade in Services (GATS)
8. WTO and Regional Trade Agreements (RTAs)
9. Negotiations on RTAs
10. Overview of the NTM and NTB agreements in SAARC
11. Dispute Settlement Mechanism in the WTO
12. Current economic structure and growth of Sri Lanka
13. Special and Differential (D&S) Treatment in WTO
15. The TBT Agreement and Health
16. Questions for Discussion
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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AB</td>
<td>Appellate Body</td>
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<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific Group of States</td>
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<td>ACs</td>
<td>Advanced Countries</td>
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<td>ADD</td>
<td>Anti-Dumping Duty</td>
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<td>AFT</td>
<td>Aid for Trade</td>
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<td>AGOA</td>
<td>Africa Growth and Opportunity Act</td>
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<td>AMS</td>
<td>Aggregate Measure of Support</td>
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<td>AoA</td>
<td>Agreement on Agriculture</td>
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<td>AP-LDC</td>
<td>Asia-Pacific Least Developed Countries</td>
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<td>APTA</td>
<td>Asia Pacific Trade Agreement</td>
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<td>ATC</td>
<td>Agreement on Textiles and Clothing</td>
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<td>BABMA</td>
<td>Bangladesh Accumulator and Battery Manufacturers Association</td>
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<td>BFTAs</td>
<td>Bilateral Free Trade Areas</td>
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<td>BOP</td>
<td>Balance of Payments</td>
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<td>BTC</td>
<td>Bangladesh Tariff Commission</td>
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<td>CACM</td>
<td>Central American Common Market</td>
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<td>CAFTA</td>
<td>Central American Free Trade Area</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CBI</td>
<td>Caribbean Basin Initiative</td>
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<td>CCP</td>
<td>Critical Control Point</td>
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<td>CEGAT</td>
<td>Custom, Excise and Gold Control Appellate Tribunal</td>
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<td>CFC</td>
<td>Common Fund for Commodities</td>
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<td>CFIA</td>
<td>Canadian Food Inspection Agency</td>
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<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<td>CPD</td>
<td>Centre for Policy Dialogue</td>
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<td>CRTA</td>
<td>Committee on Regional Trade Agreements</td>
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<td>CTD</td>
<td>Committee on Trade and Development</td>
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<td>CTPL</td>
<td>Centre for Trade Policy and Law</td>
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<td>CVM</td>
<td>Counter-Veiling Measure</td>
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<td>DC</td>
<td>Developing Country</td>
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<td>DCG</td>
<td>Developing Country Grouping</td>
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<td>DDA</td>
<td>Doha Development Agenda</td>
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<td>DDR</td>
<td>Doha Development Round</td>
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<td>DF-QF</td>
<td>Duty-Free Quota-Free</td>
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<td>DGAD</td>
<td>Directorate General of Anti-Dumping Allied Duties</td>
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<td>Acronym</td>
<td>Description</td>
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<tr>
<td>DME</td>
<td>Developed Market Economy</td>
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<td>DoF</td>
<td>Department of Fisheries</td>
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<td>DSB</td>
<td>Dispute Settlement Body</td>
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<td>DSU</td>
<td>Dispute Settlement Understanding</td>
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<td>EBA</td>
<td>Everything But Arms</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECDPM</td>
<td>European Centre for Development Policy Management</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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<td>ENT</td>
<td>Economic Needs Tests</td>
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<td>EPZ</td>
<td>Export Processing Zone</td>
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<td>ERP</td>
<td>Effective Rate of Protection</td>
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<td>EU</td>
<td>European Union</td>
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<td>FAO</td>
<td>Food and Agriculture Organisation</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FMD</td>
<td>Foot and Mouth Disease</td>
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<td>FTAA</td>
<td>Free Trade Area of the Americas</td>
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<td>FTA</td>
<td>Free Trade Area</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GoB</td>
<td>Government of Bangladesh</td>
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<td>GPT</td>
<td>General Preferential Tariff</td>
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<td>GSP</td>
<td>Generalized System of Preferences</td>
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<td>GSTP</td>
<td>Global System of Trade Preferences</td>
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<td>HACCP</td>
<td>Hazard Analysis and Critical Control Point</td>
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<td>HOD</td>
<td>Heads of Delegations</td>
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<td>HTS</td>
<td>Harmonized Tariff Schedule</td>
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<td>IATP</td>
<td>Institute for Agriculture and Trade Policy</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<td>ICTSD</td>
<td>International Centre for Trade and Sustainable Development</td>
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<td>IF</td>
<td>Integrated Framework</td>
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<td>IFPRI</td>
<td>International Food Policy Research Institute</td>
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<td>IFSC</td>
<td>International Food Steering Committee</td>
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<td>IICA</td>
<td>Inter-American Institute for Cooperation on Agriculture</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IP</td>
<td>Intellectual Property</td>
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<td>IPIC</td>
<td>Intellectual Property in Respect of Integrated Circuits</td>
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<td>IPO</td>
<td>Import Policy Order</td>
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<td>IPPC</td>
<td>International Plant Protection Convention</td>
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SIDS  Small Island Developing States
SOE  State Owned Enterprises
SPS  Sanitary and Phytosanitary
SPs  Special Products SSM Special Safeguard Mechanism
SUNS  South-North Development Monitor
SVE  Small and Vulnerable Economies
TB  Tariff Barrier
TBT  Technical Barriers to Trade
TIFA  Trade and Investment Framework Agreement
TIM  Trade Integration Mechanism
TMNP  Temporary Movement of Natural Persons
TNC  Trade Negotiations Committee
TPRM  Trade Policy Review Mechanism
TPSC  Trade Policy Staff Committee
TPS-OIC  Trade Preferential System - Organisation of the Islamic Conference
TRIMs  Trade-Related Investment Measures
TRIPS  Trade Relate Intellectual Property Rights
TRQ  Tariff Rate Quota
TRTA  Trade-Related Technical Assistance
TWN  Third World Network
UNCED  United Nations Conference on Environment and Development
UNCTAD  United Nations Conference on Trade and Development
UNECA  United Nations Economic Commission for Africa
UNESCAP  United Nations Economic and Social Commission for Asia and the Pacific
UPOV  International Union for the Protection of New Varieties of Plants
UR  Uruguay Round
VER  Voluntary Export Restraint
WIPO  World Intellectual Property Organisation
WTO  World Trade Organisation
SESSION PLANNING AND PROGRAMME DETAILS
1. Training Overview / Benchmark Interaction

Why this session
A successful training needs a sound beginning, which builds the foundation of interaction for the upcoming sessions and reiterates the overall objectives of the training. The overall objective of the training.

Objective
The objective of this session is twofold first to give an overview of the training content, to level expectations and to motivate participants for the upcoming sessions. It will address the methodology of training. The second is to get to know every participant to understand the knowledge base of the participants with respect to NTBs, NTMs, WTO, Foreign Trade Policy and International trade.

Duration
60 minutes

Preparation
The trainer should attentively listen to each participant to understand his or her background. The trainer should relate to the participants through the presentations and should anticipate related questions to make the introduction effective and interactive.

Methods
Discussion/brief presentation

Tools
Copies of the manual, PowerPoint presentation, Laptop, LCD projector

Session Delivery
- Initiate the discussion by asking the participants to share their background, experience and relativity to NTBs and NTMs.
- Make a brief presentation on the purpose of the training,
- Ask each participant to share their views regarding the impact of NTBs and NTMs on international trade
2. An Introduction to the International Business and Multilateral Trading System and the WTO

Why this session?
This session will discuss the importance of trade issues and evolution of the multilateral trading system, principles and rules guiding the GATT/WTO. Another important area of this session will be special provisions stipulated in the WTO in support for the LDCs and mechanisms for dispute settlement in the WTO system.

Objective:
The objective of this session is to familiarise the participants with the evolution of the multilateral trading system, principles and rules pertaining to WTO.

Duration
90 minutes

Preparation
The trainer should have enough knowledge about international business and the WTO system.

Methods
Discussion/presentation

Tools
Copies of the manual, PowerPoint presentations, Laptop, LCD projector

Session Delivery:
• The trainer should be able to help the participants know about the importance and significance of multilateral system in international business.
• The trainer should be able to explain the role of WTO and its support to LDCs.
• The trainer should explain the dispute settlement mechanism in the WTO system

Description:
The General Agreement on Tariffs and Trade (GATT), precursor of the WTO, was established on a provisional basis after the Second World War. Three multilateral institutions dedicated towards international economic cooperation were established during this time, notably the "Bretton Woods" institutions; The International Bank for Reconstruction and Development (IBRD) and The International Monetary Fund (IMF). The IBRD was established to provide support in the form of credit for long term reconstruction and development and the IMF was to provide loans for balance of payments support. The original 23 GATT countries were amongst over 50 countries which agreed to a draft Charter for an International Trade Organisation (ITO) a new specialised agency of the United Nations to deal with trade related issues. However, when the United States government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO’s future was sealed for all practical purpose. Notwithstanding, countries agreed that they would negotiate tariff liberalisation under a general agreement in the area of tariff and trade, and that they would start negotiating in the area of tariffs on and trade in industrial goods. With a view to reducing
tariffs, negotiations were opened among the 23 founding GATT "contracting parties" in 1946. Despite its provisional nature, the GATT remained the only multilateral instrument governing international trade from 1948 until the establishment of the WTO in 1995. Prior to the establishment of the WTO, eight GATT Rounds were held. The last GATT round was the Uruguay Round (UR) which was the most comprehensive of all the GATT Rounds. Whilst other Rounds dealt with only trade in industrial goods, the GATT UR for the first time, discussed issues related to trade in the Agriculture and the Services sector.

The WTO was established on the basis of consensus reached at the end of the GATT-UR in 1993 and started to function in January 1995. In 1995, number of WTO members was 121, which at present stands at 164. The objective of WTO is to move towards a global trade regime by way of gradual liberalisation of trade in commodities, services and factors of production. This is to be realised by dismantling various non-tariff barriers (NTBs) like quantitative restrictions (QRs), anti-dumping duty (ADD), and tariffs of NTBs and gradual reduction of tariff barriers (TBs). The aim is to gradually move to an international commercial transaction that is based on competitive strength and transparency, but does not ignore the rationale of non-reciprocity and special and differential treatment of the relatively less developed countries.1

The WTO is a rule-based organisation. Basic principles of the WTO are:

1) non-discrimination, 2) trade liberalisation, 3) specific disciplines, 4) general exceptions, 5) special and differential treatment for developing countries, and 6) transparency.

The WTO performs six major functions:

• Administering the WTO trade agreements;
• Forum for trade negotiations;
• Handling trade disputes;
• Monitoring national trade policies;
• Technical assistance and training for developing countries; and
• Cooperation with other international organisations.

Its member governments run the WTO, where all major decisions are taken by the membership as a whole, either by Ministers (who meet at least once every two years) or by their Ambassadors or delegates (who meet regularly in Geneva). Decisions are normally taken by consensus and they are made at three levels:

Ministerial Conference (held every two years, is the highest decision making body in the WTO); General Council (held in Geneva where Ambassadors and delegates meet on a regular basis); and Agreement-specific Committees.

The WTO continues the GATT practice of taking decisions by consensus but if a decision cannot be reached by consensus, it is to be reached through majority vote (unless otherwise provided in the particular agreement under reference). In the Ministerial Conference and the General Council each member has one vote. All the outcomes of ministerial conferences held till date will be discussed.

1CPD (2008) - Training Manual on WTO and Bangladesh Trade policy
3. General Agreement on Trade in Services (GATS)

Why this session:
This session will enable the participants to understand the main issues relating to GATS and to apply this knowledge in their professional fields.

Objective:
The underlying objective of this particular session is to expose the participants to the issue of trade in services, which are broadly covered by the General Agreement on Trade in Services (GATS) under the WTO. Besides explaining the background and nature of GATS,

- The trainer should be able to explain the evolution and nature of GATS.
- The trainer should explain the significant inclusion of services into International trade.
- The trainer should be able to explain the role and importance of GATS, especially to the LDCs.

Duration
60 minutes

Preparation
The trainer should have enough knowledge about GATS, its functions and importance.

Methods
Discussion/presentation

Tools
Copies of the manual, PowerPoint presentations, Laptop, LCD projector.

Session Delivery:
- The trainer should be able to explain the evolution and nature of GATS.
- The trainer should explain the significant inclusion of services into International trade.
- The trainer should be able to explain the role and importance of GATS, especially to the LDCs.

Description:
Objectives of the GATS are: (i) expansion in services trade; (ii) progressive liberalisation through successive rounds of negotiations; (iii) transparency of rules and regulations; (iv) increasing participation of developing countries. The GATS deal with four Modes of Supply of Services.

- Mode 1: Cross-border supply (e.g. international telephone);
- Mode 2: Consumption abroad (e.g. international tourism);
- Mode 3: Commercial presence (e.g. establishment of foreign bank);
- Mode 4: Movement of natural persons (e.g. doctor working abroad).

The GATS has a wide spectral coverage which include business services, communication, construction, distribution, education, environmental services, health-related services, financial services, tourism, recreation, culture & sport, transport and other services. The GATS was developed in response to the huge growth of the services economy over the last 30 years and the greater potential for trading services brought about by the communications revolution.

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3 Ibid.
4. WTO and Regional Trade Agreements (RTAs)

Why this session:
Regional trade agreements have become a prominent feature of the multilateral trading system (MTS) in recent years. It is expected that participants, after the session, would be able to track the on-going negotiations on RTAs, along with the issues and concerns relating to RTAs. RTAs continue to proliferate, as progress on the Doha Round has slowed.

Objective:
The aim of this particular session is to provide an overall idea about how Regional Trade Agreements (RTAs) are dealt with in the WTO. The session will also focus on the evolution of RTAs in the multilateral trading system.

Duration
90 minutes

Preparation
The trainer should have enough knowledge about RTAs, its functions and importance.

Methods
Discussion/presentation

Tools
Copies of the manual (Case Study- Annexes)

Session Delivery
- The trainer should be able to explain the evolution and nature of RTAs.
- The trainer will explain the requirements for a regional trade agreement between nations and the way it helps to reduce trade barriers.
- The trainer should be able to explain the role and importance of RTAs, especially to the LDCs.

Description:
Some Regional Trade Agreements (RTAs) have been notified to the WTO/GATT up to February 2016 of which 419 RTAs are in force. The WTO mandates that each member accord Most Favoured Nation (MFN) status to all other WTO members. However, it allows an exception for regional trade initiatives that extend different terms of trade to participating countries, stipulating that an RTA must comply with two main requirements outlined in the GATT Article XXIV. First, the agreement must lower trade barriers within the regional groups and second, the agreement cannot raise trade barriers for non-participating members.

* [https://www.wto.org/english/tratop_e/region_e/region_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm)
5. Introduction to NTMs and NTBs in SAARC

Why this session:
Though the import tariffs of the countries in the SAARC region have been significantly reduced in the recent past, the use of various sorts of Non-Tariff Measures (NTMs) and Non-Tariff Barriers (NTBs) has been increasing as a result of developments in multilateral trade regimes (both WTO and SAFTA) as well as preferential bilateral trade agreements.5

Objective:
This session is designed to provide a clear idea about the NTMs and NTBs in the WTO. It will discuss NTM’s and NTB’s,

Duration
90 minutes

Preparation
The trainer should be well prepared on NTMs and NTBs. SAARC should be able to relate to the country specific participants through the presentations and prepare the Power Points/related case studies to make the presentation effective and interactive.

Methods
Discussion/presentation

Tools
Copies of the manual (Case study-Annexes), PowerPoint presentations, Laptop, LCD projector, White board, markers.

Session Delivery:
• Initiate the discussion by asking the participants to share their background, experience and relation to NTBs and NTMs.
• The trainer should explain the role of NTMs and NTBs and how they affect international trade.
• With the help of case studies, the participants shall understand the role of NTM desks and the need to have a new approach to resolve trade barriers.

Description:
In the initial years of the formation of SAARC in the 1980s, the popular hypothesis for the reason behind limited intra-region trade was the prevailing high tariff rates (customs duty) among the member countries. High customs duties have come down substantially over the years since the formation of SAARC due to increased globalisation of trade, the establishment of the WTO regime, and the South Asian Free Trade Agreement (SAFTA). Despite significant reduction in customs duty in the region, the intra-SAARC trade has been quite static at only 5% of the total trade of this region while the rest is with non-SAARC countries. Now the popular hypothesis is that limited intra-region trade is not caused by the high customs duty or tariff, but is the result of NTMs and the resulting trade barriers, i.e., NTBs. This view is reflected in many contemporary studies and documents. A thorough analysis is made in this session to make the participants understand how the SAARC countries need to aim for a new approach.

5 Kabir, M. (2014) - Regional trade liberalisation and non-tariff barriers: the case of Bangladesh’s trade with South Asia; Bangladesh Institute Of International and Strategic Studies(BIIS Journal); 35(2); P-126-146, ISSN:1010 9536
6 Raihan, S; Khan, A. M.; Quoreshi, S. (2014) - Analysis of prevailing Non-Tariff Measures (NTM’s) in SAARC; for the SAARC Trade Promotion Network
6. Dispute Settlement Mechanism in the WTO

Why This Session:
This session will deal with the issue of dispute settlement system under international trade agreements. It will especially focus on the nature and trends of the cases filed, identifying the complainants and respondents of these cases etc.

Objective:
This session will describe the case of India’s anti-dumping duties on lead acid battery import from Bangladesh to appreciate the complexities and challenges for LDCs.

Duration 90 minutes

Preparation
The trainer should be well prepared with the dispute settlement process of the WTO. The trainer should prepare the Power Points/ related case studies to make the presentation effective and interactive.

Methods
Introduction, Case study (group work) on lead acid battery, ensuing presentation and discussion

Tools
Copies of the manual (Case study-Annexes), PowerPoint presentations, Laptop, LCD projector, White board, markers.

Session Delivery:
The trainer should explain how the dispute settlement mechanism in WTO is related to SAARC nations and help the participants to understand how DSM helps to reduce trade barriers between SAARC nations. Through the case study the trainer should be able to help the participants understand that the WTO dispute settlement mechanism is useful and relevant.
7. Current economic structure and growth in recent trade policies- Export/Import policies – Sri Lanka

Why this session:
Sri Lanka’s economic indicators, export and import policy will be discussed in this session as well as the major products of import and export of Sri Lanka. The economic policies of Sri Lanka is also analysed, sector contributions and diversification.

Objective:
This session will discuss different phases of trade liberalisation in Sri Lanka and their characteristics. Sri Lanka’s current Trade Policy (EXIM Policy 2014 -15), and arguments in support of trade policy reform in developing countries will be discussed, basic arguments in favour of market-oriented policy reform a) economic liberalisation reduces static inefficiencies arising from resource misallocation and waste; b) economic liberalisation enhances learning, technological change, and economic growth; c) outward-oriented economies are better able to cope with adverse external shocks; and d) market-based economic systems are less prone to rent-seeking activities.

Duration
90 minutes

Preparation
The trainer should be well prepared on trade policies in Sri Lanka and the current economic structure. The trainer may prepare a PowerPoint presentation with ITC’s TradeMap for detailed info on Sri Lanka’s most traded products.

Methods
Discussion/presentation

Tools
Copies of the manual, PowerPoint presentations, Laptop, LCD projector, White board, markers

Session Delivery:
• The trainer, with help of the Trade Policy of the respective country, should explain how it has an impact over international trade, especially in SAARC nations.
• The trainer should help participants understand that the trade regulations of the country are an important and key instrument in enhancing trade between countries.
• The trainer should also explain the economic and growth patterns in Sri Lanka.
8. Developing countries and the TBT Agreement- Focus to Sri Lanka

Why this session:
In this session, we focus on the trade liberalisation, an important development tool many benefits. A large number of multilateral, regional and bilateral trade negotiations as well as non-reciprocal concessions have led to a remarkable reduction in average global tariff protection. Apart from this, we also focus on favourable market access, international trade, unseen growth, raising mutual welfare and the standards of living. However, it seems that the positive development of falling tariffs has been undermined by a shift towards a misuse of non-tariff measures (NTMs). Some NTMs are essential to ensure consumer health, environmental protection or national security. Still, evidence suggests that countries are resorting to NTMs as alternative instruments for protectionist market access regulation. NTMs have been negotiated within the General Agreement on Tariffs and Trade and World Trade Organisation (WTO). This session will go through more light on NTMs and TBT related to Sri Lanka. 

Objective:
- This session will define the importance of TBT agreement with respect to Sri Lanka.
- The session also focuses on the benefits of countries entering into world trade with the help of TBTs.

Duration
90 minutes

Preparation
The trainer should be prepared about prevailing TBTs between SAARC nations. The trainer should prepare the PowerPoint presentations and open discussion on TBTs and their role in helping the developing nations in world trade. The trainer should be able to give statistics pertaining to TBTs.

Methods
Discussion/presentation

Tools
Flip charts and markers, copies of the manual (Case study), PowerPoint presentations, Laptop, LCD projector.

Session Delivery:
The trainer should open/brainstorm the discussion over the TBTs in SAARC nations and their impact on international trade. Through the PowerPoint presentation, the trainer should be able help make the participants understand the current scenario in the world trade with TBTs.

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Why this session:
This session takes a closer look at the purpose of sanitary, phytosanitary and technical requirements for traded products, how they address perceived market failures such as information asymmetries and negative externalities, especially in the agro-food sector and what drawbacks they entail, such as higher production costs, potentially preventing trade. In order to mitigate this negative impact of technical, sanitary and phytosanitary requirements on import/export flows, the WTO fostered the signature of international agreements on Sanitary and Phytosanitary Measures (SPS) and on Technical Barriers to Trade (TBT).

Objective:
- Considering all of the above, the objective of this session is to address the following questions:
- Which are the main principles within the SPS/TBT Agreements?
- To what extent have different countries participated in the WTO SPS/TBT mechanisms (notifications, Specific Trade Concerns and disputes)? Has it been in relation to their economic level?
- What does recent research say about the impact of SPS/TBT on agricultural markets?

Duration
90 minutes

Preparation
The trainer should be prepared with the principles of TBTs/SPSs. The trainer should prepare the presentation on how the TBTs/SPS mechanisms have an impact on the economy of the country.

Methods
Discussion/presentation

Tools
Copies of the manual, PowerPoint presentations, Laptop, LCD projector, White board, markers etc.

Session Delivery:
- The trainer should prepare the highlight points of the TBTs/SPS mechanisms in the world trade.
- The trainer should help the participant understand the notifications, specific trade concerns and disputes among the SAARC nations.
Why this session:
The session covers Free Trade Agreements (FTAs) as the chief vehicles for greater trade liberalisation amongst Asian nations, ought not to be a puzzling phenomenon, albeit it has to be conceded that it is much in need of extensive researching. The facts themselves can be quite easily narrated. While multilateralism was the dominant theme of the Asian preference until late 1980s and even the 1990s, primarily on account of the then Asian economic super power Japan, beginning with only three FTAs in 2000, by end of that decade over 60 FTAs had been concluded in Asia. Such a rapid rise of FTAs obviously raises serious concerns about prospects for multilateralism, all these issues will be discussed here in this session and the participants are updated with the latest information on FTAs.

Objective:
This session is designed to make the participants understand the fundamentals of Free Trade Agreements. Analysis is done on FTA’s focus to the South Asian region.

Duration
60 minutes

Preparation
The trainer should be prepared with the detailed description on FTAs. The trainer should prepare the Power Points/ and explain to the participants the fundamentals of FTAs in SAARC countries with the latest statistics.

Methods
Discussion/presentation

Tools
Copies of the manual (Case study- Annexes), Power Point presentations, Laptop, LCD projector, White board, markers etc.

Session Delivery:
The trainer should deliver the presentation through PowerPoint and explain the FTAs between SAARC countries. The trainer, with the help of case studies should explain the impact of FTAs and multilateralism.
11. A Guide to WTO Related Information

Why this session:
A Guide to WTO Related Information Sources of information and data, resource persons, news, views and events are very important for performing effectively one's professional responsibilities.

Objective:
The objective of this session is to focus on the following issues:

- Sources of Trade Statistics,
- WTO Negotiations related documents,
- Reference Materials, News and Views of related topics, and
- Tips for successful “source searching”.

Duration
30 minutes

Preparation
The trainer should be prepared with all the sources of data related to world trade. The trainer should be prepared navigate through a few sample websites to help participants understand the importance of data in international trade and how to access it.

Methods
Presentation of the respective websites

Tools
Copies of the manual (Case study- Annexes), PowerPoint presentations, Laptop, LCD projector, White board, markers, WIFI (internet) etc.

Session Delivery:
The trainer should assign the participants to search for the sources of information for trade statistics and related reference material, news, views from the WTO help. The trainer should explain the importance of source searching, major sources of data.
12. Introduction to standards in international trade

Why this session:
Standards are increasingly important in international trade. The literature identifies two characteristics of standards which affect trade. On the one hand, they can be trade facilitating by reducing transaction and information costs. On the other hand, they can be trade constraining: many trade economists consider them as non-tariff barriers to trade that may be used with a protectionist motive to replace tariffs and other traditional trade barriers restricted under WTO rules. In some areas of trade, both public and private standards are rapidly growing in importance. This introduces important new issues for trade policy. In fact, there is serious and growing concern of how to deal with private standards in an international framework. WTO rules on TBT (Technical Barriers to Trade Agreement) and SPS (Sanitary and Phytosanitary Agreement) apply to public standards but not to private standards. More light will be thrown in this area. This, in turn, has potentially important implications for how they can be dealt with under WTO rules and will also be emphasised.

Objective:
In this session, the participants are given an insight about how important the standards in international trade and how it affects trade, both positively and negatively.

Duration
90 minutes

Preparation
The trainer should be prepared with the information that the standards and non-tariff barriers to trade. The trainer should be prepared with some examples/case studies on standards and non-tariff barriers in international trade.

Methods
Discussion/presentation

Tools
Copies of the manual (Case study- Annexes), PowerPoint presentations, Laptop, LCD projector, White board, markers etc.

Session Delivery:
The trainer should explain the impact of standards and non-tariff barriers in international trade, especially with respect to SAARC countries. The trainer should depict data related to standards and NTBs in SAARC and how they have become the trade constraints.

Heckelei, T., Swinnen, J. (2012) - Introduction to the Special Issue of the World Trade Review on ‘standards and non-tariff barriers in trade’
13. Pillars of learning- an overview

Why this session:
This session different facts of learning will be introduced as well as tools that help people learn and enable trainers to bring across their message more clearly.

Objectives
Is to make participants familiar with,
➢ Different elements of learning.
➢ Tools of successful learning

Duration
90 minutes

Preparation
The trainer should prepare different role plays that can help participants to learn and motivate to become a trainer.

Methods
Discussion/presentation/Role plays

Tools
PowerPoint presentations, Laptop, LCD projector, White board, markers and stage decor for role plays

Session Delivery:
The trainer should explain the need for trainers and the importance of learning competency of a trainer. The trainer should motivate and help the participant to understand the various competency principles of a trainer through role plays.
14. Soft Skills – Presentation skills

Why this session:
Presentations skills are very useful in many aspects of work and life. Effective presentations are important in business, sales and selling, training, teaching, and lecturing.

Objective:
This objective of this session is to help the participants to understand that every individual should know about and improve presentation skills as they are very useful in every aspect of life. The objective is to develop confidence and make them capable to give effective presentations.

Duration
60 minutes

Preparation
The trainer should be an effective presenter and should have practiced presentation skills. The trainer should have all the required material/handouts and role plays defined for the training.

Methods
Role plays/description/presentation

Tools
PowerPoint presentations, Laptop, LCD projector, White board, markers etc.,

Session delivery:
The trainer should deliver the training using PowerPoint presentation and explain the need of preparation in presentation skills. The trainer should also explain that every individual has the potential to become an effective presenter with the help of role play.

Description:
Developing the confidence and capability to give good presentations, and to stand up in front of audience and speak well, are also extremely helpful competencies for self-development and social situations.

Personality skills are not limited to certain special people—anyone can give a good presentation to a professional and impressive standard. Like most specialists, this requires preparation and practice.
15. SWOT analysis of a trainer

Why this session:
SWOT analysis is a strategic planning method used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project, personal affairs or in a business venture. Self-analysis is one of the most complicated things to do but plays a very significant part in our personal progress. The personal skills SWOT analysis helps to identify your respective strengths, weaknesses, opportunities and threats.

Objective:
This objective of this session is to help the participants to understand that every individual has strengths, weaknesses, opportunities and threats in work life. It also helps them to assess themselves with the help of the SWOT analysis.

**Duration**
45 minutes

**Preparation**
The trainer should help the participants understand the principles of SWOT analysis. Prepare a role play accordingly and assign the participants to do a personal SWOT analysis.

**Methods**
Introduction, self-assessment, discussion

**Tools**
Template for self- and/or partner assessment, pens

Session delivery:
The trainer should explain the merits of a SWOT analysis. The trainer should also explain that a SWOT analysis will help every participant in their professional as well as individual life.

* https://rapidbi.com/swotanalysis/
Evaluation of the training

In order to know the relevance and effectiveness of the training, and scope for further improvements, an evaluation of the training will be done by the participants using a pre-designed Evaluation Sheet. The evaluation of the training will include an overall design of the training, duration and contents, facilities, results on participant's knowledge, relevance, general questions/comments and assessments, and quality of the training sessions.

Methods for the Training of Trainers

The training approach and tools deployed are typically interactive and designed to facilitate participatory learning. Discipline-specific theme papers as background material set the tone for introspective learning. Lecture-cum-discussions and case studies form major tools. Renowned subject experts and experienced field level functionaries form the core resource faculty. The teaching methodology includes short presentations, guided discussions, role plays, individual and group facilitation, work in small groups, practical learning and recap sessions. The inclusion of field study visits and in-plant studies in the curriculum ensures a mix of theory with practice.

The following list of methods (including a short description) may be used as a basis for a ToT course:

(i) **Brainstorming**

The use of this method is generally made as a first step to generate initial interest and essential involvement of the trainees in the training activity. The quantity, not the quality, is what matters. Ideas can be discussed later for practical consideration. To give the exercise on identification of NTMs and NTBs among the SAARC members to the participants – based upon the gap in understanding the modules would be a suitable introduction.

(ii) **Interactive Talk**

This method is marked by encouraging the trainees to be quite active and analytical in their learning approach. They are also motivated to be inquisitive and anxious to know new things by asking questions and exploring alternatives.

(iii) **Illustrative Talk**

This is a lecture method supplemented by the use of proper illustrations using training materials, including audio-visual aids. The presentation of success stories and case studies is also one of the essential elements of this method. Participants will be given some
cases and based upon that they have to rate the relative importance of NTMs and NTBs for better trade and investment with respect to selected members of SAARC. This module would be delivered based upon the knowledge gap of all participants.

(iv) **Group Discussion**

This method is based upon the principle of the trainer talking the role as a promoter. This method is also an effective instrument of participatory learning, whereby the trainer acts as a group adviser, a group facilitator and a group torch bearer. Participants would be given the group task to come out with the estimated economic impact of removing some of the actionable NTMs and NTBs – Based upon this, the strategies to design a better NTB or improved NTM framework may evolve.

(v) **Panel Discussion**

In this situation the trainer’s role is limited to a coordinator or moderator of a discussion, in which the trainees act as panellists and catalyst agents of the learning process. Being a learning trainer, the issues on NTM and NTB will be discussed in small groups.

(vi) **Role Play Exercise**

For this method, an artificial situation is created, whereby every individual trainee is assigned a role which he or she enacts to demonstrate the skills learnt through the process of the training. In the ToT, these assigned roles may be, but are not limited to: trainer, the trainee, the operator of audio-visual equipment, etc.

While using this method, the role of the facilitator of trainings is that of a guide or director of the enacted play.

(vii) **Workshop Method**

This method is used to make the best use of the mix of talent and skill of every individual trainee. In the workshop method, the trainees are arranged into a number of smaller groups, keeping in
view their interest and areas of learning. Each group is assigned a theme of discussion relating to the topic being covered during the training session. This method may be used at an advanced stage of the ToT.

**(viii) Classroom Practical**

This method is generally used to reinforce the learning experience through classroom practice. In case of a ToT, this method may be used as a supplement to the knowledge input given to the trainees through the lecture method, to cover a particular topic of the training session. One such example may be that of developing a tool of a Training Needs Assessment (TNA) or designing a plan of action for a training programme.

**(ix) Practice in Participatory Evaluation of Training**

A skilled trainer particularly engaged in building a cadre of facilitators of sustainable development at the grassroots level, as envisaged in the overall framework of the ideas and activities in Human Capacity Development Programmes, needs to be given practice in monitoring and evaluating the impact of the training conducted by him/her. Such a practice can be arranged both in the classroom and in a village situation. There are specific measures that can be adopted for a successful ToT course.

**(x) Curriculum Planning**

In Curriculum Planning apart from the objective of the programme method and organisation such as Instruction Strategies, resources and activities will be given on NTB and NTMs. The model is based on the TABA Model which includes the diagnosis of needs, Formulation of objectives, selection of content, organisation of content, selection of learning experience, organisation of learning experience and evaluation and Means of evaluation. It also shows the interaction relationships of the four essential phases of the curriculum development process: (I) Planning, (II) Content and Methods, (III) Implementation, and (IV) Evaluation and Reporting.
REFERENCE MATERIAL
An Introduction to the International Business Multilateral Trading System and the WTO

Learning Objectives
• This module will provide a clear idea about the importance of the international trading system with reference to the evolution and structure of the World Trade Organisation (WTO).
• It will facilitate learners to have a sound understanding about the importance of trade issues and evolution of the multilateral trading system.
• Learners will also be able to learn about the principles and rules guiding the GATT/WTO along with special provisions and mechanisms for dispute settlement.

Importance of Trade Issues for Sri Lanka
India, Sri Lanka, Bangladesh and most of the other South Asian countries opened up their economies under various trade and economic reforms, particularly in the 1990s, which is still continuing. Consequently, most of these economies, including Sri Lanka, are becoming increasingly dependent on trade, as opposed to aid, which re-emphasizes the importance of trading issues for Sri Lanka.

Sri Lanka economy’s degree of openness has gone up sharply over the recent years - about two fifths of its economy is now related to the global economy through export and import of goods and services. The challenge for Sri Lanka, in such a context, lies on how aid can be made to work for promotion of its trade related capacity and also, simultaneously, how to build the supply-side capacities for export and to design effective rates of protection for domestic industries. Making trade work for poverty alleviation and achieving the Millennium Development Goals (MDGs) are major concerns.

Sri Lanka is one of the 121 founding members of the WTO. A good understanding about the work of the multilateral trading system by all relevant stakeholders is essential to ensure Sri Lanka’s strengthened global integration. This is also pertinent from the perspective of taking advantage of the opportunities emanating from the global trading system. Indeed, trade issues are also important for Sri Lanka because of its membership in the various regional trade initiatives in South Asia that focus on preferential market access to goods from neighbouring countries. In recent years, most of the South Asian countries have taken various steps to reduce their tariffs, dismantled non-tariff barriers and facilities with regard to export and import of goods and services.

The degree of openness of these economies has also been on the rise at the same period. As a result, this has created closer trade and economic cooperation among the regional countries through preferential trading arrangements (PTAs), free trade areas (FTAs) and bilateral free trade areas (BFTAs). In such a scenario, the need for establishing closer cooperation in trade and investment involving both goods and services and study of trade issues is becoming increasingly important for the development of Sri Lanka’s economy. In fact, for Sri Lanka this applies not only within the region; making the global trading system work for the development of its economy remains as burning a concern.
Importance of International Trade and Multilateral Trading System

International trade is concerned with the flow of goods and capital across national borders. The focus of the analysis is on commercial and monetary conditions that affect balance of payment and resource transfers.

Basis for international trade
Whenever a buyer and seller come together, each expects to gain something from the other. The same expectation applies to nations that trade with each other. It is virtually impossible for a country to be completely self-sufficient without incurring undue costs. Therefore trade becomes a necessary activity, though in some cases trade does not always work to the advantage of the nations involved. Virtually all governments feel political pressure when they experience trade deficits. Too much emphasis is often placed on the negative effects of trade, even though it is questionable whether such perceived disadvantages are real or imaginary.

Why do nations trade?
A nation trades because it expects to gain something from its trading partner. One may ask whether trade is like a zero-sum game, in the sense that one must lose so that another will gain. The answer is no because though one does not mind gaining benefits at someone else’s expense, no one wants to engage in a transaction that includes a high risk of loss. For trade to take place, both nations must anticipate gain from it. In other words trade is a positive sum game.

The economic case for an open trading system based on multilaterally agreed rules is very strong and rests largely on commercial common sense. But it is also supported by evidence, as experienced with the growth of world trade and economic development since the Second World War. During the first 25 years after the war, world economic growth averaged about 5% per year, a high rate that was partly ensured as a result of lowering trade barriers. World trade grew even faster, averaging about 8% during the corresponding period. According to the World Trade Report 2007, world trade has recorded a twenty seven fold growth since 1950 which is three times higher than world output growth.¹⁰

The link between free trade and economic growth is quite strong and economic theory points to many reasons for such links. Countries that have chosen to make trade an instrument of economic growth have, indeed, grown more strongly and become wealthier than those who have chosen a reliance on domestic markets behind protective walls. All countries, including the poorest, have assets - human, industrial, natural, and financial - which they can employ to produce goods and services for their domestic markets and/or to compete overseas with other suppliers. Economic theories assert that countries can benefit when these goods and services are traded based on comparative advantages. Simply put, the principle of "comparative advantage" says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products

¹⁰ https://ecampus.wto.org/admin/files/Course_382/Module_2317/ModuleDocuments/eWTO-M1-R2-E.pdf
for products that other countries produce best. In other words, liberal trade policies - policies that allow flow of goods and services with increasingly lowered restrictions - deepen competition, encourage enhancement of trade across borders and increase welfare. Trade promotes growth, and growth reduces poverty. Increased movements of capital and people have had a significant role in the process, as have technology.

However, the welfare enhancing capacity of trade is not automatic and depends on many factors. The relevant policies need to be appropriately crafted in order to ensure that trade is both growth-inducing and equity-friendly. For this reason, the study of multilateral and regional trading systems, particularly from the perspective of developing and least developed countries is so important. And for this reason, making trade work for poverty alleviation is not just a slogan, but an issue of enormous policy significance for these countries. A strong case for favouring freeing of the global trade has been made in the preamble of the Marrakesh Agreement that established the WTO. The objective is to move towards a global trade regime by way of gradual liberalisation of trade in commodities, services, and factors of production, to be done through dismantling of various non-tariff barriers (NTBs) like quantitative restrictions (QRs), anti-dumping duty (ADD), tariffication of NTBs and gradual reduction of tariff barriers (TBs). The objective of the WTO is to gradually move to an international commercial transaction that is based on competitive strength and transparency, but which does not also ignore the rationale of non-reciprocity and special and differential treatment of the relatively less developed countries.

**Evolution of the Multilateral Trading System: From GATT to WTO**

The General Agreement on Tariffs and Trade (GATT), precursor of the WTO, was established on a provisional basis after the Second World War. Two multilateral institutions, also called 'Bretton Wood' institutions, dedicated to international economic cooperation were also established at this time: The International Bank for Reconstruction and Development (IBRD) and The International Monetary Fund (IMF). The IBRD, popularly known as the 'World Bank', was established to provide support in the form of credit for long-term reconstruction and development and the IMF to provide loans for balance of payments support. The original 23 GATT countries were amongst over 50 countries which agreed to a draft Charter for an International Trade Organisation (ITO) - a new specialised agency of the United Nations to deal with trade related issues. However, when the United States government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO's future was sealed for all practical purpose.

Nevertheless, countries agreed that they would negotiate tariff liberalisation under a general agreement in the area of tariff and trade and that they would start negotiating in the area of tariffs on and trade in industrial goods.

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1. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm
Many industrialised countries were interested to correct the large overhang of protectionist measures which remained in place from the early 1930s and continued till the end of WWII. In this backdrop and with a view to reducing tariffs, tariff negotiations were opened among the 23 founding GATT "contracting parties" in 1946. This first round of negotiations resulted in 45 thousand tariff concessions affecting US$10 billion - or about one-fifth - of world trade. This was a significant achievement given that the proposed ITO could not leave the ground. For about 50 years, countries could not agree on establishing an architecture or a body to comprehensively deal with multilateral trading issues. As a result, despite its provisional nature, the GATT remained the only multilateral instrument governing international trade from 1948 until the establishment of the WTO in 1995. Prior to the establishment of the WTO, in all, eight GATT Rounds were held. The last GATT round was the Uruguay Round (UR) which was the most comprehensive of all the GATT Rounds. Whilst other Rounds dealt with only trade in industrial goods, the GATT-UR for the first time, discussed issues related to trade in agriculture and the services sector. The WTO was established on the basis of consensus reached at the end of the GATT-UR in 1993 and started to function in January 1995. In 1995, number of WTO members was 121 and at present it is 164.

World Trade Organisation (WTO): Objectives and Functions

The Uruguay round of GATT (1986-93) instated the World Trade Organisation. The members of GATT signed on an agreement of the Uruguay round in April 1994 in Morocco for establishing a new organisation named WTO.

On January 1, 1995, it took the place of GATT as an effective organisation. GATT used to be an informal organisation which regulated world trade since 1948.

Contrary to the temporary nature of GATT, WTO is a permanent organisation which has been established on the basis of an international treaty approved by participating countries. It achieved the international status like IMF and IBRD, but it is not an agency of the United Nations (UN).

Structure:
The WTO has nearly 153 members accounting for over 97% of world trade. Around 30 others are negotiating membership. Decisions on new membership are made by all members, typically based on a consensus.

A majority vote is also possible but it has never been used in the WTO and was extremely rare under the WTO’s predecessor, GATT. The WTO’s agreements have been ratified in all members’ parliaments.
The WTO’s top level decision-making body is the Ministerial Conference which meets at least once in every two years. Below this is the General Council (normally ambassadors and heads of delegation in Geneva, but sometimes officials sent from members’ capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Disputes Settlement Body.

At the next level, the Goods Council, Services Council and Intellectual Property (TRIPs) Council report to the General Council. Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas such as, the environment, development, membership applications and regional trade agreements.

**Secretariat:**

The WTO secretariat, based in Geneva, has around 600 staff and is headed by a Director-General. Its annual budget is roughly 160 million Swiss Francs. It does not have branch offices outside Geneva. Since decisions are taken by the members themselves, the secretariat does not have the decision making the role that other international bureaucracies are given.
The secretariat’s main duties are to supply technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyse world trade and to explain WTO affairs to the public and media. The secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO.

Objectives:

The important objectives of WTO are:
1. To improve the standard of living of people in the member countries.
2. To ensure full employment and broad increase in effective demand.
3. To enlarge production and trade of goods.
4. To increase the trade of services.
5. To ensure optimum utilization of world resources.
6. To protect the environment.
7. To accept the concept of sustainable development.

Functions:

The main functions of WTO are discussed below:
1. To implement rules and provisions related to trade policy review mechanism.
2. To provide a platform to member countries to decide future strategies related to trade and tariff.
3. To provide facilities for implementation, administration and operation of multilateral and bilateral agreements of the world trade.
4. To administer the rules and processes related to dispute settlement.
5. To ensure the optimum use of world resources.
6. To assist international organisations such as, IMF and IBRD for establishing coherence in Universal Economic Policy determination.

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<th>Conference</th>
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<td>I</td>
<td>9-13 Dec., 1996</td>
<td>Singapore</td>
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<td>II</td>
<td>18-20 May 1998</td>
<td>Geneva (Switzerland)</td>
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<td>III</td>
<td>30 Nov.-3 Dec., 1999</td>
<td>Seattle (USA)</td>
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<td>IV</td>
<td>9-14 Nov., 2001</td>
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<td>V</td>
<td>10-14 Sep., 2003</td>
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<td>VI</td>
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<td>VII</td>
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<td>15-18 Dec., 2015</td>
<td>Nairobi (Kenia)</td>
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Source: www.wto.org
WTO Agreements

The WTO’s rule and the agreements are the result of negotiations between the members. The current sets were the outcome to the 1986-93 Uruguay Round negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT).

GATT is now the WTO’s principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement and trade policy reviews.

The complete set runs to some 30,000 pages consisting of about 30 agreements and separate commitments (called schedules) made by individual members in specific areas such as, lower customs duty rates and services market-opening.

Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries’ markets. Each country promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

(a) Goods:
It all began with trade in goods. From 1947 to 1994, GATT was the forum for negotiating lower customs duty rates and other trade barriers; the text of the General Agreement spelt out important, rules, particularly non-discriminations since 1995, the updated GATT has become the WTO’s umbrella agreement for trade in goods.

It has annexes dealing with specific sectors such as, agriculture and textiles and with specific issues such as, state trading, product standards, subsidies and action taken against dumping.

(b) Services:
Banks, insurance firms, telecommunication companies, tour operators, hotel chains and transport companies looking to do business abroad can now enjoy the same principles of free and fair that originally only applied to trade in goods.

These principles appear in the new General Agreement on Trade in Services (GATS). WTO members have also made individual commitments under GATS stating which of their services sectors, they are willing to open for foreign competition and how open those markets are.

(c) Intellectual Property:
The WTO’s intellectual property agreement amounts to rules for trade and investment in ideas and creativity. The rules state how copyrights, patents, trademarks, geographical names used to identify products, industrial designs, integrated circuit layout designs and undisclosed information such as trade secrets “intellectual property” should be protected when trade is involved.
(d) Dispute Settlement:
The WTO’s procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore, for ensuring that trade flows smoothly.

Countries bring disputes to the WTO if they think their rights under the agreements are being infringed. Judgments by specially appointed independent experts are based on interpretations of the agreements and individual countries’ commitments.

The system encourages countries to settle their differences through consultation. Failing that, they can follow a carefully mapped out, stage-by-stage procedure that includes the possibility of the ruling by a panel of experts and the chance to appeal the ruling on legal grounds.

Confidence in the system is borne out by the number of cases brought to the WTO, around 300 cases in eight years compared to the 300 disputes dealt with during the entire life of GATT (1947-94).

(e) Policy Review:
The Trade Policy Review Mechanism’s purpose is to improve transparency, to create a greater understanding of the policies that countries are adopting and to assess their impact. Many members also see the reviews as constructive feedback on their policies.

All WTO members must undergo periodic scrutiny, each review containing reports by the country concerned and the WTO Secretariat.

Basic Principles of the WTO
The rule-based regime in GATT/WTO is premised on two basic principles, often expressed as four main elements. The two basic principles are non-discrimination and market efficiency (or open, secure access). The four main elements are: most favoured nation (MFN), national treatment, tariffication and transparency. These four elements are the four most powerful Swords of the GATT. The complex legal texts of the WTO are developed based on a number of simple and fundamental rules. Under the most favoured nation MFN (Favour One, Favour All) rule, countries cannot treat their trading partners on a discriminatory basis. The National Treatment principle calls for treating both domestic and foreign goods equally. WTO agreements opt for reduction in trade barriers through reducing tariff and non-tariff barriers in a gradual manner; and ensuring predictability through binding obligations and transparency, the WTO system discourages use of quota and other means of quantitative restrictions on trade, but developing countries and LDCs are given relatively more time for such removal through Special and Differential (S&D) Treatment. All the decisions made in the WTO are taken through negotiation and consensus whereby all members have to agree to the principle of Single Undertaking: Nothing is agreed unless everything is agreed. Although, a vote is theoretically possible allowing majoritarian decision making, till now every effort has been made to come to decisions through consensus. Such treatment is based on the
principle of non-reciprocity in the areas of commitments and obligations. This allows developing and particularly, the least developed countries (LDCs), certain agreed upon derogations.

- **Most favoured nation**, commonly referred to as MFN, means simply that a member of the GATT extend the same treatment to imports from all the other members, i.e. all members are treated equally as well as the "most favoured" among them. This ensures non-discrimination at the border: favour one, favour all.

- **National treatment** means that imported goods, once they have met all the requirements of whatever border regime is in place and have entered into the internal (domestic) market in a member's economy, will be treated no less favourably than domestic goods are treated in the domestic market. This is non-discrimination in the internal (domestic) market. Taken together, the above two elements ensure non-discrimination.\(^\text{14}\)

- **Tariffication** refers to the elimination of Quantitative Restrictions (QRs) and Non-Tariff Barriers (NTBs) and reliance on tariffs as the sole instrument of border protection. The objective of the WTO is to quantify the tariffs on the QRs and NTBs (if required), then gradually bring the tariffs down.\(^\text{15}\)

**Transparency:** The general goal of transparency is achieved through publication of trade laws and regulations. Transparency is expected to improve market efficiency as it is necessary for participants in the market to know the rules if they are to compete effectively. Towards this end, developed country members have to report on their trade policies to the WTO Secretariat every two years. LDCs have to do this every six years (BD's Trade Policy Review has taken place in 2000 and 2006).\(^\text{16}\)

The swords allow WTO to cut down the barriers to international trade, while the "Shields" allow the WTO members an opportunity to protect their interest by way of derogation from commitment and obligations, protracted implementation period and waivers in exceptional cases.


TRADE ministers from the 146 member countries of the World Trade Organisation (WTO) arrived in Cancun on September 10th for what officially is yet another yawn-inducing routine meeting to mark the halfway point of the current round of global trade talks. But the meeting promises to be anything but routine, or boring. Every negotiator knows that, in reality, the Cancun meeting will be a desperate effort to keep the trade talks alive.

Since it was launched in the Qatari capital of Doha in November 2001, the WTO's latest round of multilateral trade talks has made almost no progress. Every deadline has been missed as politicians, from rich and poor countries alike, have proved reluctant to make tough compromises on issues from freeing farm trade to cutting tariffs on industrial goods. Recent weeks have seen two small rays of light. On August 30th, after years of negotiations, a deal was finally agreed to allow poor countries to import cheaper generic drugs in emergencies to fight scourges such as AIDS. Also last month, the United States and the European Union, the titans of global trade, agreed to offer a joint proposal for liberalising farm trade.

Both developments are welcome, and long overdue. But the drugs deal, by itself, is unlikely to do much to help the ill and dying in the poorest countries. In the overall context of world trade, moreover, the drugs agreement is small potatoes. And it is too early to say whether the vague American-EU joint approach on farm trade will lead to a genuine breakthrough on this thorniest of all trade issues.

On the biggest questions, fundamental divisions remain: over the scope of the negotiations, over how far countries are willing to reduce trade barriers, and over the role and responsibility of poor countries themselves, which were meant to be among the biggest beneficiaries of the current round. Without a breakthrough in Cancun, the chances of finishing the talks on time by January 2005, or even of concluding them at all, are slim. A failure to reach agreement could be a disaster for the multilateral trading system, the world economy and, most of all, for the world's poor.

**High hopes**

Launched in November 2001, barely two months after the September 11th terrorist attacks, the Doha round of trade talks began with high hopes. Just agreeing to embark on a new round of talks was a victory after the debacle of the WTO's 1999 meeting in Seattle, when efforts to do the same ignominiously collapsed amid anti-globalisation riots on the city's streets.

The Doha agenda was ambitious, aiming not only to cut barriers in highly protected economic sectors, such as agriculture and services, but to write new rules for globalisation in areas such as investment and competition policy. Most of all, Doha was purportedly focused on helping the poor. Rich countries promised to open their markets in areas, especially farm

17 https://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm
goods and textiles, which matter most to poor countries. They promised to help poor countries with cash, technical assistance and “special and differential” treatment in implementing any agreement. To underline the pro-poor message, the words “development” and “developing” were included 63 times in the 10-page document that launched the Doha round.

Rhetoric is cheap, but there is little doubt that the Doha round has the potential to bring substantial economic benefits to poor countries. A new analysis by the World Bank, published in its Global Economic Prospects on September 3rd, suggests that an ambitious, though achievable, reduction of trade barriers in the Doha round could boost global income by between $290 billion and $520 billion a year. Well over half of these gains would go to poor countries. By 2015, the World Bank reckons, a successful Doha round could lift 144m people out of poverty.

If trade in services, from shipping to accountancy, were significantly freed, another Doha goal, the benefits could be even greater. Nearly all economists agree that freer trade in services would lead to gains several times larger than those from lowering barriers to goods alone.

Despite these potential gains, governments in both rich and poor countries pedalled backwards from the moment they agreed to the Doha agenda. The EU, champion of mollycoddled farmers, was quick to downplay the extent to which it had committed itself to free farm trade. The Americans talked big, putting forward radical proposals to free trade in agriculture and industrial goods. But their actions, particularly last year’s boost to American farm subsidies, suggested the opposite.

Many poor countries were defensive from the start. Still smarting from what they regarded as unfair treatment in the earlier Uruguay round of trade talks which were concluded in 1994, they moaned about the iniquities of past trade deals and focused on minimising their responsibilities in the Doha round. “Special and differential treatment”, poor nations seemed to feel, should mean “we do nothing and the rich world opens up”.

The result has been stalemate. Trade negotiators in Geneva made modest progress on technical details, but the overall talks stalled. In farm trade, a chasm between big agricultural exporters, such as Australia and Argentina, which want to tear down barriers and slash trade-distorting subsidies, and the big farm subsidisers, especially the EU and Japan, who want minimum change, meant that negotiators have not even agreed on how to conduct and measure progress in the negotiations. These “modalities” should have been decided by April. Instead the decision was put off to Cancun.

The paralysis on agriculture spread to the rest of the talks, because many developing countries were reluctant to make concessions elsewhere without progress on farm trade. Efforts to agree a way of measuring cuts to industrial tariffs also stalled, and were put off to Cancun. Nor has there been much headway on agreeing the scope of negotiations in controversial new areas such as investment.
The result is that trade ministers next week have five days to reach a series of complicated political compromises after almost two years of stalemate. A month ago that seemed an impossible task. WTO insiders at Geneva were privately fretting that the Cancun meeting could easily become another Seattle-style debacle.

Fortunately, the agreements on drugs and agriculture announced last month, though modest, seem to indicate that trade negotiators, and their political masters, are at least waking up to the dangers of the round collapsing. With so much at stake, next week's meeting might just salvage the talks. The drugs deal removes an emotive and highly symbolic issue which could have torpedoed the entire round. And the American-EU announcement on farm trade at least signals that a final deal is still possible.

Agriculture is the issue which puts the most pressure on rich countries. The World Bank estimates that over two-thirds of the overall benefits from Doha's barrier-lowering would come from freer farm trade. It is easy to see why. Farm protectionism is a scandal. Over three-quarters of the world's poor live in rural areas, mostly dependent on agriculture. Yet the rich world spends over $300 billion a year supporting its farmers, more than six times the amount it spends on foreign aid. Average agricultural tariffs in rich countries are many times higher than those on manufactured goods. On individual products, barriers are often much higher. In Japan, for instance, tariffs on rice, at up to 1,000%, are ludicrous.

This lavish support distorts prices and blocks market access for poor countries that are natural exporters of farm products. Cotton is a classic example. The world's biggest exporter of cotton is America, even though its production costs are far higher than those of African producers such as Mali or Burkina Faso. America's 25,000 cotton farmers receive $4 billion of government subsidies in return for producing $3 billion-worth of cotton. These subsidies push down the world market price, hurting, among others, 11m cotton producers in West Africa. Similar stories abound in other products. From beef to cereals, world markets are distorted by rich country's cossetting of their farmers.

Less well known, however, is that poor countries themselves engage in farm protectionism. They cannot generally afford subsidies, but tariff rates on agricultural goods are often even higher in poor countries than in rich ones. While rich countries would benefit most from getting rid of their crazy agricultural systems, the World Bank analysis suggests that 80% of the benefits reaped by poor countries from farm reform would come from reductions in the barriers between poor countries themselves.

Can the Doha round cut through this morass? Much depends on what the United States and the EU decide to do. Their agreement last month was something of a fudge. On cutting agricultural tariffs, they simply added their opposing positions together. America had long demanded that countries with higher tariffs on farm goods should cut them more. The more protectionist Europeans, by contrast, wanted all countries to cut their tariffs by an equal percentage. They now suggest a mixture of the approaches.

On export subsidies, America lowered its ambition, giving up the goal of eliminating export subsidies altogether. The Europeans, in turn, agreed to get rid of subsidies in certain
products that matter to poor countries (without naming what those products might be). Their joint framework also recognises that the poorest countries needed special treatment in freeing farm trade, but implies that big agricultural exporters, such as Brazil, should not get such privileges.

The deal’s ambition—or its potential impact on poor countries—is difficult to gauge because it includes no numbers, dates or references to specific products. And yet despite its vagueness, the American-EU framework galvanised debate. Suddenly a plethora of proposals for how to structure the farm talks are on the table, largely modelled on the American-EU approach. Most important is a plan presented by 20 developing countries, led by Brazil, India and China, which represent 60% of the world's farmers. This group followed the American-EU approach but, predictably, demanded more subsidy cuts and tariff reductions from rich countries while offering much less ambitious liberalisation from poor countries. In particular, it suggested poor countries should be able to use the “average” formula for cutting tariffs, while rich countries should be required to cut their higher tariffs more. 

The task at Cancun will be to forge compromise between the American-EU position and that of these developing countries, while somehow keeping extreme agricultural protectionists, such as Japan, on board. Ideally, that compromise should push both sides into more liberalisation. One risk is that the negotiators settle for the lowest common denominator: an unambitious effort to reduce support for the rich world's farmers coupled with even fewer demands on poor countries, in the name of “special and differential treatment”. That compromise, as the World Bank’s numbers show, would forgo most of the potential economic benefits of the Doha round.

Textiles and beyond

The debate about how to reduce barriers to the trade of industrial goods follows a similar pattern. In this area, too, the public focus of the Doha round has been on the rich world’s need to cut its barriers to the exports of poorer countries. While overall rich-country tariffs on manufactured goods are low, they are high in areas, such as textiles and footwear that are most important to poor countries. On average, tariffs applied by rich countries on the types of goods that poor countries produce are four or five times higher than the tariffs on goods usually imported from other rich countries (see chart 1). As a new study for Oxfam, an aid agency, points out, the tax rate which America applies to imports from Bangladesh is 14% compared with a rate of 1% on imports from France. Rightly, Oxfam points out that an important measure of progress in the Doha round will be a commitment by rich countries to reduce these high tariffs.

But, again, the biggest potential gains for poor countries themselves, contrary to popular belief, are actually from tariff cuts in other poor countries. For the past decade, trade flows between poor countries have risen twice as fast as overall global trade, precisely because many poor countries have been cutting tariffs. Trade between developing countries now makes up 11% of all global trade.

Nonetheless, barriers between poor countries are still far higher than those between rich and poor countries. And the maximum barriers allowed under WTO rules—that is, the level at which countries have “bound” their tariffs—is often higher still. In America, for instance, the average tariff on industrial goods is 4%. In Brazil, by contrast, the average tariff level permitted under trade rules is 30% while in India it is almost 40%. The average tariff levels actually applied in Brazil and India are 14% and over 30% respectively (see chart 2).

Although poor countries would gain most from slashing these barriers, the debate at Cancun is almost certain to revolve around the question of how much the rich world should “give” and how little poor countries should “give up”. Most rich countries want a formula which requires those countries with higher tariffs to cut more, although with special provisions for poor countries, especially the very poorest. Rich countries are willing to make extra efforts to reduce barriers in sectors such as textiles, but they want the more advanced developing countries to do the same.

But most developing countries are reluctant to expose their domestic industries to more international competition. India is the most extreme example, and is deeply opposed to a formula that demands bigger cuts from those with higher tariffs. China thinks it should do less than others because it has just cut tariffs to join the WTO. Big farm traders, such as Brazil, are loth even to discuss industrial goods until they see gains in agriculture. Worse, many supposed champions of the poor, such as Oxfam, reinforce this mercantilist mind set. “Responsibility for Cancun's fate”, Oxfam writes in its most recent report on the subject, “resides overwhelmingly in the national capitals of the rich world.” As far as industrial goods are concerned, that is simply not true.

The final area of controversy at Cancun—how far to broaden the Doha round into new areas—also pits poor countries, notably India, against rich ones, specifically Europe and Japan. This time, however, poor countries have more of a point.

At the insistence of the Europeans and Japanese, the Doha agenda promised to launch full-fledged negotiations at Cancun to write rules in four new areas. These are investment policy, competition policy, procedures for transparency in government procurement, and trade-facilitating policies, such as customs procedures—generally known as the four “Singapore issues” after the summit at which they were first raised.

The prospect of expanding the WTO's remit to these new areas has long frightened many poor countries. Some have worried that rich governments would use any new rules to dictate their investment regimes, a fear that the anti-globalisation protesters have encouraged. More reasonably, many small poor countries have worried that they simply do not have the political or technical ability to negotiate about such rules. After all, more than half of the WTO's members lack even a domestic competition authority.
There are signs that most poor countries could, albeit reluctantly, accept negotiations on government procurement and trade facilitation. But they consider competition and investment as off-limits. India, which objected most to the introduction of the Singapore issues into the Doha round, has said loudly and repeatedly that it will not allow negotiations in any area, though it clearly cares most about investment. But the EU and Japan have, so far, refused to budge from their position that negotiations must be launched in all four areas. The EU sees progress on the Singapore issues as a necessary exchange for any concessions it will make on agriculture. Exactly why is hard to fathom. European companies have not been loudly demanding new WTO rules on investment.

It now no longer looks likely that the Cancun meeting will collapse into a Seattle-style fiasco. The deal on drugs for poor countries has removed one dangerous obstacle, and farm-trade negotiations have at least begun to move. But to be judged genuinely successful, negotiators at Cancun will have to do more than avoid an embarrassing breakdown. On a range of issues, the Doha round is clearly in trouble. To keep it alive, Cancun needs to produce some real progress in all three areas—farming, industrial tariffs and new topics such as investment and competition—that nearly all 146 participating countries, however reluctantly, can support.

Given the difficulty rich countries have had in making any progress towards liberalising farm trade, and the mercantilist instincts that drive many poor countries, the prospects are still not good. But the stakes, especially for the world's poor, should be too high for any country, rich or poor, to accept failure willingly.

Questions for Discussion
1. Why are trade issues important for Sri Lanka?
2. What were the major GATT Trade Rounds?
3. What are the four basic principles of WTO?
4. What are MFN and National Treatment Principles?
5. What is a 'single undertaking'?
6. Why is there a need for special and differential treatment for the developing countries and LDCs in the WTO?
7. How is S&D treatment ensured in the WTO system?
8. Is WTO member-driven or it can exercise veto power as in the UN?
9. Where and how the WTO member countries can resolve their trade related conflicts?
Learning Objectives

• The module will enable to expose the learners to the issue of trade in services which are broadly covered by the General Agreement on Trade in Services (GATS) under the WTO.
• The module will explain the background and nature of GATS. A brief discussion on the state of WTO negotiations on GATS with particular emphasis on the implications of GATS on least developed countries (LDCs) like Bangladesh is also included.
• The module will enable the participants to learn the nitty-gritty of GATS and to apply the accumulated knowledge in their professional arena.

Introduction to GATS

The General Agreement on Trade in Services (GATS) entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services. With a view to achieving a progressively higher level of liberalisation, pursuant to Article XIX of the GATS, WTO Members are committed to entering into further rounds of services negotiations.¹⁹

All Members of the World Trade Organisation are signatories to the GATS and have to assume the resulting obligations. ²⁰

The GATS was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.²¹ Ranging from architecture to voice-mail telecommunications and to space transport, services are the largest and most dynamic component of both developed and developing country economies.²² Services represent the fastest growing sector of the global economy and account for two thirds of global output, ²³ one third of global employment and nearly 20 percent of global trade.²⁴ The idea of bringing rules on services into the multilateral trading system was floated in the early to mid-1980s and since January 2000, they have become the subject of multilateral trade negotiations.²⁵ The GATS agreement allows a high degree of flexibility to participating countries, both within the framework of rules and also in terms of the market access commitments.²⁶

GATS Explained: Origin of GATS and its Coverage

Since the inception in 1947, the focus of multilateral trading system under GATT was largely on trade in goods. Hence, from 1947 through the Tokyo Round of GATT, services were not

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²⁰ https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/intro1_e.htm
²¹ https://ecampus.wto.org/admin/files/Course_437/Module_2857/ModuleDocuments/Module%2020_print.pdf
²² https://www.wto.org/english/tratop_e/serv_e/serv_e.htm
²⁴ Fengjuan, Xiao; Turner, Lindsay (2008) - A study on financial service trade between Australia and China 2008-07-08 Economic Papers (Economic Society of Australia)
²⁵ https://www.wto.org/english/tratop_e/whatis_e/tif_e/agrm6_e.htm
²⁶ https://www.wto.org/gatt_docs/English/SULPDF/92140017.pdf
covered in successive rounds of trade negotiations. These developments, coupled with the growing recognition of the significance of trade in services ultimately culminated in services being included in the multilateral trading system under the General Agreement of Trade in Services (GATS). The GATS is one of 28 World Trade Organisation (WTO) agreements and the first multilateral agreement which provides legally enforceable rights to trade in all services. The agreement included built-in commitment for continuous liberalisation through periodic negotiations. The agreement also covered, for the first time, the issues related to investment since it covers not only the cross-border trade but also every possible means of supplying a service. Due to diverse nature of trade in services, the complicated negotiation process could not be completed during the Uruguay Round and there were areas which still required substantive negotiations before concluding a comprehensive framework for trade in services. Thus, the outstanding issues were incorporated in the agreement in 1994, and it was decided unanimously that the first round of negotiations on the GATS was to start no later than five years from 1995 under the "Built-in-Agenda" in the GATS. Accordingly, the services negotiations started officially in early 2000 under the Council for Trade in Services of the WTO. Under the GATS four modes of supply of services in international trade have been identified. These are; Mode 1: Cross Border Supply; Mode 2: Consumption Abroad; Mode 3: Commercial Presence, and, Mode 4: Presence of Natural Persons. The post-Uruguay negotiations on services liberalisation were somehow overlooked due to the increased focus on matters such as negotiations on agriculture liberalisation, non-agricultural market access (NAMA) and the so called "Singapore Issues". Together with the negotiations on market access, the issues relating to service sector liberalisation are still under the "built-in" agenda of the WTO, and it is expected that with the progress in negotiations in other areas, GATS negotiations will receive increased attention due to the growing importance of services liberalisation to both the developed and developing countries.

Objectives of GATS
The GATS is intended to contribute to trade expansion "under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries". Trade expansion is thus not seen as an end in itself, but as an instrument to promote growth and development. GATS’s contribution to world services trade rests on two main pillars; (a) ensuring increased transparency and predictability of relevant rules and regulations; and (b) promoting progressive liberalisation through successive rounds of negotiations, which is tantamount to improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors. The Agreement explicitly recognises governments' right to regulate, and introduce new regulations, to meet national policy objectives and the particular need of developing countries to exercise this right.

28 Adlung, Rudolf; Carzaniga, Antonia (2001) - Health services under the General Agreement on Trade in Services and the Health Sector
30 Bhat, T.P. International Trade in Health Care Services: Prospects and Challenges for India; Institute of Studies in Industrial Development, Vasant Kunj, New Delhi, India
31 http://commerce.nic.in/trade/international_trade_matters_service_indianpapers_specialsession_2.asp
Basic Principles of GATS

- All services are covered by the GATS
- Most-favoured-nation treatment applies to all services, except the one-off Temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments are normally unrestricted
- Individual country’s commitments would be negotiated and bound
- Progressive liberalisation through further negotiations

Scope and Application of GATS

The GATS applies to measures by Members affecting trade in services. It does not matter in this context whether a measure is taken at central, regional or local government level, or by non-governmental bodies exercising delegated powers. The relevant definition covers any measure; whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, in respect to the purchase, payment or use of a service; the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally, or the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.

For purposes of structuring their commitments, WTO Members have generally used a classification system comprised of 12 core service sectors.

- Business services (including professional services and computer services)
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services (including insurance and banking)
- Health related and social services
- Tourism and travel related services
- Recreational, cultural and sporting services
- Transport services
- Other services not included elsewhere

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32 https://en.wikipedia.org/wiki/General_Agreement_on_Trade_in_Services
34 Gupta, Pralok - International Trade in services: Importance and potential for states. Assistant Professor Centre for WTO Studies New Delhi
35 https://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm
36 https://www.wto.org/english/ Tratop_e/serv_e/cbt_course_e/c1s4p1_e.htm
38 Villup, Elina (2015) - The Trade in Services Agreement (TISA): An end to Negotiations in sight?
These sectors are further subdivided into a total of some 160 sub sectors. Under this classification system, any service sector may be included in a Member's schedule of commitments with specific market access and national treatment obligations. Each WTO Member has submitted such a schedule under the GATS.40

**Definition of Services Trade and Modes of Supply**

The GATS covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction. The GATS covers:

a) Services supplied from the territory of one Member into the territory of another Member (Mode 1: Cross-border trade);

b) Services supplied in the territory of one Member to the service consumer of any other Member (Mode 2: Consumption abroad);

c) Services supplied by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3: Commercial presence); and

d) Services supplied by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode-4: Presence of natural persons).

The above definition is significantly broader than the balance of payments (BOP) concept of services trade. While the BOP focuses on residency rather than nationality—i.e. a service is being exported if it is traded between residents and non-residents—certain transactions falling under the GATS, in particular in the case of mode 3, typically involve only residents of the country concerned. Commercial linkages may exist among all four modes of supply.

For example, a foreign company established under mode 3 in country A may employ nationals from country B (mode 4) to export services cross-border into countries B, C, etc. Similarly, business visits into A (mode 4) may prove necessary to complement cross-border supplies into that country (mode 1) or to upgrade the capacity of a locally established office (mode 3).

These clearly defined commitments are ‘bound’; like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries. Governmental services are explicitly carved out of the agreement. Governmental services are defined in the agreement as those that are not supplied commercially and do not compete with other suppliers. These services are not subject to any GATS disciplines, they are not covered by the negotiations, and commitments on market access and national treatment (treating foreign and domestic companies equally) do not apply to them.

The market access provisions of GATS (Article XVI) cover six types of restrictions that must be maintained. The restrictions are related to:

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(i) the number of service supplies
(ii) the value of service transactions or assets
(iii) the number of operations or quantity of output
(iv) the number of natural persons supplying a service
(v) the type of legal entity or joint venture
(vi) the participation of foreign capital

*National treatment* (Article XVII) implies the absence of all discriminatory measures to competing countries, i.e. commitment to treat foreign services or service supplies the same as domestic suppliers.

**Structure of the Agreement**

The GATS has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the 'Most Favoured Nation' principle of non-discrimination.

**Obligations under GATS**

There are two types of obligations for member countries

(i) General obligations: unconditional and conditional.

(ii) Specific Obligation.

**Unconditional General Obligations**

Each member has to respect certain general obligations regardless of the existence of specific commitments. These include:

a) MFN treatment (Article II)

b) Some basic transparency provision (Article III)

c) Compliance of monopolies and exclusive providers with the MFN obligation (Article VIII: 1)

d) Consultations on business practices (Article IX)

e) Consultations on subsidies that affect trade (Article XV: 2)

**Conditional General Obligations**

- Domestic regulation (Article VI)
- Monopolies (Article V)
- Payments and Transfers (Article XI)
- Economic Integration Agreements (Article XXIV)
- Recognition (Article VII)
- Exceptions (Article XII)

**Specific Obligations**

- Each member is required to assume specific commitments related to market access (Article XVI) and national treatment (Article XVII) in designated sectors.  

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41 https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c2s5p1_e.htm
Additional Commitments

- Members may also undertake additional commitments with respect to measures not falling under the market access and national treatment provisions of the Agreement.
- Such commitments may relate to the use of standard, qualifications or licenses (Article XVIII).
- Additional commitments are particularly frequent in the telecommunications sector where they have been used by members to incorporate into their schedules certain competition and regulatory discipline.

Transparency

The GATS says governments must publish all relevant laws and regulations, and setup enquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. And they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

Regulations

Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively and impartially. The GATS does not require any service to be deregulated. Commitments to liberalise do not affect governments' right to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit. Governments naturally retain their right to set qualification requirements for doctors or lawyers, and to set standards to ensure consumer health and safety.

Recognition

When two (or more) governments have agreements recognising each other’s qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to negotiate comparable pacts. The recognition of other countries' qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

International Payments and Transfers

Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplied ('current transactions') in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

Progressive Liberalisation

The Uruguay Round was only the beginning. The GATS requires more negotiations, which began in early 2000 and are now part of the Doha Development Agenda.
The scope of GATS allows for broad-based interaction with, and integration into international product and factor markets. Focal areas of interest, from a developmental perspective, might include infrastructural services, such as transport, distribution, finance and communication that have economy-wide growth and efficiency implications. This implies, in turn, that in the definition of negotiating positions any defensive interests of sector incumbents, and the possible cost of adjustment, would need to be balanced with such wider economic benefits.

Gains to the USA and the EU from Mode 4
Changing Demographic Conditions
- By 2050 labour supply is expected to go down substantially due to early retirement, aging population, falling birth rates, increasing affluence and time spent in higher education of young population.
- According to the UN, France, Germany, Italy, and the UK have to increase immigration 37-fold, to almost 9 million a year to "save social security," to keep the ratio of persons 18 to 64 years old to persons 65 and older stable.
- Given the demand conditions scope for trade in services is substantive for labour surplus countries.

Gains to the World Economy from Mode 4
World welfare gains from liberalisation of the movement of workers could amount to $US 156 billion per year if developed countries increase their quota for the entry of workers from developing and least developed countries by 3 per cent (Winters, 2003). Multilateral liberalisation of temporary movement through commercially meaningful.

Questions for Discussion
1. What are the modes of GATS?
2. What are the concepts of GATS?
3. What are the provisions of GATS?
4. Discuss method and present state of GATS negotiation.
5. Which Mode is important for Bangladesh and why?

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42 Winters, L. Alan; Walmsley, Terrie L.; Wang, Zhen Kun; Grynberg, Roman (2009) - Liberalising Temporary Movement of Natural Persons: An Agenda for the Development Round
**WTO and Regional Trade Agreements (RTAs)**

**Learning Objectives**
- This particular lecture module will provide an overall idea about how Regional Trade Agreements (RTAs) are being dealt in the WTO.
- It also highlights the evolution of RTAs in the multilateral trading system.
- The module will enable participants to track the ongoing negotiations on RTAs along with the relevant issues and concerns as regards the RTAs.

**Background on Regional Trade Agreements**

Regional trade agreements (RTAs) have become increasingly prevalent since the early 1990s. As of 1 December 2015, some 619 notifications of RTAs (counting goods, services and accessions separately) had been received by the GATT/WTO. Of these, 413 were in force. These WTO figures correspond to 452 physical RTAs (counting goods, services and accessions together), of which 265 are currently in force.

What all RTAs in the WTO have in common is that they are reciprocal trade agreements between two or more partners. Information on RTAs notified to the WTO is available in the RTA Database.

The WTO also receives notifications from WTO members regarding preferential trade arrangements (PTAs). In the WTO, PTAs are unilateral trade preferences. Information on PTAs notified to the WTO is available in the PTA Database.

**What are Regional Trading Agreements?**

Regional Trade Agreements (RTAs) are the agreements whereby members accord preferential treatment to one another in respect to trade barriers.

During the second half of the 1990’s, trade liberalisation and the pursuit of global free trade underwent a metamorphosis. The political momentum shifted away from what was seen by some nations as the painstakingly slow process of multilateral tariff negotiations to smaller regional and bilateral arrangements - the Regional Trade Agreement.

RTAs are not a new means of trade liberalisation; historically, whenever multilateral trade negotiations broke down, bilateral and multilateral free trade agreements filled the void. Such strategic trade arrangements have enabled many states to move towards freer trade at their own pace, and for their own benefits.

**What is Preferential Trading Arrangement?**

Preferential Trading Arrangement means a system of discriminatory tariffs designed to benefit Less Developed Countries (LDCs). While some PTAs originate as political expressions of desired closer economic relations, they can act as a catalyst to eventual free trade among the participants. PTAs are also employed to help developing countries obtain access to a larger export market, and therefore gain greater economic development.
Around 50 per cent of world trade is currently carried out under preferential trade arrangements. Preferential trade is growing at a faster rate than global trade - between 1993 and 1997, preferential trade grew at 66 per cent annually while global trade grew at 34 per cent annually.

How many types of Regional Trade Agreements are there?
According to their level of integration amongst participating nation-states, RTAs can be described as the following categories.

First, at the most basic level, Preferential Trading Agreements, (PTAs) lower trade barriers among members. Such preferential trade is usually limited to the portion of actual trade flows from LDCs, and is often non-reciprocal. An example of such an agreement is the Papua New Guinea - Australia Trade and Commercial Relations Agreement (PATCRA II) that has been in effect since 1977.

Second, a Free Trade Agreement/Area (FTA) is a reciprocal arrangement whereby trade barriers (usually tariffs) between participating nations are abolished. However, each member determines its external trade policies against non-FTA members independently. Most commonly, barriers to trade are reduced over time, but in most cases, not all trade is completely free from national barriers. A prominent example of a FTA is the North American Free Trade Agreement (NAFTA).

The third level of economic integration is the Customs Union. In a Customs Union, trade barriers among members are eliminated. Also, the participating nations adopt a common external trade policy (e.g. common external tariff regime or CET). A Customs Union is equivalent to an FTA plus a common external trade policy. The Customs Union of the Southern Cone -Mercosur-represents such an arrangement.

The fourth level of economic integration is the Common Market. In a Common Market, countries remove all barriers to movement of both goods and factors, and retain the common external trade policy. It is equivalent to a customs union plus free mobility of factors. One example of Common Market is the Common Market for Eastern and Southern Africa (COMESA).

The fifth level of economic integration is the Economic Union. In an Economic Union, besides the free goods and factor movements, member countries also adopt common macroeconomic policies. One example of Economic Union is the European Union (EU)

Is RTA beneficial to the member countries?
Although the recent spread of RTAs has given rise to concerns to that such selective trade arrangements will undermine the benefits of global tariff reform and entrench trading blocs rather than free trade. RTA is beneficial to its member countries in the following aspects:

By lowering or eliminating tariffs among themselves, the RTA member countries can enjoy lower importing price and thus increase their overall trade. Due to the trade diversion resulting from the relative lower price, some member countries can increase their imports on goods previously supplied by countries outside the RTA.
In addition, RTAs can join the international trade negotiations as a whole. Thus, joining in a RTA will enhance the member countries' bargaining power in multilateral negotiations because of the enlarged size of the negotiator.

**WTO and RTA**

Essentially, RTAs are violations to WTO’s non-discrimination principle. This basic principle is defined in the Most-Favoured-Nation (MFN) rule, which requires a member country to extend to all WTO members the privileges that it grants to one contracting party. However, WTO views RTAs to be good and encourages the formation of free trade areas and customs union. RTAs are in fact helpful to world trade liberalisation. Compared with multilateral negotiation systems, smaller numbers of parties are involved in RTAs and similar political and economic interests can be easily processed. RTA rules can pave the way for WTO multilateral negotiations.

To ensure that RTAs can improve regional trade liberalisation without hurting global trade liberalisation, Article 24 of GATT regulates that RTAs should trade more freely among their member countries without raising barriers on trade towards the outside world. In addition, the WTO General Council created a Committee on Regional Trade Agreements (CRTA). Its purpose is to examine regional groups and to assess whether they are consistent with WTO rules.

**Major Features of RTAs**

RTAs define different aspects of economic integration between economies. As economic integration increases, the barriers of trade between markets diminish.⁴³ The most integrated economy today between independent nations is the European Union and its euro zone. The degree of economic integration can be categorised into the following stages: preferential trading area; free trade area; customs union; common market; economic and monetary union and complete economic integration. Just as one bit leads to another, a customs union leads to the creation of a common market, followed by an economic union and, finally, completes economic integration. The EU is the prominent example in this regard. *Preferential trading area* is a trading bloc which gives preferential access to certain products from certain countries. This is done by reducing tariffs, but does not abolish them completely. Examples of SAPTA, APTA can be put forward here.

*Free trade area (FTA)* is a designated group of countries that have agreed to eliminate tariffs, quotas and preferences on most (if not all) goods between them. Unlike a customs union, members of a FTA do not have the same policies with respect to non-members, meaning different quotas and customs by different countries. "FTAs afford their parties ample flexibility in terms of the desired trade policy scope and choice of partners; the latter consideration appears to be particularly relevant to the current wave of cross-regional FTAs where the focus is often on strategic market access or strategic political alliances, unbound by geographical considerations. Most significantly, FTAs allow for ambitious preferential regimes while safeguarding a country’s sovereignty over its commercial policy since each FTA party maintains its own trade policy vis-à-vis third parties".⁴⁴

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⁴³ [http://www.cid.harvard.edu/cidtrade/issues/regionalism.html](http://www.cid.harvard.edu/cidtrade/issues/regionalism.html)

⁴⁴ “Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6"
Customs Union (CU) is a free trade area with a common external tariff. It reflects the traditional objective of regional integration among geographically contiguous countries. The participant countries set up common external trade policy, but in some cases they use different import quotas. Common competition policy is also helpful to avoid competition deficiency. Purposes for establishing a CU normally include increasing economic efficiency and establishing closer political and cultural ties between the member countries. "Besides this, CUs are often flanked, and in most cases driven, by considerations that reach beyond the realm of trade (i.e. political integration, economic and monetary unions, supranational institutions etc.) On the technical side, a CU requires the establishment of a common external tariff and harmonisation of external trade policies; this implies a much higher degree of policy coordination among the parties compared to FTAs and, unquestionably, loss of autonomy over the parties' national commercial policies. As a result, CUs entail longer and more complex negotiations and implementation periods. Furthermore, while the parties to an FTA have, in principle, full flexibility with regards to their individual choice of future FTA partners, participation in CUs, if played by the rules, limits the individual parties' choice for future RTA memberships since a proper functioning of the union requires that any agreement with a third party includes the CUs as a whole. In the current trading climate of flexible and speedy RTAs, the preference of FTAs over CUs seems obvious" (ibid).

The basic difference between a CU and an FTA is that while both eliminate duties and other barriers to trade amongst members, a CU also imposes a common commercial policy toward non-members. The North American Free Trade Agreement– NAFTA – is an example of a free trade agreement, while the European Community is an example of a customs union.46

Negotiations on RTAs

DDA Negotiations on WTO Rules (on RTAs)

In the Doha Ministerial Declaration, WTO Members recognised that RTAs could play an important role in promoting trade liberalisation and in fostering economic development, and stressed the need for a harmonious relationship between the multilateral and regional processes. On this basis, Ministers agreed to launch negotiations aimed at clarifying and improving the relevant disciplines and procedures under the existing WTO provisions with a view to resolving the impasse in the CRTAs, exercising better control of RTAs' dynamics and minimising the risks related to the proliferation of RTAs. The negotiations on RTAs have been conducted on two tracks: issues of "procedural" nature, and "systemic" or "legal" issues of a more substantive matter. Negotiations on the latter have made some progress. However, the scope of issues under consideration is wide and complex, given the fact that clarifying or improving WTO rules on RTAs relates to several other regulatory areas which are under negotiation and this adds to further complexity.46

Negotiations on procedural issues which are, by nature, less contentious have instead been very fruitful, with Members reaching a formal agreement on a Draft Decision on a Transparency Mechanism for Regional Trade Agreements in July 2006. The decision was

45 https://en.wikipedia.org/wiki/Customs_union
46 http://wenku.baidu.com/view/50f36e8202d276a200292ec6?fr=prin
applied on a provisional basis in December 2006 while awaiting the conclusion of the Doha Round.

**Current Negotiations on RTA**

Current negotiations on RTA are taking place in the Negotiating Group on Rules (NGR) which reports to the Trade Negotiations Committee (TNC). Regarding the progress, the issue-identification phase of the negotiations on RTAs is about to complete. The negotiating group is pursuing a two-track approach: identifying issues for negotiation in formal meetings; and, holding open-ended informal consultations on more procedural issues related to transparency of RTAs.

**Transparency Mechanism on RTAs**

The General Council, on 14 December 2006, established on a provisional basis a new transparency mechanism for all RTAs. This mechanism was negotiated in the Negotiating Group on Rules which provides the stipulations for early announcement of any RTA, including notification to the WTO.

The transparency mechanism is implemented on a provisional basis. Members are to review, and if necessary modify the decision, and replace it by a permanent mechanism adopted as part of the overall results of the Doha Round. Members will consider the notified RTAs on the basis of a factual presentation by the WTO Secretariat. The CRTA will conduct the review of RTAs falling under Article XXIV of the GATT and Article V of the GATS. The Committee on Trade and Development (CTD) will, then, conduct the review of RTAs falling under the Enabling Clause (trade arrangements between developing countries).

**Conditions for RTAs**

WTO rules say regional trade agreements have to meet certain conditions. But interpreting the wording of these rules has proved controversial, and has been a central element in the work of the Committee on Regional Trade Agreements. As a result, since 1995 the committee has failed to complete its assessments of whether individual trade agreements conform to WTO provisions. This is now an important challenge, particularly when nearly all member governments are parties to regional agreements, are negotiating, or are considering negotiating such agreements.

**Hong Kong Ministerial and Aftermath**

The Doha Round has mandated clarification of the rules relating to RTAs. The negotiations aim to clarify and improve disciplines and procedures under the existing WTO provisions, as regards RTAs. These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The original deadline of 1 January 2005 was, however, missed and at a meeting of the WTO General Council on 14 December, WTO Members voted to adopt the Transparency Mechanism agreed to in the Negotiating Group on RTA Rules before the suspension of negotiations 19 July 2006. The Transparency Mechanism improves notification procedures and examination of all RTAs (Free Trade Agreements and Customs Unions), including RTAs between developing countries. Increased scrutiny of all RTAs in the CRTAs will ensure that they are WTO consistent and
genuinely trade liberalising. The adoption of the Transparency Mechanism provided renewed impetus for the Negotiating Group on Rules to discuss the substantive WTO rules applicable to RTAs. The group met on 20 December 2007 to re-start discussions on the matter, specifically about the definition of the term "substantially all trade", a key element of the WTO rules on RTAs. Australia is expected to play an active role in these discussions.

**Concerns and Issues Surrounding RTAs**

In general, the WTO mandates that each Member accord the Most Favoured Nation (MFN) status to all other WTO Members. However, it allows an exception for regional trade initiatives that extend different terms of trade to participating countries, stipulating that an RTA must comply with two main requirements, as outlined in the GATT Article XXIV. First, the agreement must lower trade barriers within the regional groups; and second, the agreement cannot raise trade barriers for non-participating members.

The CRTA, established by the WTO to examine each agreement, tries to reconcile the rules of the specific RTA with similar rules governing multilateral trade agreements. However, the process becomes difficult in areas where WTO rules are vague and inconsistent, particularly those regarding dispute settlement and retaliation measures. The WTO has placed great emphasis on the need to tighten up its own policies in the face of RTA proliferation.

There are concerns that RTAs are incomplete, unequal, or counter-productive and even those who support the recent proliferation of the agreements believe that the issue must be addressed. The volume of RTAs activity stretches negotiation capacities to their limit, and in the case of developing countries, prevents them from actively participating in all proceedings. The WTO has partnerships with the United Nations and the World Bank to build capacity in smaller countries and give aid money to support participation in trade negotiations.

Additionally, there is a fear that in agreements formed outside the WTO, developing countries do not have the power of collective bargaining to negotiate RTAs (particularly bilateral agreements) that are in their best interest. For example, Chile recently concluded an agreement with the US in which it committed to lowering tariffs on agriculture products and deregulating investment, but in return, could not gain any concessions from the US regarding farm subsidies. Since developing countries often depend on progress made in the WTO on sensitive issues, it is important that multilateral negotiations retain a top priority.

**Should the WTO Encourage RTAs?**

Proponents of RTAs argue that they help nations gradually work towards global free trade by allowing countries to increase the level of competition slowly and give domestic industries time to adjust. In addition, RTAs can be valuable arenas for tackling volatile trade issues such as agricultural subsidies and trade in services. Political pressures and regional diplomacy can resolve issues that cause deadlock in multilateral negotiations. Proponents of RTAs, such as the US trade representative Robert Zoellick, a number of economists and trade policy analysts, describe them as circles of free trade that expand until they finally converge to form expansive multilateral agreements.
Other policy analysts express doubt about the benefit of booming RTAs. Some describe them as a complex web of competing trade interests that hinder multilateral agreements. Because RTAs create preference systems that transcend regional boundaries, some argue that political and economic tensions will lead to hostility and increased retaliation. There is also fear that anti-dumping charges will increase and the dispute settlement process in the WTO will be complicated by unclear and conflicting regional trade laws. Additionally, RTAs may negatively impact global trade because regional preferences and rules of origin distort production by making location of production or source of raw materials the driving incentive. There is further fear that RTAs could prevent complete liberalisation in the multilateral arena and countries that benefit from regional trade agreements, may be reluctant to expose themselves to the risks of opening their markets on a multilateral level if they expect relatively insignificant returns.47

Questions for Discussion

1. What are the major features of an RTA?
2. What are the stages of economic integration?
3. What are the provisions of the Agreement establishing the WTO that deal with RTAs? What treatment has RTAs been given in GATT and WTO?
4. How do RTAs override the MFN principle?
5. How much progress has the Doha Ministerial Declaration been able to achieve regarding the issue of RTAs?
6. What are the major arguments for and against establishing RTAs?

47 http://www.cid.harvard.edu/cidtrade/issues/regionalism.html
Overview of the NTM and NTB agreements in SAARC

Learning objective?

Definition of NTMs and NTBs\textsuperscript{48}

\textbf{NTMs} = policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both. Some of these measures may constitute non-tariff barriers.

\textbf{NTBs} = Non-tariff measures that have a protectionist intent. Examples: quotas, tariff-rate quotas, licensing regimes, price bands.\textsuperscript{49}

What are types of NTMs?

Old types: Quotas, Monopolistic measures, Licensing
New types: SPS, TBT, Antidumping

Limitation of Existing Data on NTMs

- UNCTAD data is obsolete (almost 10 years old)
- Old Classification (more focus on traditional NTMs)

Subsidies

- OECD covers only OECD countries
- World Bank covers developing countries

National databases on NTM

- Only some countries have databases on NTM
- Separate databases within one country
- Different coding

A new database on NTM

- UNCTAD - MAST effort on NTM

Advice for research

- Put all NTM data in one single database
- Collect, verify, standardize
- What kind of data is important for research vs. for policy?

Research, measures overall impact of NTM:

- Are NTMs replacing tariffs?
- What about restrictiveness? NTM can be restrictive, others may help exporters.
- Which countries use NTMs, in which product lines, and what types of NTMs are encountered?


\textsuperscript{49} Cadot, Olivier; Malouche, Mariem; Saez, Sebastian (2012) - World Bank Publications, Streamlining Non-Tariff Measures: A Toolkit for Policy Makers
• What is the impact of NTMs across products from different origin (NTM affect market access to LIC?)
• Do NTMs create trade diversion?

Policy feeds on overall research and then looks into policy issues.
Monitoring NTM uses, types and frequencies (evolution)
NTM used as protectionist barriers, or are they legitimate/legal?
Negotiation purposes (legal)
Quantify the costs of compliance
Large costs for some, small costs for others (country level, firm level)
Help countries to meet the NTM requirements
Aid for trade

Technical Assistance
Question: How restrictive is NTM trade policy?
• Impact on trade flows (overall or by product)
• Impact on prices
Methodology: explain trade flows with trade policy variables (Correlate different variables).
• Gravity models, comparative advantage models
• Time Series models
• Price gap models

NTM Data requirements
• Variables on the right (NTM, Determinants) must be comparable with left hand side (Trade). That is: they must refer to the same sample.
• Detailed disaggregated data
• Panel Data (time series)

Policy question:
Do NTM prevent LDCs from exporting to High income countries? How can policy help to solve this problem?

Using the information coming from research:
• Identify if NTMs are important
• Identify if LDC do not export as much as they could because of NTMs
• Identify Products where problems are larger
• Identify NTMs applied to these products
• Identify binding NTMs
• Design technical assistance, aid for trade
• Help to resolve problems for these products and for mitigating these NTMs

What kind of data answers these questions?
• Data representative of all trade flows (or all imports or exports overall, or within the sector).
• Comparable across countries

• Starting/ending date of NTM (or any substantial change in content). To identify impacts of NTM in time series analysis.
• Detailed NTM classification is not very important for research, but it is important for policy, product level analysis.

**NTM Dataset: which characteristics?**

- Detailed product classification HS6
- NTM by types
- Most Countries covered (especially large import markets)
- Time Series (collect NTM every year as tariffs)
- Implementation date of existing NTM
- Changes in underlining requirements (SPS TBT)

**Is a-priori judgment of restrictiveness of NTMs recommendable?**

It is very difficult to do, especially to properly collect Data. 
Trade-off: Accurateness vs Richness

**A priori information on restrictiveness is important – but at what cost?**

Example: SPS residue limit

- Existence of a limit: yes/no (easy to collect)
- Compliance with international standards?
- Is there an international standard?
- Info national standard is more/less lax than intl.
- May involve a lot of substances…
- SPS exact residue limits (even more difficult to collect, may change often)\(^{51}\)

**Example: Quotas**

- Existence of a quota regime
- How large is the quota, allocation, seasonal, TRQ.

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\(^{51}\) http://slideplayer.com/slide/730669/
Salient Features of Sri Lanka’s NTMs

Like in other SAARC states, Sri Lanka’s national policies and regulatory regime related to trade, industry, and economy are predominantly focused on promoting domestic industries and exports thereof, protection of local industries, safeguarding against hazards to public health, and the environment.

It also focuses on government’s revenue collection through export and import. With a fairly decent level of industrialisation and openness to trade in goods and services, and a moderate size of economy and population in the SAARC context, Sri Lanka’s trade with the world is also moderate.

It is the fourth largest among the SAARC countries in terms of the total value of global trade. However, Sri Lanka lags behind India and Pakistan in terms of the total volume of export and import; it ranks third within the SAARC region. According to ITC Trade Map data, in 2011, regional trade within SAARC constituted 9.04% of Sri Lanka’s global export, and 24.01% of its imports from the world. As of 2011, India remains the largest trading partner regionally, with Maldives and Pakistan as very close second and third partners, respectively. Sri Lanka’s trade regime features taxes, levies, and surcharges on exports, rare regulatory measures in the SAARC region. Afghanistan is the only other SAARC country to impose levy on significant number of export items.52

The salient features of NTMs in Sri Lanka are as follows:

i) 38 categories of plants or plant materials are banned and/or restricted for imports.

ii) Animals and animal products from ruminant origin from 22 countries are banned for imports.

iii) 9 categories of food items require test certificates for radiation level within the allowable range before they are permitted for export or import.

iv) Imports of a number of products are subject to quality standards.

v) 15 categories of food items that contain colours not permitted under regulatory measures are prohibited from import, sale, and distribution in Sri Lanka.

vi) 4 species of fish are banned for exports.

vii) Selected products, such as tea, gemstones, etc. are subject to prior approval for prequalification by respective product-specific sectoral regulatory bodies (Tea Board, for example) before export.

viii) Food items containing Genetically Modified Organism (GMO) are subject to restricted import and sale in the domestic market.53

Most Cited Specific NTM Issues in Sri Lanka

Based on the review of Sri Lanka’s trade regulations and the Country Paper on the island nation’s NTMs published by the Geneva based ITC as well as subsequent interactions between the consultant and members of the business community, officials of trade bodies, and government officials, the following broad categories of NTMs emerged most frequently:

52 http://ctax.kar.nic.in/what_vat/About%20vat%20nnew.pdf
53 http://print.thefinancialexpress-bd.com/2014/05/07/32659/print
i) **Para-Tariffs:** Para-Tariffs in the form of export levy (referred to as ‘cess’ from a 10% to 35% range), and a 5% infrastructure development levy on imports, both specific and ad valorem exist in Sri Lanka. A differential treatment in VAT calculation for imported products is also a form of para-tariff faced by importers.

ii) **Licensing Requirements:** The NTM inventory in this study found that 335 categories of products with different levels of HS chapters and codes for imports are regulated under E129 (Licensing for non-economic reason n.e.s.) in Sri Lanka. It was pointed out in interviews that obtaining these licenses from different authorities is often time-consuming; and they also involve costs, and hassles to businesses.

iii) **SPS Restrictions:** Sanitary and Phytosanitary measures (Category A under UNCTAD classification) pertaining to Human, Animal and Plant health and food safety issues are applied to over 101 product categories for Sri Lanka. Under these measures, these products are subject to quarantine, certifications, and inspection requirements.  

iv) **TBT Restrictions:** Various kinds of packaging, labelling, certifications, and conformity assessments, or other restrictions under the Technical Barriers to Trade (TBT) pertaining to Category B of the UNCTAD classification have been found applicable to about 90 product categories. Most of these products belong to machinery, equipment, and chemicals for industrial use, and household and consumer products, including processed food and beverage items.

v) **Quality Standards:** Members of the business community, particularly the exporters in Sri Lanka, expressed their concerns over fluctuating standards they face while dealing with officials of India, their largest export destination in SAARC as well as in other SAARC countries. They also expressed their concerns over the increasingly stringent quality standards in Sri Lanka for production and import.

vi) **Quantitative Restrictions for Exports:** Members of the Sri Lankan business community also expressed concerns over quantitative restrictions imposed upon by Indian authorities on certain products, e.g., hydrogenated vegetable oil.

**Products for Sri Lanka**

The priority products for Sri Lanka are listed below. These products remain the least traded goods of Sri Lanka in the SAARC region mainly because of existing NTM issues.

i) **HS Code 071340 (Lentils dried, shelled, whether or not skinned or split):** In this category, products worth US$69.67 million were imported to Sri Lanka in 2012, according to ITC Trade Map data for that year, but the country imported worth only US$190,000 from SAARC countries the same year. India’s global export of these goods in 2012 was worth over US$8.23 million, and Nepal’s was over US$24.15 million. Sri Lanka has imposed strict measures requiring special authorization for imports in compliance with SPS (A 14) and certification (A 83) requirements in the form of approval by the Chief Food Authority. Exporters also require certification by the competent authorities.

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authorities of the country of origin attesting that the food has been inspected. Nepal and India, the major exporters of lentil in the SAARC region, find these requirements difficult to comply with.

**ii) HS Code 252329 (Portland Cement, nes):** Sri Lanka imported this product worth US$259.5 million from the world in 2012, out of which imports from SAARC countries constituted only US$7.74 million. SAARC countries had exported the same category of products worth US$670.43 million globally in the same year, of which Pakistan exported worth US$546.94 million globally and Sri Lanka’s share of global export of this was only US$42.63 million. India exported its entire volume of global cement (worth US$107.53 million) to Sri Lanka. Bangladesh exported cement worth US$15.74 million to the world and none to Sri Lanka. These various statistics are from the ITC Trade Map data for 2012. In Sri Lanka, import of products under this HS Code is subject to several TBT-related measures, certification requirements, differential VAT treatment, and some para-tariffs. These pose difficulties to exporters from other SAARC countries.

**iii) HS Code 210690 (Food preparations, nes):** While Sri Lanka imported these products worth US$25.38 million from the world in 2012, it imported worth only US$7.74 million from SAARC countries. Member countries of the SAARC had exported the same category of products worth US$197.54 million globally in the same year, of which India exported worth US$130.30 million and Pakistan exported worth US$20.64 million to the world. In Sri Lanka, import of products under this HS Code is subject to several SPS- and TBT-related measures, and some para-tariffs which are difficult for the exporters of other SAARC countries to comply with.

**iv) HS Code 300490 (Medicament nes, in dosages):** Sri Lanka spent US$273.66 million to import goods in this category in 2012, out of which products worth US$171.34 million were imported from SAARC countries. For the same year, global exports of medicines under the same HS Code from SAARC region stood at US$6.71 billion. India alone had exported over US$6.63 billion worth of medicines to the world in 2012, but exported US$95.23 million to Sri Lanka. Pakistan had global export of medicine worth US$52.79 million but exported only worth US$5.75 million to Sri Lanka, and Bangladesh also had global export of over US$23 million that year, but exported only worth little over US$1 million to Sri Lanka. Like in most other countries, import of medicines in Sri Lanka is subject to strict regulatory measures related to TBT, such as the registration requirement. The region’s exporters of medicine find it difficult to comply with the differentiated and complex registration requirement in different SAARC countries.

**Most Cited Cross-Cutting Issues and Emerging Economic Trends in Sri Lanka**

The para-tariff on export in the form of ‘cess’ tax was a major concern of exporters in Sri Lanka. It was mentioned repeatedly that Sri Lanka was the only country in SAARC that imposed para-tariffs on exports. Such tariffs were reducing the export competitiveness of Sri Lankan products in the SAARC region and in the world. Afghanistan did impose taxes on

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55 https://ideas.repec.org/a/jge/journl/632.html
exports but they were limited to selected number of products. Increasingly, stringent quality parameters were difficult to cope with for the traders. However, it was also expressed that those difficulties were short-term in nature, and in the long run they would help Sri Lankan industries to achieve better quality standards and competitiveness. Stable political situation and good supply of power were considered as positive impetus for economic growth and trade promotion for the near future.

Salient Features of Bangladesh’s NTMs

Bangladesh’s national policies and regulatory regime related to trade, industry, and economy are prevalently focused on protection and promotion of domestic industries and exports thereof, safeguarding against hazards to public health, and the environment. They are shaped by the perceived economic interests of the business community and the policymakers. As the third largest economy and the third most populated country in the SAARC, Bangladesh’s trade with the world is significant. It is also ranked the third amongst the SAARC countries in terms of the total value of trade. Regionally, India remains its largest trading partner, followed by Pakistan. Despite being the third largest trader in the SAARC, Bangladesh has limited regional (SAARC) trade compared to its trade volume with the world. According to ITC data for 2011, exports to SAARC countries constituted only 2.75% of Bangladesh’s total exports, and imports from SAARC countries constituted only 14.13% of Bangladesh’s total import from the world. As one of the LDCs among the SAARC member countries, Bangladesh maintains a fairly large sensitive list of about 1,000 products under South Asian Free Trade Agreement (SAFTA). At the same time, it maintains the schedule of gradually reducing the number of products in the sensitive list. Para-Tariffs in the form of Supplementary Duty and Regulatory Duty on many import items are also on the rise.

The salient features of NTMs in Bangladesh are as follows:

i) 21 categories of products under 4-digit HS Heading, including narcotics, firearms, pornographic and otherwise offensive materials, swine and pork products, 2-stroke motor engines, reconditioned office equipment, hazardous chemicals, polypropylene bags, etc. are banned or restricted for imports on social, moral, security, religious and environmental grounds.

ii) Imports of a number of products are subject to quality standards.

iii) Imports of all food items are subject to radioactivity test reports by Bangladesh Atomic Energy Commission. Radioactivity test by Bangladesh Atomic Energy Commission is not required for imports from SAARC countries if certificate is issued by the concerned authority of the exporting SAARC country.

iv) Supplementary and regulatory duties are levied on a number of products.

v) Another 13 categories of products, i.e., jute and ‘shan’ seeds, onions, petroleum products, arms, frog and frog legs, unprocessed and certain categories of shrimp, unshelled pulses, live animals, raw and wet blue leather, etc. are subject to export ban on various economic, food security, and environmental grounds.

vi) 9 categories of products are subject to conditional exports; such conditions are related to
minimum value addition criteria and other entre-pot and re-export conditions on economic grounds.

vii) Pre-registration is required for import of selected sensitive products, such as iron scrap, used vehicles, etc.

viii) Though decreasing recently, tariff anomalies exist for the same product imported as raw materials for different industrial sectors.

ix) Business community frequently complains about port-entry restrictions on export and import products, and about complex customs clearance procedures.56

Most Cited Specific NTM Issues in Bangladesh

Based on the review of Bangladesh’s trade regulations and subsequent interactions between the consultant and members of business community, officials of trade bodies, and government officials in the country, the following broad categories of NTMs surfaced most frequently:

i) **Para-Tariffs**: Para-Tariffs in the form of Supplementary Duty and Regulatory Duty imposed on imports creates discriminatory competitive disadvantage for imported goods. This is a serious concern frequently raised by the business community, and consumer groups. The recent trend shows that government’s revenue collection from supplementary and regulatory duties exceeded revenue collection from customs duty in the 2012-2013 fiscal year, according to figures from the National Board of Revenue (NBR). The NTM inventory in this study shows the para-tariff measures (F69) in the form of these two kinds of duties on 270 categories of items under various HS chapters, heading and codes.

ii) **Port Restrictions**: Bangladeshi exporters frequently face specific port entry requirement-related restrictions while entering India. The restrictions are often applied on arbitrary basis by the Indian authority applying obsolete regulations. For example, the Indian Authority at the Agartala Land Customs Station declined to allow shipment of toilet soaps through Agartala Land Port, citing provisions under the Drugs and Cosmetic Act, 1940 and Drugs and Cosmetic Rules 1945. It maintained that Agartala Land Port was NOT an entry point from Bangladesh for import of toilet soap, defined as a cosmetic item under Indian Law. Later, it was found out that an updated Indian regulation revised in 2007 included Agartala as one of the designated land ports through which import of toilet soaps from Bangladesh was allowed to enter India. Bangladesh also imposes port entry restrictions for imports, for certain products, on grounds of various inspection requirements as well as specific port entry requirements (C3). Bangladesh legislation requires imports under Bonded Warehouse system to enter Bangladesh through Chittagong Sea Port only. However, there are some exceptions for the same categories of goods from Bhutan and Nepal entering Bangladesh through land ports. Indian authorities have raised this issue in June 2013 citing discrimination and the Bangladeshi authority has agreed to look into the matter.

iii) **Pre-Shipment Inspection Requirement**: Import items requiring Pre-Shipment Inspection (PSI) should obtain an inspection certificate (C1) at the additional cost of 1% of the FOB value of the shipment. The requirement for PSI came up 35 times in our NTM inventory. The number of items requiring mandatory PSI is on the decrease, and PSI requirement will be withdrawn altogether within 2015. PSI requirement has already been made optional for imports from India, effective from July, 2013.

iv) **SPS Restrictions**: Sanitary and Phytosanitary measures (Category A under UNCTAD classification) pertaining to Human, Animal and Plant health and related food safety issues are applied to over 300 product categories for Bangladesh. These products are subject to quarantine, certification, and inspection requirements related to SPS issues.²⁷

v) **TBT Restrictions**: Various kinds of packaging, labelling, certifications, and conformity assessments, or other restrictions falling under the Technical Barriers to Trade (TBT) pertaining to Category B under UNCTAD classification have been found for 218 product categories. Most of these products belong to packaged food, household and consumer products.

vi) **Fluctuating Standards and Procedural Steps**: The business community in Bangladesh expressed their concerns over fluctuating standards and procedural steps they face while dealing with officials both in Bangladesh and in other SAARC countries, particularly in India. Discussions revealed that many of these difficulties arise from poor coordination and dissemination between government officials and business community. Non-acceptance of quality certificates issued by Bangladesh Standards & Testing Institution (BSTI) by Indian authorities, even for the designated 18 products for which there is a bilateral agreement for acceptance, was a major concern expressed by Bangladeshi exporters to India. For processed food items, the Indian practice of testing each consignment was a serious hindrance to exports, in the view of Bangladeshi exporters.

### Priority Products for Bangladesh
The items below were identified as priority products. These are also the products that are traded on a limited volume in the SAARC region mainly because of persisting NTM issues.

i) **HS Code 040221 (Milk and cream powder unsweetened exceeding 1.5% fat)**: Bangladesh imported these products worth US$142.63 million in 2011, out of which there was no import from the SAARC countries, according to ITC Trade Map data. However, among the SAARC countries, Pakistan had exported the same product worth US$6.20 million globally in 2011. Bangladesh has several measures (B31, B32, B83) related to certification, labelling and marking requirements for imported milk powder which exporters from Pakistan may find difficult to comply with.

ii) **HS Code 520503 (Cotton yarn)**: The country spent US$221.11 million in 2011 to import products in this category. It spent US$202.65 million the same year for imports from SAARC countries. Among the SAARC countries, India globally exported over US$858.35

²⁷ [https://www.wto.org/english/tratop_e/sps_e/sps_e.htm](https://www.wto.org/english/tratop_e/sps_e/sps_e.htm)
million, and Pakistan globally exported over US$41.64 million worth of the same product in 2011, according to ITC Trade Map data. Bangladesh imposes a C3 measure, or requires this product to pass through specific port of customs (Chittagong Port in this case) for import under the Bonded Warehouse system for its large export oriented readymade garments industry. This restriction is not often cost-effective for Indian exporters who find it easier and cost-effective to use various land ports to access Bangladeshi market.

iii) **HS Code 210690 (Food preparations, nes):** In this category, products worth US$25.11 million were imported by Bangladesh in 2011 from the world, with no record of imports from SAARC countries, according to ITC Trade Map data. SAARC countries had exported the same category of products worth US$192.22 million globally in the same year, with Indian global export worth US$116.18 million, Sri Lanka’s global export worth US$58.16 million, and Pakistan’s global export worth US$15.35 million. In Bangladesh, import of products under this HS Code is subject to several TBT-related measures and certification requirements under (B83) category, which are difficult for the exporters of other SAARC countries to comply with.

iv) **HS Code 090830 (Cardamoms):** Bangladesh imported products worth US$19.65 million in 2011, out of which no record of import from SAARC countries can be found, according to ITC Trade Map data. In the same year, SAARC countries had global export of cardamoms worth US$119.46 million, out of which Nepal had global exports of US$30.74 million, and India had global export of 79.80 million. Import of cardamoms in Bangladesh is subject to various certification requirements under B83 measures for TBT reasons that the exporters from SAARC countries find difficult to comply with. Large informal trade with bordering India could also be a possible reason for no official data on cardamom imports.

**Most Cited Cross-Cutting Issues and Emerging Economic Trends in Bangladesh**

A significantly large volume of informal trade with India and other two countries, i.e., Nepal and Bhutan via Indian traders was frequently mentioned as a problem leading to increased hassles at the borders, loss of revenue, and consumer welfare. Poor road and transport infrastructure in Bangladesh was also a major concern. Inadequate manpower, insufficient power and communication infrastructure at border posts added to woes of the traders. However, introduction of new technologies and the increasing level of automation at major border stations were noted as positive developments. Introduction of Border Haats (frontier markets) was also considered as a positive development to promote bilateral and regional trade. Apprehension of losing markets in the North East region of India as a result of allowing transhipment of Indian goods through Bangladesh territory was a concern expressed by the exporters. Hassles faced by traders from both Bangladeshi and Indian officials were also an issue mentioned during the discussion with the business community. Irregularities and obstacles in banking transactions with India was a major concern expressed by Bangladeshi business community.
Salient Features of Bhutan’s NTMs

Bhutan’s national policies, including its trade, industry, and economy related policies are predominantly protective of its own people, culture, and the environment. With the small size of its economy and population and no direct access to international ports, Bhutan’s trade with the world is fairly limited. Being a landlocked country, and having its currency equally pegged with Indian currency, Bhutan conducts the majority of its cross-border trade with India. Apart from India, the other important trading partners are Bangladesh and Nepal, the countries that have very limited or no trade with other SAARC countries. Though Bhutan can be considered as a trading nation (Trade Openness Index estimated to be around 75% in 2005-06), its regulatory regime still carries some restrictive measures as a carryover from the past when the country was a closed economy.

Some of the salient features of Bhutan’s NTMs are listed below:

i) Importers need to register themselves with the Ministry of Economic Affairs.

ii) All import consignments originating from countries other than India and entering Bhutan by road through India (transit) need an import license, issued for up to one year validity period, and free of cost. Imports to Bhutan from countries other than India that enter by air need not have import license.

iii) An importer can import a certain product from any country other than India, up to a maximum of 4 container loads in one year. However, the restriction on quantity does not apply to importers who generate foreign exchange on their own and are duly cleared by the Royal Monetary Authority of Bhutan (Central bank). Further, importers supplying to government agencies are also exempted from the quantity restrictions.

iv) Importers are required to report the landing of imports in their approved retail outlets to the Regional Trade and Industry Offices along with the required transportation documents. The Regional Offices’ verification shall form a part of obligations of the importers for issuance of next Import License. This landing certificate is required for imports transiting through India to discourage deflection. Landing certificates are not required for imports entering Bhutan by air.

v) Three categories of products, e.g., narcotics, pornography, and items that are considered contraband internationally are prohibited for import.

vi) Used clothes and textile items are also restricted for import.

vii) Temporary restriction is imposed on import of motor vehicles, furniture and alcohol due to severe constraint on balance of payment. However, procurement of motor vehicles and furniture by government and government approved projects are allowed.

viii) A total of 14 categories of items are restricted for import from all countries and are subject to licensing requirement with special permission of 4 container loads in one year. However, the restriction on quantity does not apply to importers who generate foreign exchange on their own and are duly cleared by the Royal Monetary Authority of Bhutan (Central bank). Further, importers supplying to government agencies are also exempted from the quantity restrictions.

iv) Importers are required to report the landing of imports in their approved retail outlets to
the Regional Trade and Industry Offices along with the required transportation documents. The Regional Offices’ verification shall form a part of obligations of the importers for issuance of next Import License. This landing certificate is required for imports transiting through India to discourage deflection. Landing certificates are not required for imports entering Bhutan by air.

v) Three categories of products, e.g., narcotics, pornography, and items that are considered contraband internationally are prohibited for import.

vi) Used clothes and textile items are also restricted for import.

vii) Temporary restriction is imposed on import of motor vehicles, furniture and alcohol due to severe constraint on balance of payment. However, procurement of motor vehicles and furniture by government and government approved projects are allowed.

viii) A total of 14 categories of items are restricted for import from all countries and are subject to licensing requirement with special permission issued by relevant authorities, e.g., special permission from Ministry of Agriculture for import of chemicals and fertilisers.

ix) Selected fresh horticultural produces need mandatory grading before exports.

x) Import of raw materials for industrial use must have a value addition of minimum 40%.

Most Cited Specific NTM Issues in Bhutan

During the interactions between the consultant and members of the business community, officials of trade bodies, and government officials in two major cities of Bhutan, the following broad categories of NTMs were cited most frequently:

i) **Port Restrictions**: Bhutanese exports are required to pass through notified exit/entry points (Land Customs Stations) in India, Bangladesh and Nepal. The SPS-related inspection and testing requirements are a major reason for such port entry related restriction in case of India. Being a landlocked country, Bhutan has to use Indian Territory and Indian ports for transhipment of its products to other countries. For transhipments to Bangladesh and Nepal, Bhutanese exports have to use specific ports of entry as per the requirements of relevant trade protocols existing between India, Bangladesh, Nepal, and Bhutan. Haldia and Kolkata sea ports are used for Bhutanese exports to non-SAARC countries, such as Singapore, Australia, Hong Kong, and South Korea. Bhutan is currently negotiating with Bangladesh to use Chittagong and Mongla port of Bangladesh as an alternative sea port for trade with other countries.

ii) **Quantitative Restrictions**: For imports from countries other than India, an importer can import only up to 4 container loads a year. However, this quantitative restriction is applied in a very lenient manner, when imports from SAARC countries, particularly, from Bangladesh and Nepal is concerned. Imports from SAARC countries do enter Bhutan in truck-loads and not in the standardised containers, and the complexities of converting the truck-loads of quantity into comparable container-loads of quantity is avoided, and thus this quantitative restriction on imports is not applied for imports from SAARC countries.  

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58 [http://icrier.org/pdf/working_paper_263.pdf](http://icrier.org/pdf/working_paper_263.pdf)
iii) **License Requirements**: Each import consignment is required separate import license for the already registered importer. However, this import license is issued free of cost, and does not take more than 1 to 2 working days. This issue of no-cost and time requirement was cross-checked by the consultant by talking to both parties, i.e., government officials and the business community.

iv) **Certification Requirements**: Bhutan’s export of selected fresh produces, tangerines in particular, needs certification for mandatory fumigation, and other health related issues, in compliance with the SPS requirements. Mandatory grading and sorting is also done and relevant certificates are issued for tangerines, and also for pebbles and boulders for export. Additionally, traders need to obtain Certificate of Origin (C/O) for exports. In the absence of adequate quality infrastructure in Bhutan, exporters have difficulty in accessing export markets, particularly for processed food items.

v) **Temporary Ban on Imports**: Bhutan has recently imposed temporary restriction on import of motor vehicles, furniture and alcohol due to severe constrain in balance of payment.

vi) **Para-Tariffs**: Bhutan faces a variety of state-level para-tariffs while entering India. Many of them are found discriminatory against imports. Bhutanese products face para-tariffs in Bangladesh in the form of supplementary and regulatory duty for many products. However, the 18 products of Bhutan that get duty free access to Bangladesh under bilateral agreement are not subject to such para-tariffs.

**Priority Products for Bhutan**
The following are priority products of Bhutan. These were identified based on the methodology (explained in details in Section 2.2) developed by the NTM Study Team. The existing NTMs issues continue to greatly hinder the trade of these products in the SAARC region.

i) **HS Code 252329 (Portland cement, nes)**: Products worth US$6.34 million from this category were imported to Bhutan in 2011, out of which only US$190,000 worth was imported (2010 figure) from SAARC countries. Bangladesh (over US$199 million), India (over US$190 million), and Pakistan (over US$424 million) have significant global export for this particular product. This study did not find any particular import restriction in Bhutan for this product. Apparently, no any particular NTM is restricting import of this product from SAARC countries. SAARC business community may well explore the potential for exporting HS Code 252329 Portland Cement nes to Bhutan.

ii) **HS Code 070110 (Potato Seeds)**: Bhutan faced difficulty in accessing Bangladesh market until very recently when it was included in the list under bilateral agreement. Bangladesh is a net importer of first generation potato seeds from Europe (Netherlands), but exporters of the same products from Bhutan faced licensing and inspection related regulations which they found difficult to overcome. The trade impact of this recent development is yet to be seen.
iii) **HS Code 200919 (Orange Juice in Tetra Pack4):** Bhutan exports considerable volume of fruit juices to Bangladesh under duty free conditions. However, only bottled and canned juice is allowed for such duty free access. Orange juice in Tetra Pack packages face 25% customs duty, which make the Bhutanese products uncompetitive in the market. A different duty structure for the type of packaging can be considered as a TBT-related restriction.

iv) **HS Code 640299 (Footwear, outer soles/ uppers of rubber or plastics, nes):** Imports worth US$1.88 million were made by Bhutan in this category in 2011, out of which only US$3,000 (2010 figures) worth was imported from SAARC countries. Bangladesh had worth US$14.39 million, India had worth US$31.8 million, and Pakistan had worth US$424.63 million of global export of the same product in 2011. Import of plastic packaging materials needs special permission from Ministry of Economic Affairs for environmental reasons. However, industries using plastic packaging materials as raw material are allowed to import them without hindrance.

**Most Cited Cross-Cutting Issues and Emerging Economic Trends in Bhutan**

As a landlocked country, Bhutan significantly depends on India for port access. This was a major concern expressed by the Bhutanese business community. They believed that pegged with a decreasingly devalued Indian currency, Bhutanese import payment was getting higher, contributing more to liquidity crisis of foreign currency. Recent agreement with Bangladesh for accessing several land, sea, river and airports for Bhutanese export and import was a major reason for enthusiasm. Irregularity in banking transaction with a particular Bangladeshi bank was a concern. However, a major initiative has already been taken by forming a Bhutan-Bangladesh Banking Sub-Group to address the financial transaction irregularities. Bhutan Chamber of Commerce and Industry (BCCI) took this initiative by persuading the Bhutanese government when this issue was discussed by the consultant of this NTM Study during his visit to Bhutan, and a major improvement is expected to follow. Absence of any bank branches at the major border port on the Bangladeshi side at Burimari was pointed out as a cause of inconvenience to Bhutanese traders. Large informal trade with India, and complexities in port entry restrictions in India and Bangladesh were also frequently cited as cross-cutting issues of regional trade.

**Salient features of India’s NTMs**

India’s national policies and regulatory regime related to trade, industry, and economy are prevalently focused on promoting strategic domestic industries and exports thereof, protection of local markets for domestic products, safeguarding against hazards to public health, environment, and perceptions of socio-political-religious and security issues of the policymakers, with very recent trends for openness towards SAARC neighbours. With a fairly large size of its economy in the global context (ranking 9th in nominal GDP and 3rd by Purchasing Power Parity according to IMF sources) and the second largest population in the world, India is by far the largest economy in the SAARC region. India’s trade with the world is also significant, having the 19th position as exporter and the 10th position as importer in world trade, according to WTO ranking in 2012. India figures as the largest or the second
largest (after China) trading partner for all other SAARC countries. She has 73% share of all intra-SAARC exports, but registers only 13% intra-SAARC imports. However, regional exports of India within SAARC constitutes only 4.68% of her global exports, and regional import figure for an insignificant 0.54% of India’s global imports, according to ITC Trade Map data for 2011. Until 1991 India deliberately followed a closed economy, and even after opening up since then, India carries forward, to a large extent, the complex restrictive regulatory regime dotted with quantitative restrictions, levies, para-tariffs, and bureaucratic procedural complexities, as perceived by the business community in India. The neighbours, despite India’s drastic liberalisation to SAARC under SAFTA, particularly for the SAARC LDCs (since November 2011), remain sceptical about trading with India due to its vast array of procedural fluctuations and arbitrary interpretations of regulatory regime.

The salient features of NTMs in India are as follows:

i) There are 428 products at 8 digit HS code level which are restricted and cannot be imported without any license.

ii) Import prohibition is maintained on 52 HS lines, in addition to 33 other products that are allowed to be imported only by State Trading Enterprise of India.

iii) Import of Beef in any form and import of products containing beef in any form is prohibited for religious reasons.

iv) Import of Genetically Modified Food, Feed, Genetically Modified Organism (GMOs) and Living Modified Organisms (LMOs) or any product containing any of these is subject to several kinds of certification, and other TBT measures.

v) A total of 74 products are subject to compliance of the mandatory Indian Quality Standards, which are also applicable to domestic goods.

vi) Apart from Federal levies and duties, various states of India are free to impose different categories of duties that act as state-level para-tariffs and are often discriminatory for imported products. Such state-level para-tariffs cannot be brought under bilateral government level negotiations and are left unaddressed.

vii) India has provisions for using anti-dumping, countervailing and safeguard measures, and India uses anti-dumping and safeguard measures frequently.

Most-cited specific NTM issues for India
During the review of India’s trade regulations and subsequent interactions between the consultant and members of the business community, officials of trade bodies, and government officials in three major cities of India, the following broad categories of NTMs were cited most frequently:

i) Port Restrictions: Currently 137 Indian imports are allowed to enter Pakistan only through Attari-Wagah border between India and Pakistan. Apart from SPS related inspection and testing requirements, customs inspection procedures and other trade related factors, political considerations are a major reason for such port entry related restriction for exports from India to Pakistan. Indian traders, particularly exporters also face such port entry restriction measures in Bangladesh. For example certain categories of yarn, if imported under Bonded Warehouse system for use in export oriented garments
sector in Bangladesh, need to pass through Chittagong Sea Port only, putting the Indian exporters of such yarns from adjacent states (Tripura and West Bengal for instance) into severe difficulty. India has been requesting Bangladesh for the removal of port restriction on export of vulcanized rubber thread via Akhaura LCS, which is affecting trade opportunities along with land port restrictions imposed by Bangladesh particularly on items like yarn, milk powder, fish, sugar, potatoes. Such Indian exports are allowed by the sea route, but not through all land custom posts.

ii) **SPS Restrictions**: Bangladesh has imposed ban on import of poultry and poultry products from India for quite some time in the wake of outbreak of avian influenza (bird flu) in India. Since the outbreak of avian influenza is quite frequent in India, export of poultry products to Bangladesh is an irregular affair. In view of the above, India is following the concept of compartmentalization as provided under the OIE guidelines. India has already requested Bangladesh authorities to lift the ban on import of poultry products from India and have invited a Bangladeshi team to see the compartmentalization being carried out. Custom inspection on the Nepal side is one of the major issues concerning the India-Nepal trade. The entire inspection process could be more time and cost-efficient. For example regulations relating to SPS measures are one of the major hurdles. The Nepalese custom officials carefully scrutinize every Indian vehicle and every export item coming into Nepal from India. Even though this practice is justifiable, involvement of a series of monitoring agencies delay the clearance process, leading to high transaction costs. The Department of Drug Administration of Nepal demands that all the Ayurvedic drugs imported should have a COPP Certificate vide WHO-GMP norms. This rule is not applicable to the Ayurvedic drugs manufactured in Nepal. Thus, this requirement works as a non-tariff barrier for exports of Ayurvedic medicines from India to Nepal.

iii) **Sensitive list**: India has been reiterating its request for the removal of 225 items from Bangladesh sensitive list under SAFTA. As on date, only 21 items have been removed, which is less than ten percent of the items identified as export interest by the Indian side. India has urged Bangladesh to respond positively to the proposal that was put forward by Bhutan, India, Maldives and Pakistan, that peak tariff on all products be reduced by all member countries to 0-5% by the year 2020, excluding a small number of about 100 tariff lines which may still remain in the respective sensitive lists of each member country.

iv) **Rules of Origin (RoO)**: There have been concerns from the Indian side about possible misdeclaration of “Country of Origin Certificate” for the textiles and betel nuts imported from third countries and exported to India after they are re-packed/re-invoiced without any major value addition.

v) **Payment difficulties**: The issue relating to payment defaults by the Bangladeshi importers arising out of not honouring irrevocable letters of credit and LICs on due date, non-payment of interest for delays and returning LICs without payment by the Bangladesh banks have long been haunting the Indian exporters.
vi) **Pre-shipment inspections (PSI)**: India has conveyed its concern regarding the pre-shipment inspection being mandatory except in case of goods specifically exempted and requested that the same should be abolished, as is the norm worldwide. There have been frequently reported delays in issuance of Khamarbari certificates in respect of export of agricultural commodities from India, especially potatoes.

**Priority Products for India**

The following are priority products for India. These are also the products that have a large potential for intra-region trade but are traded in insignificant volumes because of existing NTMs.

i) **HS Code 071340 (Lentils dried, shelled, whether or not skinned or split)**: In 2011, India spent only US$593,000 on imports from SAARC countries whereas its global imports were worth US$68,07 million on imports. In the same year, Nepal had global export of lentils worth US$24.28 million, Sri Lanka had worth US$7.75 million, and Afghanistan globally exported worth US$2.45 million, according to ITC Trade Map data. India imposes SPS-related (A14) special authorisation requirement in accordance with import permit granted under Plant Quarantine regulations of India, which is difficult to comply with by the SAARC exporters of lentil.

ii) **HS Code 610910 (T-shirts, singlets and other vests, of cotton, knitted)**: Imports of products in this category was relatively low. Goods worth US$17.67 million were made by India in 2011 but products worth only US$2.97 million were imported the same year from SAARC countries. Among the SAARC countries, bulk of the global export of this product was made by Bangladesh (US$4.01 billion), Pakistan (US$265.71 million) and Sri Lanka (US$256.67 million) in 2011, according to ITC Trade Map data. India imposes B 31 and B 82 measures, or testing, certification and labelling requirements. These products do not fall under the SAFTA sensitive list. Additionally, Bangladeshi apparel products are subject to 12.36% Counter Veiling Duty (CVD) in Indian market. These are possible reasons for poor export of this item to India from other SAARC countries.

iii) **HS Code 090240 (Black tea (fermented) & partly fermented tea in packages exceeding 3 kg)**: In this category, products worth US$37.12 million were imported by India in 2011 from the world, out of which imports from SAARC countries constituted only US$12.65 million. Among the SAARC countries, Sri Lanka made worth US$743.53 million and Nepal made worth US$18.15 million global export of the same product in 2011, according to ITC Trade Map data. In India, import of products under this HS Code is subject to SPS-related (A14) special authorisation requirement in accordance with import permit granted under Plant Quarantine regulations of India, which is difficult to comply with by the SAARC exporters of black tea.

iv) **HS Code 340119 (Soap&orgn surf prep, shapd, nes; papers & non-wovens impreg w soap/prep, nes)**: Products worth US$9.68 million were imported in this category by India in 2011, out of which only US$498,000 worth was imported from SAARC countries. For the same year, other SAARC countries, for example, Bangladesh (over US$1.73 million),...
Nepal (US$3.16 million), and Pakistan (US$12.80 million), made global exports of these products, according to ITC Trade Map data. This category of products is labelled cosmetics, and falls under drugs and cosmetics regulations in India. These products require passing through specific ports of customs (C3), and thus their imports from SAARC countries remain rather restricted.

Most Cited Cross-Cutting Issues and Emerging Economic Trends in India
A very large volume of trade with Bangladesh, Nepal, and Bhutan, and significant volume of quasi-formal trade with Pakistan via UAE was frequently mentioned as a problem leading to higher prices, loss of revenue, and border restrictions. A comparatively poorer infrastructure and less developed level of automation in trading partners in SAARC were cited as major reasons for disharmony in cross-border transactions. The business community and government officials expressed enthusiasm over the recent openness of Indian trade policy towards SAARC imports, particularly from SAARC LDCs. Apart from positioning India in global supply chain and other strategic geo-political context, India seems to be repositioning itself among its neighbours in a positive and cordial way – this was the perception received during the interactions with the Indian business community, think tanks, and government officials.

Salient Features of Pakistan’s NTMs
Pakistan’s national policies and regulations on trade, industry, and economy are predominantly focused on promoting domestic industries and exports, protection of local industries, safeguarding against hazards to public health, the environment, and perceptions of socio-political-religious and security issues of the policymakers. With a fairly large size of economy and population among the SAARC countries, Pakistan has significant trade with the world. It is the second largest amongst the SAARC countries in terms of the total value of global trade. India remains its largest trading partner within the SAARC, followed by Afghanistan and Bangladesh. Despite being the second largest trader in SAARC, Pakistan has limited regional (SAARC) trade compared to its trade volume with the world. According to ITC data for 2011, exports to SAARC countries constitute only 9.95% of Pakistan’s total exports, and imports from SAARC countries constitute only 4.48% of its total import from the world. Pakistan’s trade and NTMs feature the unique India-specific negative list, a long catalogue of 1,209 items that are prohibited to import from India. Certain products may be imported from India through a specific land route. The salient features of NTMs in Pakistan are as follows:

i) 20 categories of products, including wild animals, indigenous pulses, fertilizers, liquor, sugar, etc. are banned from exports.

ii) Another 20 categories of products, i.e., rice, cotton, yarn, edible oil, mangoes, arms etc. are subject to restricted exports, allowed for trade only after obtaining special permissions from relevant authorities, or fulfilling certain other conditions.

iii) 13 categories of live animals, birds, books, and some other products are banned for imports on health, safety, and religious or moral reasons.
iv) 44 other industrial products are banned for imports for various economic and/or protective reasons.

v) There are also 9 broad categories of used machinery and equipment which are banned for imports.

vi) 56 categories of items, including some animal and plant products are considered as restricted for import; to import these requires special permission issued by respective relevant authorities.

vii) Imports of a number of products are subject to quality standards set by Pakistan Standards and Quality Control Authority (PSQCA).

viii) Import of a number of products is subject to regulatory duty.

ix) As of 2012, Pakistan has started using anti-dumping duty.

**Most Cited Specific NTM Issues in Pakistan**

Based on the review of Pakistan’s trade regulations and subsequent interactions between the consultant and members of the business community, officials of trade bodies, and government officials in three major cities of Pakistan, the following broad categories of NTMs have been identified:

i) **Port Restrictions**: Currently 137 Indian imports are allowed to enter Pakistan only through Wagah border. Apart from SPS-related inspection and testing requirements as well as customs inspection procedures and other trade-related factors, political considerations are a major reason for such port entry related restrictions on imports from India. Imports from Afghanistan are also subject to port specific restrictions due to security considerations, in addition to trade-related reasons. NTM classified as C3 (Requirement to pass through specified port of customs) came up 78 times in our NTM inventory.

ii) **Political Restrictions**: Our NTM inventory for Pakistan found E329 (Prohibition for non-economic reason, n.e.s. or ‘not elsewhere specified’) applicable to 585 categories of products under different levels of HS chapters and codes for imports from India.

iii) **SPS Restrictions**: Sanitary and Phytosanitary measures (Category A under UNCTAD classification) pertaining to Human, Animal and Plant health and related food safety issues are applied to about 79 product categories in Pakistan. These products are subject to quarantine, certifications, and inspection requirements related to SPS issues.

iv) **TBT Restrictions**: Various kinds of packaging, labelling, certifications, and conformity assessments, or other restrictions under the Technical Barriers to Trade (TBT) in Category B of the UNCTAD classification have been found for about 186 product categories. Most of these products belong to machinery, equipment, and chemicals for industrial use, and household and consumer products.

v) **Fluctuating Standards and Procedural Steps**: Members of the business community in Pakistan expressed their concerns over fluctuating standards and procedural steps they
face while dealing with officials in Pakistan as well as in other SAARC countries, particularly in India. Discussions revealed that many of these difficulties arise from poor coordination and dissemination between government officials and the business community. For example, one businessman from Lahore cited the example of his ‘harassment’ by Bangladeshi customs officials when he sent a full 20-ft container weighing 29 metric tons of calcium carbide, not knowing the fact that such a large volume of chemical product was way beyond acceptable limit for samples, and hence was subject to scrutiny by Bangladeshi customs officials.

**Priority Products for Pakistan**

The following items, which are traded in limited volume in the SAARC region due to NTM issues, were identified as priority products:

i) **HS Code 252329 (Portland Cement, nes)**: This was a major product subject to quality standards and other TBT restrictions for export to India. Pakistan and India successfully reached the first ever product-specific Mutual Recognition Agreement (MRA) in the SAARC region on quality standards for cement in November 2012. However, the desired positive impact on the trade of this product has yet to be seen due to other complications. Right after the MRA was signed, the Bureau of Indian Standards issued a notice to all suppliers of cement to India as well as to Pakistan to submit a Performance Bank Guarantee of US$10,000 in order to qualify for export to India. This is an additional measure that has increased the cost of doing business for Pakistani exporters. Moreover, it has been reported by the Pakistani business community that the Indian Customs Authorities at the Atari-Wagah land port have implemented a stringent Customs checking and documentation procedure for Cement from Pakistan, whereas such strictness is not observed in the case of exports of ‘Gypsum’ (raw material for cement manufacturing) to India. According to the cement industry of Pakistan, at least 30 to 40 truckloads of Gypsum are processed by the Indian authorities at the Customs post on a daily basis in comparison with 1 to 2 truckloads of Cement. Furthermore, Pakistan's major market for cement is Afghanistan where the demand has been increasing steadily during the last couple of years. The local demand for cement has also jumped in the last year. Both these factors have resulted in an enhanced profit margin for the manufacturers in both domestic as well as the Afghan market. The stringent measures by India as described above coupled with improving domestic and Afghan market conditions have resulted in a downward trend in cement exports to India.

ii) **HS Code 090411 (Pepper of the genus Piper, ex cubeb pepper, neither crushed nor ground)**: Imports worth US$11.13 million were made by Pakistan in 2011, out of which only US$504,000 worth was imported from SAARC countries the same year. Among the SAARC countries, India exported over US$13.39 million, and Sri Lanka exported over US$28.87 million worth of the same product globally in 2011. Pakistan imposes a B83 measure, a certification that requires an Aflatoxin Report attesting that the consignment is free from any pests/diseases. The report is certified by the Dept. of Plant Protection for import of Peppers. India and Sri Lanka, the two major exporters of Pepper in the region, are yet to develop adequate facilities to comply with the requirements; hence their export to Pakistan for this particular product is limited.
iii) **HS Code 210690 (Food preparations, nes)**: In 2011, Pakistan spent US$36.07 million to import products in this category from the world, out of which imports from SAARC countries constituted only US$191,000. SAARC countries had exported the same category of products worth US$192.22 million globally in the same year. In Pakistan, import of products under this HS Code is subject to several measures on SPS and TBT, for example, (i) the products must be fit for human consumption; (ii) they should be free of any ‘haram’ element or ingredients; (iii) edible products shall have at least 50% of the shelf life, calculated from the date of filing of import, etc. These requirements are difficult for the exporters of other SAARC countries to comply with.

iv) **HS Code 300490 (Medicament nes, in dosages)**: Medicinal products worth US $ 225.89 million were imported by Pakistan in 2011, out of which only US$12.44 million worth were imported from SAARC countries. For the same year in 2011, global exports of medicines under the same HS Code stood at US$5.36 billion. India alone had exported over US$5.2 billion worth of medicines to the world in 2011 but it exported only US$12.44 million to Pakistan that year. Bangladesh also had global export of over US$26 million in 2011, but did not export medicines under this category to Pakistan. Like in most other countries, import of medicines is subject to strict regulatory requirements related to TBT. Some of these regulations stipulate that (i) import shall be permissible strictly according to registration of drugs under section 7 of the Drugs Act, 1976 (XXXI of 1976), subject to the condition that the drugs shall have at least 75% of the shelf life calculated from the date of filing of 'Import General Manifest' (IGM), as per provisions of Customs Act, 1969(IV of 1969), except those drugs specifically allowed by the Director General, Ministry of Health, Government of Pakistan; and (ii) all imported packaged medicines or drugs shall display the name and prescription materials of imported medicines.

**Most Cited Cross-Cutting Issues and Emerging Economic Trends in Pakistan**

A quasi-formal trade of very large volume with India via Dubai of the UAE was frequently mentioned as a problem leading to higher prices, loss of revenue, and consumer welfare. High volume of informal border trade with India and Afghanistan was also a concern expressed by members of the business community and professionals working for the government and trade bodies. They noted that lower tariffs for the same products in Afghanistan caused filtration by the e-entry of the same products into Pakistan from Afghanistan. This was cited as a major concern since it was creating unfair competition for Pakistani importers. Afghan goods entering Pakistani territory either for Pakistan’s market or for transhipment to other countries through land or sea ports were of serious security concern to Pakistani officials, and were subject to repeated inspections, leading to delays in shipment. Hopes for more stable political situation and improved power and other infrastructure were also considered as key prerequisites for economic development and trade promotion. It was unanimously expressed that the renewed emphasis by the federal and local government to improve infrastructure and trade facilitation logistics and services at borders would improve the cross-border trade situation with the neighbours in SAARC.
Dispute Settlement Mechanism in the WTO

Learning Objectives

- The module will explain the participants to the issue of dispute settlement system under international trade agreements.
- It will thoroughly discuss dispute settlement mechanism under the WTO, especially nature and trends of the cases filed, the complainants and respondents of these cases etc.
- It will also describe a case on India's anti-dumping duties on lead acid battery import from Bangladesh to appreciate the complexities and challenges for LDCs to participate in the DSM process.
- Finally, it will explain current state of negotiations on dispute settlement under the Doha Development Round.

Disputes in International Trade

International Trade Agreements’ (ITAs) obligation brings about adjustments for each party as these agreements are implemented into domestic regulatory frameworks. Such adjustments often present formidable challenges to commercial enterprises as they must adapt to new conditions of competition. Consequently, the interpretation and enforcement of rule becomes major pre-occupations in the administration of ITAs. A dispute arises when a member government believes that another member government is violating an agreement or a commitment that it has made in the international trade agreement, as ultimate responsibility for settling disputes lies with member governments, through the Dispute Settlement Body. When a dispute arises between governments participating in an ITA, the focus falls on the measures adopted by the concerned governments that whether such measures are beyond the limits set by an agreement or fall short of the commitments under the agreement.59

Dispute Settlement Procedure under the GATT 1947

Dispute settlement procedures are generally based either on the respective power of the disputants (power based) or on a set of rules that applies to the subject matter of the dispute between them (rules based). An effective multilateral dispute resolution procedure is particularly important for small states, as they seldom have the clout or capacity to enforce the agreements by themselves. They also usually find it difficult to oppose the unilateral actions by larger trading nations that would arise in the absence of multilateral dispute settlement mechanisms.

The basis for dispute settlement under the GATT 1947 is found in GATT Article XXII: Consultation and Article XXIII: Nullification or Impairment.

Article XXII : Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this agreement.

Article XXIII: If any contracting party should consider that any benefit accruing to it directly or indirectly under this agreement is being nullified or impaired or that the attainment of any objective of the agreement is being impeded as the result of: a) the failure of another contracting party to carry out its obligations under this agreement, or

b) The application by another contracting party of any measure, whether or not it conflicts with the provisions of this agreement, or c) the existence of any other situation. Dispute settlement under the GATT was based on consensus principle, which ensured that both parties to a dispute had to agree on the outcome. It also created opportunities for parties to a dispute to block either the initiation or the completion of the process. In practice though, contracting parties did not employ blocking tactics extensively. The conventional wisdom is that the GATT dispute mechanism worked much better than was generally recognised. In the GATT's early history, the panel procedure was quite informal. Disputes were simply referred to the chair of the plenary meeting of the contracting parties, who would then issue a ruling to the parties. However, as the volume of complaints grew, the practice of referring a dispute to a 'working party' composed of the disputants and other interested parties developed. Consequently, from 1952 onward the procedure became more formalised, with disputes being referred to a panel of independent experts acting in their own capacities, and not as representatives of the Member states. These panels issued rulings based on a legal interpretation and examination of evidence submitted by the disputants, and could make policy recommendations about what steps, if any, should be taken to bring the offending policies into compliance with GATT rules, or what compensatory measures would be sufficient to make restitution to the complainant. Under the old GATT system, any state, including the defendant, could exercise a veto power over the decision to establish a panel to hear a case, as well as the decision to adopt a panel report.

Of some 278 complaints considered under general dispute settlement provisions between 1948 and 1994, 110 led to legal rulings by panels, the others being settled before a report was produced. Of the 88 cases where the panel found that a violation had occurred, the majority were adopted. Many of those not adopted did lead to a satisfactory outcome, with a success rate well over 90% (Hudec, 1993).

Dispute Settlement Procedure under the WTO

The Dispute Settlement Understanding in the WTO Agreement establishes procedures for dispute settlement under a new entity, the Dispute Settlement Body (DSB) which is composed of representatives of all the Member states. The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) further expanded and codified dispute settlement procedures that had been in effect under the GATT 1947. DSU is legalised in the WTO framework under Annex 2 of WTO Agreement.

In contrast to the previous system, strict time limits for consultations have been set, and all consultations must be notified to the DSB. When consultations fail to resolve a dispute, a complaining party has a right to the establishment of a panel to adjudicate its case, barring a
consensus by the DSB not to establish it. Unless a party to the dispute formally notifies the DSB that it wishes to appeal, adoption of panel reports is virtually automatic, since a ‘reverse’ consensus by the DSB to not adopt the report is required for rejection. In the case of an appeal, a standing Appellate Body will review the case and issue its own report, which is to be adopted by the DSB unless, once again, there is a consensus not to adopt.

The DSU sets out specific time periods for each phase of dispute settlement and further elaborates sections on implementation and surveillance. It is evident that WTO Members wish to retain possibilities of diplomatic resolution of disputes as a principle of the organisation and as an alternative to legal adjudication.

**Different Stages of the Settlement of Disputes**

There are five stages in the settlement of disputes under WTO (see Chart 6.1).

**Stage 1**: Consultation and mediation (based on Articles 4 and 5 of DSU)

**Stage 2**: Request of a panel (based on Article 6 of DSU)

**Stage 3**: The panel at work (based on Articles 7, 8, 9, 10, 11, 12, 13, 14 and 15 of DSU)

**Stage 4**: Adoption decision or appeal (based on Articles 16, 17, 18, 19, and 20 of DSU)

**Stage 5**: Implementation (based on Article 21 and 22 of DSU)

**Stage 1: Consultation and Mediation**

Members must initially attempt to solve their disputes through bilateral consultations. The good offices, conciliation or mediation by the WTO Director General may also be sought, although this is optional. The goal of the consultation stage is to enable the disputing parties to understand the factual situation and the legal claims and hopefully to settle the matter bilaterally. Usually there is a period of 60 days for consultation.\(^{62}\)

**Stage 2: Request for a Panel**

If parties are not able to secure a solution to their dispute through consultations within 60 days, the establishment of a panel may be requested. The DSB establishes a panel, drafts terms of reference and determines its composition and the WTO Secretariat suggests the names of three or four potential panellists to the parties to the dispute. The parties have the right to object to a proposed panellist. Panellists serve in their individual capacity, may not be subjected to government instructions, and are usually members of delegations or retired civil servants (academics) knowledgeable in trade matters. The WTO Secretariat provides administrative support and generally prepares the background documentation regarding the facts of the case. The whole process is usually completed by 45 days.

**Stage 3: The Panel at Work**

The panel usually goes through the following steps: examination of facts and arguments; meetings with the parties and interested third parties; interim review—descriptive and interim reports are sent to the parties who may request a review meeting with the panel; drafting of conclusions and recommendations; panel report issued to the parties and circulated to the DSB; Final panel report issued to the parties. The whole process is usually completed by 6 months.

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\(^{62}\) Ibid.
Stage 4: Adoption Decision or Appeal
The panel report must be adopted by the DSB within 60 days, unless a consensus exists not to adopt, or a party appeals the findings of the panel. Appeals are limited to issues of law or the legal interpretation developed by the panel. An Appellate Body, composed of seven persons who are broadly representative of the WTO’s membership, deals with such appeals. Appeal proceedings should not exceed 60 days and must be completed within 90 days (Box 6.1).

Stage 5: Implementation
The Appellate Body report is final and is adopted by the DSB. If it is impracticable to comply immediately, the offending country is given a ‘reasonable period of time’ to do so (Article 21.3 DSU). The length of this period can, at the request of the parties, be determined through binding arbitration. If the respondent fails to act within this period, parties are to negotiate for compensation pending full implementation (Article 22.2 DSU). If this cannot be agreed, the complainant may request authorisation from the DSB to suspend equivalent concessions against the offending country. This authorisation is automatic as a consensus is required to refuse it. The magnitude of the retaliation is determined by the DSB, generally on the recommendation of the original panel. Arbitration may be sought on the level of suspension, the procedures and principles of retaliation (Article 22.6).

Special Procedures Involving Least Developed Country Members
Particular consideration is given to the special situation of LDCs. Members are to exercise due restraint in raising matters under these procedures involving an LDC. If nullification or impairment is found to result from a measure taken by an LDC, complaining parties are expected to exercise due restraint in asking for compensation or seeking authorisation to suspend the application of concessions or other obligations pursuant to these procedures. In dispute settlement cases involving an LDC member, when a satisfactory solution has not been found in the course of consultations, the Director General or the Chairman of the DSB, upon request by an LDC Member, offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made.

Complainants and Respondents at the DSB
Trends of Cases Filed
A total of 363 cases have been filed till October, 2007. The number of cases filed in each year varies within a range of 10 to 50. The highest number of cases was filed in 1997 (49), while the lowest number of cases was filed in 2007 (up to October). Relatively less number of cases was filed after 2002. It is interesting to note that number of cases filed under the DSB of the WTO since its inception in 1995 has already exceeded the total number of cases filed under GATT dispute settlement process between 1948 and 1994. The following discussions (under sections 6.4.2 to 6.4.5) are based on the data set covering all 311 WTO disputes initiated through the official filing of a Request for Consultations from 1 January 1995 until 31 July 2007.

Narayanan, S. (2003) - Dispute Settlement Understanding of the WTO: Need for Improvement and Clarification
2004, and for events occurred till 28 February 2005. Following discussions (6.4.2 to 6.4.5) are based on Horn and Mavroidis (2006).

Who are Complainants?
The USA and EU (herein after referred as G2) have complained 242 times, that is, 28.3% of all bilateral disputes. They are the third most active group. Industrialised countries (herein after referred as IND) leads with 334 bilateral complaints, that is, 39% of all disputes, followed by developing countries (herein after referred as DEV) with 272 bilateral disputes, or 31.8%. Least developed countries (LDCs) have complained only 8 times, that is, in 0.9% of all bilateral disputes.

G2 is the most active respondent of the cases filed against different trading nations. The practices of the G2 have been challenged 481 times, which accounts for 56.2% of all bilateral disputes. DEV follows with 226, that is, 26.4%. IND acted as respondent on 149 occasions that is 17.4% of all bilateral disputes. LDCs never acted as respondent. When comparing participation as complainant and respondent, G2 is roughly appearing twice as often as a respondent than as complainant (481/242). IND has been twice as often a complainant (334/149). In DEV's case, the discrepancy is not so pronounced, although DEV still is more active as complainant than as respondent (272/226).

Which Agreements and Provisions have been invoked?
GATT with Annexes strands for the vast majority of invocations, or almost 94% of the total number.

The number of TRIPS invocations is almost twice that of GATS invocations, but they both dwindle in comparison to the invocations of the agreements governing trade in goods. This might prima facie look surprising. However, the fact that developing countries enjoyed a long transitional period to implement TRIPS, probably explains the few invocations of this agreement. On the other hand, the GATS is still largely a terra incognita for most trading nations. Also, empirical evidence suggests that it did not generate any meaningful trade liberalisation beyond the status quo in 1995, which could be part of the explanation for how rarely it has been invoked. Not surprisingly, GATT completely dominates as the most frequently invoked agreement, accounting for roughly a third of all instances (Tables 6.4 and 6.5). There are then three agreements that between themselves are invoked roughly as frequently, all of them GATT Annexes: Anti-dumping (AD), Agriculture (AG) and Subsidies and Countervailing Measures (SCM). But with 8.3%, 8.0% and 8.9%, they jointly do not stand for more than a quarter of all invocations.

The Duration of the Process
Starting with the bilateral leg of the process – consultations – it is observed that their average length is 221.8 days. Since the length of the consultations process depends solely on the will

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of the consulting parties, one cannot talk of delays here. However, with regard to the other DS stages, one can compare the statutory deadlines and the de facto duration and draw such conclusions. One should be careful, nevertheless, to not too easily attribute responsibility for delays to the institution: the process can slow down because of the will of the parties as well.

The SAFTA Dispute Settlement Mechanism

I. INTRODUCTION

On January 1, 2006, the South Asian Free Trade Area ("SAFTA") agreement, negotiated between the seven members of the South Asian Association for Regional Cooperation ("SAARC"), entered into force. The treaty is extremely significant as it aims to promote economic cooperation by increasing intra-regional trade between the member countries, and making the South Asian region more conducive to the receipt of foreign direct investment.

In addition, recognizing the long-standing border dispute between the two most prominent member countries, India and Pakistan, the treaty is a major effort toward facilitating improved socio-cultural and political relations in the subcontinent through improved economic ties. The precursor to the SAFTA agreement, the SAARC Preferential Trading Arrangement ("SAPTA"), entered into force on December 7, 1995. The drafters of the SAPTA envisioned that it would not only provide a foundation to develop the SAFTA agreement, but that these instruments would ultimately result in the creation of other institutional forums, such as a "Customs Union" and "Common Market" and eventually a South Asian "Economic Union." The development of the SAFTA agreement is also consistent with the ideologies of other developing nations to further the notion of "south-south" trade cooperation, in an attempt to create a more prosperous and favourable position in the global economy.

However, to capitalize on the benefits of free trade agreements, it is fundamental that all mechanisms under a treaty function effectively, especially the dispute settlement mechanism. With the successful implementation of the SAFTA agreement, larger members like India and Pakistan certainly stand to benefit. In addition, smaller countries, including Nepal and Bangladesh, also have an important economic and political stake from a freer trade regime. This article argues that without certain key modifications to the dispute settlement mechanism, the desired interests and benefits of the SAFTA agreement remain illusory.

Part I of this article illustrates the lack of depth and specificity in the provisions of the SAFTA agreement's dispute settlement mechanism. In analysing the mechanism, this article compares its provisions with those under the Association of Southeast Asian Nations ("ASEAN") Free Trade Area ("AFTA") and its various agreements ("AFTA agreements"), including its most recent amendment, the Protocol on Enhanced Dispute Settlement Mechanism ("ASEAN Protocol").

Part II provides a critical analysis of the SAFTA agreement's dispute settlement provisions by comparing and contrasting its scope and jurisdiction, panel selection, procedures utilized in
deliberating and rendering recommendations, and the use of the appellate review process, with that of the ASEAN Protocol. Part III proposes certain recommendations in response to these lacunae, which, if incorporated, could strengthen the SAFTA agreement's efficacy and implementation in the coming years. Finally, the article concludes that although the SAFTA agreement's dispute settlement provisions currently appear inadequate, they could nevertheless be amended to be more detailed and comprehensive, to assist in the realization of the Contracting States' objectives, while equally benefiting the business community engaged in cross-border trade.

A. THE SAPTA DISPUTE SETTLEMENT MECHANISM:
Article 20 of the SAPTA provided for amicable resolution between the Contracting States in the event of a dispute. If amicable dispute resolution failed to produce the desired outcome, either of the disputing parties could submit the matter to the Committee of Participants ("Committee"), which would have 120 days from the date of submission to review the dispute and recommend an appropriate solution. However, the agreement did not delineate specific procedures for the Committee to follow in its review, leaving the review largely to the Committee's discretion. Other ambiguous issues included the obligations of Contracting States to refer their respective trade disputes exclusively to the SAPTA, to conduct domestic independent investigations, or to seek remedies under multilateral institutions, such as the World Trade Organisation ("WTO"). A recent dumping dispute between India and Bangladesh tested the broad scope of the SAPTA's jurisdiction, and illustrated the flaws of the mechanism.

B. THE SAFTA AGREEMENT'S DISPUTE SETTLEMENT MECHANISM
Following the SAPTA, Article 10 of the SAFTA agreement provides the dispute resolution framework available to Contracting States by establishing a Committee of Experts ("COE") as its primary dispute settlement body. Article 10 further establishes the SAFTA Ministerial Council ("SMC"), which is the highest administrative body concerned with implementation of the agreement. Similar to the SAPTA, Article 20 of the SAFTA agreement stipulates the dispute settlement mechanism for disputes arising from the "interpretation or application" of the agreement and its related instruments. In laying out the scope and framework for the adjudication of disputes, the SAFTA agreement includes provisions relating to consultations, timely COE review of a dispute, and the procedures for seeking appellate review of a decision by the SMC.

C. THE AFTA AGREEMENTS' DISPUTE SETTLEMENT MECHANISMS
In the initial 1992 Framework Agreement establishing the AFTA, the dispute settlement provision in Article 9 provided for the amicable resolution of disputes between the parties. It also mentioned the possibility of setting up an ad hoc body to oversee the settlement of disputes, but did not address any other rules or procedures for dispute resolution.

A few years later, acknowledging the inadequacy of this provision, the ASEAN Ministers adopted a Protocol on Dispute Settlement Mechanism ("DSM") to implement the AFTA agreements. Most recently at the 10TH ASEAN Summit held in 2004, the ASEAN Protocol superseded the DSM and further detailed the dispute settlement mechanism available to
parties under the AFTA and other agreements. Pursuant to the ASEAN Protocol, all disputes arising under the existing and future AFTA agreements are within the purview of the mechanism.

The Senior Economic Officials Meeting ("SEOM") and the ASEAN Secretariat are the primary bodies that oversee the dispute settlement process. After exhausting alternative dispute settlement methods, namely consultations, good offices, conciliation, and mediation, the parties may refer their disputes to the SEOM to set up panels as well as review, implement, and monitor the decisions regarding the breach of a party's obligations under the agreement. The ASEAN Protocol also provides more extensive provisions on the role and functioning of the panels, timelines for deliberation and rendering recommendations, a comprehensive appellate review process administered by the ASEAN Economic Ministers ("AEM"), and procedures for compensation and suspension of concessions.

II. ANALYSIS

Although the SAFTA agreement's dispute settlement mechanism is a significant improvement over the SAPTA, it is still too ambiguous and imprecise to meet the dispute resolution needs of the seven member states. There are several lacunae not addressed by the mechanism. One problem is the ambiguity in the scope and jurisdiction of the SAFTA agreement, which could be a major threshold issue in determining when and what disputes member countries could refer for resolution.

Another obstacle is the lack of procedures for the operation of the COE, as well as the largely undefined qualifications of its members. In addition, the appellate review process is also deficient, namely in the lack of scope and the procedure for review of the legal versus substantive matters already examined by the COE. Still more issues are left open-ended but are not within the scope of this article include: the enforcement of decisions, procedures for withdrawing and reinstating concessions, and the catch-all provision allowing Contracting States to opt-out of the SAFTA agreement at any time, without due cause or penalty.

In order for the SAFTA agreement's dispute settlement mechanism to move toward a more "rule-based" system with specific guidelines and procedures to adjudicate disputes, certain key areas of the mechanism require reassessment.

These areas include: the agreement's jurisdiction, the qualifications and selection of the COE members, the working procedures and terms of reference for the functioning of the COE, and finally, the appellate review process available to Contracting States under the agreement. By amending these and other provisions, the Contracting States will benefit from a stronger, rule-based process while maintaining flexibility and discretion in the adjudication of disputes, thereby facilitating the achievement of the SAFTA agreement's desired objectives:

A. THE SAFTA AGREEMENT DOES NOT DELINEATE THE SCOPE AND JURISDICTION OF THE DISPUTE SETTLEMENT MECHANISM

A primary concern is whether the SAFTA agreement's dispute settlement mechanism will be the sole and exclusive basis for remedying violations of the agreement, or whether
Contracting States can simultaneously approach multilateral organisations, such as the WTO, to resolve trade-related disputes, utilizing concurrent jurisdiction. Additionally, the agreement does not discuss instances of violations of the SAFTA agreement and its Contracting States' obligations under the WTO, giving rise to multiple claims under both mechanisms. Like disputes that arose under the SAPTA, the SAFTA agreement's mechanism also fails to provide clarity on the parties' obligation to seek assistance solely through its mechanism or whether unilateral action based on a country's internal assessment of a violation would be acceptable. Unlike the SAFTA agreement, the ASEAN Protocol provides jurisdictional flexibility in its dispute resolution mechanism. Addressing the potential jurisdictional problems that may arise in the context of regional free trade agreements, the ASEAN Protocol clearly stipulates that prior to initiating formal measures under the ASEAN Protocol, its Member States can use any other dispute settlement forum that they consider appropriate.

The provision allows parties to use either the WTO or other forums for dispute settlement, while simultaneously being able to request consultations with fellow countries or use good offices, as well as other alternative dispute settlement procedures to resolve their disputes. Allowing recourse to such an array of alternative mechanisms beyond the SAFTA agreement could be especially beneficial to the smaller member countries, such as Nepal, as it would avoid any unfair power dynamics and domination by the larger Contracting States like India and Pakistan.

Further, given the political, socio-economic, cultural, and religious differences between the Contracting States, recourse to good offices, mediation, and other means involving non-South Asian countries could assist greatly in alleviating tensions and arriving at a neutral settlement.

However, despite the example of the ASEAN Protocol, the SAFTA agreement merely perpetuates the jurisdictional flaws that existed under the SAPTA. In doing so, the SAFTA agreement leaves the Contracting States vulnerable in the early stages of a dispute.

Another problematic issue is that the SAFTA agreement is silent about situations where the actions or domestic law of a particular contracting state – while not violating the SAFTA agreement – may nevertheless inadvertently contradict or nullify the purposes of the agreement. Although allowing such disputes to fall under the SAFTA agreement could hamper the ability of individual governments to enact domestic legislation in accordance with their internal policy objectives, the burden still remains on the Contracting States to make a good faith effort to maintain the objectives of the SAFTA agreement. Cognizant of this issue, the ASEAN Protocol stipulates that if a Member State adversely affects the rights of a fellow Member State under the AFTA and its covered agreements, the Member State can offer suggestions to the suspected violating state to change its detrimental action.

**B. THE QUALIFICATIONS OF THE MEMBERS OF THE COE ARE NOT ADEQUATELY SPECIFIED IN THE SAFTA AGREEMENT**

Under the SAFTA agreement, in the event that Contracting States are unable to amicably resolve their disputes under the consultative and other mechanisms, the COE acts as the
primary Dispute Settlement Body. As presently drafted, the SAFTA agreement does not provide any guidelines for the selection of the members of the COE in terms of their qualifications, age, or years of expertise in the area of trade law, policy, or economics either in the domestic or international arena. The lack of specific expertise could impede the COE's ability to function independently and effectively since political appointments in the South Asian region are often fraught with corruption. Further, the fact that the members of the COB are political appointees leaves them vulnerable to political or economic pressures, which have a tendency to prevent high-ranking government officials from rendering unbiased decisions involving vital trade matters.

The use of specific qualifications such as a minimum number of years in the civil service, publication in the field of trade law, policy or related fields, and academic or consulting experience at a regional or international level could help diminish allegations of corruption among the COE's members. An additional problem is that the SAFTA agreement excludes experts from the non-governmental or private sectors, namely scholars, academicians, and private practitioners engaged in cross-border transactions, from providing useful expertise in a dispute between the Contracting States. Allowing the participation of such individuals would not only reduce fears of bias or pressures inherent in the political nature of the COE's appointees, but would also add valuable depth and knowledge to the interpretation and application of the SAFTA agreement in each specific dispute. Although the COE may solicit the assistance of a "specialist" from a Contracting State to provide "peer review of the matter referred to it," the SAFTA agreement is yet again silent on the qualifications or selection procedure for these individuals. Therefore, the same concerns previously discussed pertaining to the COE members' qualifications and political bias also apply to the "specialist" in the adjudication of disputes.

In comparison, the ASEAN Protocol has elaborate and detailed criteria for the composition of the panels, and these safeguards diminish fears of bias or inability of the individual panellists to effectively adjudicate disputes. For instance, the ASEAN Protocol allows for the appointment of "non-governmental" personnel with specific experience either within the ASEAN institutional framework or within other reputable organisations, thereby adding diversity and depth to the panellists. Moreover, it specifies other criteria such as publication, teaching, and professional experience, not only in international trade or law, but also in other fields encompassed by the AFTA agreements.

Having access to such a wide array of individuals allows Member States to take advantage of the specific knowledge and expertise required for the resolution of the parties' specific disputes. Such detailed provisions ensure the neutral and effective functioning of the panels, and would be an invaluable addition to the SAFTA agreements.

C. THE WORKING PROCEDURES FOR THE COE IN THE SAFTA AGREEMENT ARE LEFT LARGELY TO THE COE's DISCRETION

While outlining the timeframe within which the COE must investigate a dispute and render its recommendations to the Contracting States involved, the SAFTA agreement is silent on the procedures, rules, and nature of such deliberations. Accordingly, without further guidance, the SAFTA agreement would allow the COE broad discretion to utilize any processes or methods it deems fit to examine a dispute and make recommendations.
The lack of specific terms of reference could significantly hamper the ability of the COE to engage in fair and meaningful deliberations to arrive at its conclusions. For instance, the SAFTA agreement does not indicate the procedure or format for disputing parties to present evidence to the COE, namely whether the evidence would be oral or written, whether parties could bring in experts or witnesses to testify on their behalf, or whether parties could rebut allegations. In contrast, the ASEAN Protocol details the manner in which the panel receives written and oral submissions from not only the disputing states but also from interested third parties. Further, under the ASEAN Protocol, all statements, rebuttals, and other information presented before the panel are available to other parties and the public. Specifying such procedures would allow the SAFTA agreement's Contracting States room to present a wide array of evidence supporting their positions, and facilitate more meaningful deliberation by the COE in making its recommendations, which is critical to ensuring fairness within the proceedings. Another related concern is that although the SAFTA agreement allows for the participation of a "specialist" in the decision-making process, it does not specify the nature and extent of this individual's involvement. Given that the qualifications of the members of the COE are relatively unclear, the use of a "specialist" could be especially valuable to the COE in assessing complicated trade-related disputes that may arise under the SAFTA agreement. In comparison, the ASEAN Protocol acknowledges that panels could benefit from expert opinions, and therefore allows its panels to obtain information or guidance from any outside source, which the panels can then consider in rendering decisions. Although neither the ASEAN Protocol nor the SAFTA agreement provide guidance on the role expert suggestions should play in the panel's decision making process, the ASEAN Protocol at least allows the panels to obtain advice from any source believed to assist the panel's determinations. Narrowing the COE's ability to gain assistance only from a single "specialist," without further direction as to such an individual's qualifications or role, would not substantially add value to the proposed "peer review" process. Moreover, unlike the ASEAN Protocol's emphasis on panels performing "objective assessment" of the parties' obligations under the AFTA agreements, the SAFTA agreement leaves room for the COE's subjective interpretations. Requiring that the COE impartially examine a dispute, at a minimum, diminishes concerns of bias in the COE's recommendations. Thus, although both the ASEAN Protocol and the SAFTA agreement give their respective decision-making bodies discretion to utilize their own procedures, the SAFTA agreement should embrace at least some of the ASEAN Protocol's guidelines to mitigate the risks of leaving all the procedures to the COE's discretion.

D. THE APPELLATE REVIEW PROCESS BY THE SMC UNDER THE SAFTA AGREEMENT IS PROCEDURALLY AND SUBSTANTIALLY UNSATISFACTORY

Having a transparent and effective appellate review process is critical to the functioning of any dispute settlement mechanism in a free trade agreement.

As with many of the other provisions discussed, the appellate review mechanism under the SAFTA agreement only provides a skeletal framework for the examination of the COE's recommendations. The SAFTA agreement does little to discuss the scope of the "review" in terms of factual matters, legal substance, or the rules and nature of its proceedings. Moreover, the process is vulnerable to internal biases and political differences. The SMC, which is the body that conducts the review, is comprised only of the "Ministers of
Commerce/Trade" of the SAFTA member countries, and its findings likely would remain confidential. In contrast, the ASEAN Protocol provides a far more detailed and satisfactory mechanism for the review of the recommendations rendered by the panels. At the outset, the ASEAN Protocol departs from the largely inadequate model of its precursor, the DSM, in which the AEM was the body that conducted the appellate review. Instead, the ASEAN Protocol vests the AEM with the responsibility of establishing an appellate review panel that is comprised of highly competent and experienced individuals with specific qualifications. Furthermore, the ASEAN Protocol expressly states that only the legal issues involved in the panel's recommendation report are subject to appeal, thereby clarifying the scope of the review. Although only the disputing parties involved may appeal a finding, interested third parties also have the opportunity to present their views. Thus, because the SAFTA agreement's dispute settlement mechanism is still too imprecise to carry out its mission, modifications that would significantly enhance the mechanism's value, and infuse greater certainty into the dispute settlement process are required.

Anti-Dumping Duties on Lead Acid Battery Import from Bangladesh- Case Study

The Dispute
On 28 January 2004, Bangladesh requested consultations with India concerning a certain anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh. Bangladesh was particularly concerned about the following aspects: 66

- Initiation of the investigation and failure to immediately terminate the investigation, notwithstanding the negligible volume of imports from Bangladesh;
- Determination of margin (determination of normal value, apparent adoption of constructed value, determination of export price, and comparison between normal value and export price);
- Determination of injury and causation (examination of import volume, the effect on prices, and the impact on domestic producers of like products; inclusion of imports from Bangladesh in the assessment of the effects of imports; evaluation and examination of relevant factors, and examination of the causal link between the imports and the alleged injury);
- Treatment of evidence (failure to consider information submitted by the interested parties from Bangladesh; treatment of information submitted by the applicants as confidential; failure to disclose to the interested parties the "essential facts under consideration which form the basis for the decision to apply definitive measures" and other relevant information);
- Failure to provide the parties and give public notice of "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures".

Bangladesh considered that the foregoing Indian measure was inconsistent with: Article VI of GATT 1994, including Articles VI:1, VI:2 and VI:6(a); Articles 1, 2.1, 2.2, 2.4,3.1, 3.2, 3.3, 3.4,
3.5, 3.7, 5.4, 5.8, 6.2, 6.4, 6.5, 6.8 (including para. 3 of Annex II), 6.9 and 12.2 of the Anti-Dumping Agreement. Bangladesh considered that, as a result of the imposition of the anti-dumping duties, India may be acting inconsistently with its obligations under Articles I:1 and II:1 of GATT 1994. Bangladesh also considered that the benefits accruing to it directly or indirectly under the WTO Agreement are being nullified or impaired pursuant to Articles XXIII:1(a) and XXIII:1(b), respectively, of GATT 1994. On 20 February 2006, the parties informed the DSB of a mutually satisfactory solution to the matter raised by Bangladesh. The measure which was addressed in the request for consultations has been terminated by India’s Customs Notification No. 01/2005 dated 4 January 2005.

Trade Dispute with India: Allegation of Dumping Batteries
The export of lead acid battery from Bangladesh to India resumed after India agreed during the third round of negotiations under SAPTA to include HS8507 commodities in the list of products originating from LDC Member countries of SAARC to be given preferential tariff treatment. The MFN tariff rate on lead acid batteries was 40 per cent which made any imports of this particular item from Bangladesh uncompetitive in the Indian market (Table 6.6). But, the tariff concession given under SAPTA reduced the applicable tariff on lead acid batteries from Bangladesh to 16 per cent, which allowed a leading battery manufacturer of Bangladesh – Rahimafrooz - to export small quantities of lead acid batteries to India. Rahimafrooz exported slightly over half a million dollar worth of batteries to India in 1998-99. Its exports nearly doubled the next year to more than a million dollar, and increased further to about 1.3 million dollars in 2000-01, the year when dumping investigation was initiated (Table 6.7). The investigation and the subsequent anti-dumping duties totally stopped export of lead acid batteries to India.68

Dumping Investigation
Two battery manufacturers of India viz. Exide Industries Ltd. and Amara Raja Batteries Ltd. took the initiative to prevent the import of lead acid batteries from Bangladesh. They petitioned the Directorate General of Anti-Dumping (DGAD) of India claiming that batteries exported from Bangladesh (as well as from China, Korea and Japan) were being dumped into the Indian market. Accordingly DGAD initiated an investigation on 12 January 2001 into the alleged dumping of batteries. The period of investigation was specified to be 1 January to 30 September 2000.

The preliminary findings of DGAD were made public on 21 March 2001. The volume of import of lead acid batteries from Bangladesh was determined to be less than 3 per cent of the total imports of India. Such a finding of negligible imports required India to terminate the investigation immediately under WTO anti-dumping rules. But inexplicably, DGAD decided to continue with the investigation despite its own findings.

The investigation on dumping caught the sole domestic firm exporting batteries to India, Rahimafrooz, by surprise. They had no experience or knowledge of contesting dumping

67 https://www.wto.org/english/tratop_e/region_e/regatt_e.htm
68 https://www.coursehero.com/file/p75iond/The-imposition-of-Anti-dumping-duty-on-lead-acid-battery-a-very-minor-export/
allegations and neither were there any competent people or institutions in the country that could be consulted on the matter. It approached the Ministry of Commerce and Bangladesh Tariff Commission that looked after the trade matters of the country for resolving this dispute. But quite understandably, the enormous amount of data required to be disclosed to DGAD for the investigation worried Rahimafroz. Some of the data were of confidential nature, while the company did not have documents of some of the information sought by DGAD. It was further understandably nervous that the confidential data, if provided, would find way to its competitors in India; and this could be harmful to its business strategy in both India and Bangladesh.  

Nevertheless, Rahimafroz did complete the DGAD’s questionnaire as well as it could and submitted it through Bangladesh Battery Manufacturers Association (BABMA) on 31 May 2001. However, DGAD was not satisfied with the information provided by Rahimafroz and asked for a large amount of additional data on profit and sales, balance sheet, transactional details of the sales in the domestic market and details of costs etc. It also demanded on-site spot investigation of the company. Rahimafroz demurred and requested that such a demand be placed through the Government of Bangladesh for its consent. The reluctance of Rahimafroz to promptly provide access to its premises and to all the information sought was interpreted by DGAD as ‘non-cooperation’. Having thus satisfied itself of the non-cooperative behaviour of Rahimafroz, DGAD went ahead with its dumping investigation resorting to Article 6.8 to decide on the case on the basis of what it considered ‘the facts’ or ‘best information available’. Much of it actually came from the complainant Indian companies.

It seemed that the Bangladesh side might not have fully appreciated the seriousness of launching of an anti-dumping investigation against its export products by a statutory authority of the importing country. Initially it tried to solve the problem by directly approaching the Commerce Minister of India when the investigation was launched by DGAD of India. The then Commerce Minister of Bangladesh raised the issue with his Indian counterpart during his visit to Delhi in March 2001. Whether the Indian Minister could have intervened in a quasi-judicial process initiated by a statutory authority on the basis of a specific legal complaint (without substantial political risk) is not clear, but in the end he did not halt the investigation process. Meanwhile in Bangladesh a new Commerce Minister took over the Ministry after a change in Government in October 2001 following a general election. He wrote a letter to his Indian counterpart after DGAD had released the findings of its investigation in an attempt to seek a resolution of the dispute. The Indian Minister suggested a way around the problem; he advised that the Bangladesh exporter give a price undertaking. Article 8 allows suspension or termination of investigation without the imposition of provisional measures or anti-dumping duties upon receipt of such an undertaking. However, the Bangladeshi exporter was reluctant to give such an undertaking since they were convinced that they had not dumped in the Indian market, and giving an undertaking would be tantamount to an admission of dumping.

69 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 00159 6
70 https://www.coursehero.com/file/p1nq1t/11-But-inexplicably-DGAD-decided-to-continue-with-the-investigation-despite-its/
71 https://www.coursehero.com/file/p286uk1/Whether-the-Indian-Minister-could-have-intervened-in-a-quasi-judicial-process/
72 https://www.coursehero.com/file/p286uk1/
The final findings of the investigation were made public on 7 December 2001. DGAD made a complete turnaround on its earlier findings and determined that import of lead acid batteries from Bangladesh was actually above the ‘negligible’ level. The investigation did not make use of the substantial information provided by Rahimafrooz because of its determination that the exporter was non-cooperative (but the data on export value which apparently strengthened DGAD’s case was selectively used). The findings of DGAD supported the complainants’ claim of dumping by exporters of Bangladesh (and the other three countries). Accordingly, it recommended the imposition of anti-dumping duties on all lead acid battery exports from Bangladesh. It is found that the anti-dumping duties were not imposed either on the batteries (per piece) or on the value of the batteries. Instead, the duties were imposed on the weight of the batteries. This was a clever act as the value per unit of weight tends to be quite low for batteries, which are very heavy items. The effective ad valorem duty for even a small duty per unit of weight could be quite large. A local newspaper reported that the effective ad valorem duty imposed by India on batteries was as high as 131 per cent. Such punitive duties killed off all exports of lead acid batteries from Bangladesh to India. A small window of opportunity that had opened for Bangladesh for diversifying the export basket and increasing export to India was nipped in the bud.

Current State of Negotiations on Dispute Settlement under the Doha Development Round

There are number of areas where dispute settlement understanding needs further clarification. These changes would further improve the system and ensure better participation of all trading countries. Under the Doha Development Round, it has been agreed that Member countries will work for the improvement and clarification of the dispute settlement process. A number of special sessions were held in 2007 on the DSB where Chairman of the special session to the General Council, Ambassador Ronald Saborío Soto presented reports. Chairman's reports mainly mentioned about progress made on various proposals submitted by different countries.

In order to improve the system, LDCs submitted a proposal (TN/DS/W/17) on October 2002 to modify the Dispute Settlement Understanding (DSU). It is found in the earlier discussions that LDCs' participation in the DSB is rather rare. This does not necessarily imply that LDCs do not have any issue that needs to be placed in the DSB. LDCs find the DSB system complex, lengthy and expensive. More importantly, LDCs lack institutional capacity to raise their issues in the DSB. According to Advisory Centre on WTO Law (ACWL), LDCs proposal to change disciplines under S&D treatment would not ensure their increasing presence in the DSB, since major weaknesses are not in the DSB process. Lack of awareness about rights on the part of industrialists of LDCs is a major weakness. Besides, some of the proposed changes are not compatible with the basic principles of DSB.

LDC's proposals include modification of following articles:

- Article 4.10 of the DSU should be changed to read as follows: "During consultations, Members should give special attention to the particular problems and interests of developing countries Members especially those of least developed country Members".

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• Where a LDC is involved in the consultations, due consideration should be given to the possibility of holding such consultations and other meetings in the capitals of LDCs.

• Modification of Article 8.10 to the effect that in any dispute involving a developing country, there must be at least one panellist from a developing country.

• Dissenting judgments\textsuperscript{74} should be allowed in the DS system through a rule that the Members of the panel or Appellate Body should each deliver a judgment and the final decision be taken on the basis of a majority.

• Compensation under Article 22.2 of the DSU should be made mandatory and a strong case for monetary compensation can be made. However, the proposal submitted by the LDCs is already considered outdated by major negotiating countries. Hence LDCs have to either revive the proposal or submit a fresh proposal to negotiate for ensuring better participation in the DSB. In order to enhance LDCs participation in the DSB, there needs to be more support to strengthen the ACWL in order to enhance their capacity to deal exclusively with LDC complaints. However, till now neither developing countries nor LDCs have proposed for enhancement of the capacity of the ACWL. A proposal could be submitted by Bangladesh in this respect.

Bangladesh lodged complaints in the DSB only once. The case involved India's antidumping duties on lead acid battery import from Bangladesh, as discussed in the previous section. It was not an easy task for Bangladesh to lodge complaint in the DSB because of limited expertise in anti-dumping matters within the statutory authority or in the country to ascertain the merit of a dumping case\textsuperscript{75}, lack of adequate funds to pursue the case to the end, and constraints in terms of taking political decision. Private sector of Bangladesh should play a more proactive role in raising complaints about trade distorting practices of other countries. Private sector, with support of the government, may make use of the services of the ACWL regarding their queries on trade practices and trade related matters involving other countries. Government should take necessary measures to raise awareness among local industrialists as regards their rights in the WTO, and opportunities and scope of raising issues related to trade distorting practices of other countries.


\textsuperscript{75} A Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
Current economic structure and growth of Sri Lanka

Trade and trade policy overview of Sri Lanka General economic introduction and sector composition

The following presents an overview of the relevant aspects of Sri Lanka’s economy, trade and policy in order to provide a point of reference for the survey results. The first section gives a very brief outline of economic output, sector contributions and employment. With this overall economic situation in mind, the second section describes Sri Lanka’s trade structure – export and import sectors, partner countries and diversification. The third section describes Sri Lanka’s overall trade policy situation, complementing the analysis of the business perception of non-tariff measures in this report. Tariffs applied and faced internationally, trade agreements, and a first outlook at known non-tariff measures (NTMs) are presented.

The last section deals with national trade and development strategies that stand in close relation to the trade-related business environment (TBE).

Gross domestic product and public finance

Sri Lanka’s nominal total gross domestic product (GDP) of about US$ 28 billion in 2009 translates to a per capita GDP of about US$ 4,600 in terms of purchasing power parity. Despite several domestic as well as external challenges, Sri Lanka has resiliently achieved high economic growth rates over the last decade. Between 2003 and 2008 economic growth has generally exceeded 6% per year, comparable to the rest of Asia and the Pacific. Even during the worldwide economic downturn, a remarkable growth rate of 3.5% was achieved. Also, unemployment was steadily reduced from almost 9% in 2002 to 5.2% in 2008, but increased again by 0.5% in 2009.

Sri Lanka real GDP growth, 2002–2010

However, high government spending, particularly due to the long-lasting domestic conflict, has caused total sovereign debt to steadily increase to more than 80% of GDP in 2008. Thus vulnerable to the financial crisis, a potential payment crisis was avoided by a standby agreement with the International Monetary Fund. With the end of the war in 2009, international confidence was restored and resulted in a strong recovery with growth rates beyond 8% in the second half of 2010. Sri Lanka has also been made eligible for loans from the International Bank for Reconstruction of the World Bank.

Sector contributions and employment

The share of agriculture in Sri Lanka’s GDP fluctuated at around 13% of GDP in the last five years. If a longer time horizon is taken into account, the share of agriculture has been declining (from 26.3% in 1990 to 13.4% in 2008). Despite its low share in GDP, agriculture is a critical sector, as it employs 32.6% of the labour force (see figure 2), provides livelihoods for around 70% of the rural population, supplies raw materials for the manufacturing industry and earns foreign exchange through exports. The combined industry sector consists mostly of manufacturing, but also utilities, mining and construction, and accounts for similar shares of GDP and employment, with 29% and 26%, respectively.
The garment industries, processed agricultural goods as well as chemical and rubber-based products are the largest contributors to industrial output. The export and import operations of these respective industries thus form a major part of the survey and of the analysis in this report. Production predominantly originates from private export-oriented factories, although utilities are widely state-owned.

Sri Lanka’s economic output is dominated by the services sector, which also includes transport, communications, financial services and tourism. While 57% of GDP is contributed by services, only a smaller share, or 41%, of the work force is employed in the sector.\(^{77}\)

**Trade patterns**

This section provides a summary of Sri Lanka’s external trade. While more specific references to trade flows will be made throughout the report, this introductory part shall put those more disaggregated numbers into a broader picture. Geographically, economic activity is mostly concentrated in the Western province, particularly in the capital Colombo, and other coastal areas of the Eastern and Southern provinces. Conversely, significantly more than 20% of the population is poor in rural and plantation areas of the landlocked Uva, Central and Sabaragamuwa Provinces, while the nationwide poverty headcount is still exceeding 15%. A share of 45% of total poor households can be related to the agricultural sector, 32% to the service sector and 23% to industry.

**Composition and development of commodity trade**

Sri Lanka’s total exports for 2009 amounted to US$ 7,121 million, with imports worth US$ 9,432 million. Manufacturing represents 68% of total exports, and 78% of total imports. The government has pursued an export-oriented strategy to strengthen the manufacturing sector, while acknowledging that some of the largest industries, such as apparel or processed plastics, are dependent on imported inputs. Significant shares of total imports are thus observed for textiles, chemicals and machinery employed as direct inputs and investment goods for domestic industries (figure 3). The overall trade balance in manufacturing is therefore negative to an extent of US$ 1,279 million in 2009. If the dominant clothing export industry is excluded, Sri Lanka’s net imports even amount to US$ 4,451 million.

Net exports are positive for agricultural commodities. However, Sri Lanka is a net food importing country: if exports of the large tea sector are excluded, Sri Lanka’s agricultural net imports amount to US$ 617 million. The tea sector accounts for over half of agricultural exports and for about 15% of total exports.

Major importing subsectors are raw cereals, dairy products and some edible vegetables. The lion’s share of more than 20% of total imports is made up by fuels and other minerals, driving the trade balance into negative values.\(^{78}\)


\(^{78}\) http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/NTM%20Report_Sri%20Lanka.pdf
The development of trade and output for agriculture and manufacturing between 2002 and 2009, after several years of steady growth in exports and imports, declines due to real economy effects of the financial crisis, and thus low international and domestic demand, were recorded in 2009. Imports were most strongly affected with rates of decline of 28% in manufacturing and 20% in agricultural goods. Despite exports falling, by 12% and 9% respectively, total output in manufacturing increased by 4%, while agricultural output only fell by 3%.

According to the 2010 report by the Central Bank of Sri Lanka, trade rebounded in the first months of 2010. Earnings from agricultural exports increased significantly, driven by high prices and favourable weather conditions. However, the export of raw rubber has declined in volume terms due to an increase in domestic processing and export of processed rubber and rubber-based products. Manufacturing exports have increased by 7.9% in the same period. Most importantly, machinery and equipment, and rubber products drove the recovery, whereas earnings from the large clothing sector further declined. On the import side, transport equipment and chemicals (including fertilisers) increased strongly over the same period. Imports of all input and consumer good categories also recovered.

Despite general increases during the last years, figure 4 also highlights a decline in the relative contribution of merchandise exports to GDP, which is particularly strong and long-lasting for manufacturing exports.

While the share of manufacturing imports in GDP has also dropped significantly, its decline mostly occurred during the crisis-ridden 2008–2009 period. Agricultural trade and output generally exhibited lower growth rates since 2002, but the relative contributions of exports and imports to output remained constant until further growing domestic output was confronted with stagnant international demand and dropping international commodity prices in 2008.

**Export destinations and diversification**

The European Union (EU) and the United States are importing partners for more than 60% of Sri Lanka’s exports, dominated by manufactured goods like apparel and rubber-based products. With respect to agricultural commodities, the United States is not among the five largest markets. As major importers of tea, the Middle East and the Russian Federation respectively account for 11% and 3% of Sri Lanka’s total exports. Despite rapid annual average growth of over 20% between 2001 and 2009, neighbouring partner India only accounts for 4% of exports. Sri Lanka’s exports thus strongly depend on the demand and business cycle of a few partners.

Sri Lanka’s economic policy has made substantial efforts to diversify industrial output, which has resulted in a shift of exports from plantation crops towards more advanced processed goods. Sri Lankan manufacturing exports are now well diversified in terms of traded products. For instance, 95% of exports to the European Union, the largest importing partner of Sri Lanka, are diversified to 172 product lines (Harmonized System [HS] 6-digit classification).  

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79 Ibid.
The agricultural export of Sri Lanka is diversified with exception of trade with the Russian Federation. Sri Lanka exported to the Russian Federation for US$ 215 million in 2008, and just three tea products (defined at the HS 6-digit level) cumulatively account for 95% of the total bilateral export (table 1). Sri Lankan agricultural export baskets to other major partners – India, United Arab Emirates (UAE) and Japan – include 10 to 22 products. Exports to the European Union are quite well diversified, with 49 different agro products comprising 95% of exports (table 1). An increased export diversification in terms of products may still be desirable, as an expanded portfolio of products can help to mitigate adverse shocks, including both market risks (e.g. crisis driven contraction of demand) and unfavourable weather conditions.

Trade policy
The Mahinda Chintana, the Ten Year Horizon Development Framework for 2006–2016, as devised by the Department of National Planning, names international trade as one of the pillars of development and envisages a closer integration into world markets. Sri Lanka is pursuing an outward-oriented trade strategy with particular focus on exports by improving market access in foreign markets in order to reduce the considerable trade deficit. The Sri Lankan trade regime has been characterized as the most open of the South Asian region. Despite simplifying tariff schedules, recent reforms have seen average tariff increases. Fiscal revenue purposes have played a role in a number of additional charges on imports, but additional charges were also levied on about 22% of exports.

Sri Lankan import tariffs and trade agreements
As per June 2010, Sri Lanka’s previous five-band import tariff structure has been simplified to a three-band tariff system, yet with a strong tariff escalation from duty-free entry for essential and raw goods, over 15% tariffs for intermediate and semi-processed goods, to 30% for finished goods. While duty free tariff lines have thus increased from 10% in 2003 to 44% in 2010, the use of the highest tariff has also increased resulting in an average applied most favoured nation (MFN) tariff increase from 9.8% (2003) to 11.5% (2010). With very few exceptions exceeding the World Trade Organisation (WTO) MFN bound rates, most applied tariffs lie far below. Furthermore, 96% of all tariff lines are now ad-valorem.

With regard to WTO disciplines, Sri Lanka has recently implemented the Customs Valuation Agreement.

Yet, exceptions remain legitimate if they are viewed as necessary by the authorities. Until now, Sri Lanka has only once filed a complaint (1996, against Brazil) at the WTO Dispute Settlement body and never been a respondent to a complaint. In the negotiations of the current WTO Doha Round, Sri Lanka has been particularly engaged in areas of agriculture, non-agricultural market access, trade-related Aspects of Intellectual Property Rights (TRIPS) and trade facilitation. As a ‘disproportionately affected country’, Sri Lanka has expressed concern about a possible erosion of preferences resulting from multilateral tariff reductions due to the Doha Development Agenda.\footnote{Ibid.}
Apart from its multilateral obligations in the WTO, the country is member of two regional trade agreements, the South Asia Free Trade Agreement (SAFTA) and the Asia Pacific Trade Agreement (APTA). The simple average preferential margins Sri Lanka grants to partners under the SAFTA, which was implemented in 2006 and includes Bangladesh, Bhutan, India, Maldives, Nepal and Pakistan, amount to an average of 1.3% across all tariff lines over the respective MFN rate (11.5%). APTA, formerly the Bangkok Agreement, also came into force in 2006 and includes Bangladesh, China, India, the Lao People’s Democratic Republic and the Republic of Korea, but preferences as compared to the simple average MFN rates are very small (0.2%).

Furthermore, Sri Lanka is engaged in bilateral trade agreements with India (ISFTA – the Indo-Sri Lanka Free Trade Agreement) since 2000, and Pakistan (PSFTA – the Pakistan-Sri Lanka Free Trade Agreement) since 2002. A Comprehensive Economic Partnership Agreement (CEPA) with India as a further step for bilateral integration has been negotiated but not yet been implemented. Currently, India is granting strong tariff reductions on tea and textiles, whereas Sri Lanka allows duty-free access mostly for raw materials and machinery. As indicated before, trade between India and Sri Lanka has accordingly expanded significantly. However, preferences under the ISFTA involve relatively weak rules of origin with at least 35% of the product required to be of local origin to be eligible, implying only minor disadvantages for exporters that rely on imported raw material for processing. Pakistan also significantly reduced tariffs and gave preferential tariff rate quotas for Sri Lanka’s essential exports of tea and clothing products.\(^\text{81}\)

While the original ISFTA did not consider NTMs, subsequent trade agreements increasingly contained provisions on NTMs in order of their chronological implementation, from PSFTA over APTA to SAFTA.

The CEPA with India also envisages re-negotiated NTM provisions, particularly in the form of mutual recognition agreements (MRAs) of standards and assessment procedures.

\(^{27}\)Non-reciprocal preferences are granted to Sri Lanka under the Generalized System of Preferences (GSP) by developed countries and the Global System of Trade Preferences (GSTP) among developing countries.

Preferences formerly granted to Sri Lanka by the European Union and Turkey under GSP+ (Special Incentive Arrangement for Sustainable Development and Good Governance) have been temporarily withdrawn, effective August 2010, on account of weak implementation of human rights conventions, including child labour.\(^\text{82}\)

**Tariffs and preferences faced for agricultural commodities**

Agricultural tariffs vary widely across importing countries: trade-weighted MFN tariffs range between 0.9% and 38.4%. For the largest five importers, the trade-weighted MFN tariff is lower than its simple average.

\(^{81}\) Ibid.

This implies that Sri Lanka exports products that tend to be less protected in these markets, in particular tea, than other agricultural commodities. Deviating downwards from the MFN duty, tariffs actually applied are then determined by preferences granted under specific trade agreements. These preferential margins are between zero and 23.0%.  

The aforementioned temporary suspension of the GSP+ preferences by the European Union and Turkey has caused much concern. When GSP+ preferences were applicable in 2009, Sri Lanka’s agricultural exports were almost entirely eligible for duty-free entry (62.8% of all agricultural tariff lines corresponding to 99.2% of bilateral export value). This corresponded to a preferential margin of 8.6% vis-à-vis their foreign competitors that did not benefit from any preferential trade agreement. These numbers are theoretical, as preferences usually require compliance with the respective rules of origin and possibly other measures. Sri Lanka’s actual utilization of GSP+ preferences for the European Union in 2008 was estimated at 84%.

Under the current circumstances, Sri Lanka only benefits from the regular GSP. This implies reduced preferential margins (from 8.6% to 2.2%) and significantly less duty-free access to the European Union market (18.7% of duty free tariff lines instead of 62.8% available before the GSP+ suspension). A hypothetical preferential margin of 2.2% remains under the GSP, which can only serve as a tentative indication since it is counterfactually weighted by 2009 trade data.

Agricultural exports to the Russian Federation, which only comprised tea in 2009, enjoy a preferential tariff of 2.6% below the MFN rate of 10.3% (weighted averages). Import tariffs by the United Arab Emirates and Japan are generally lower, with weighted tariff averages only 0.9% and 4.3%, respectively. However, they hardly grant any preferential access to Sri Lanka. In contrast, India applies very high average agricultural MFN tariffs of about 40%, but preferential margins of 23% under the ISFTA, SAFTA and APTA are substantial. The resulting applied tariffs to Sri Lankan exports therefore remain rather high, but still give Sri Lanka’s exporters a significant advantage over their non-regional competitors. However, the actual preferential margin over other regional exporters (members of SAFTA and APTA) is likely to be much smaller.

**Current tariffs and preferences for manufactured goods**

The five largest markets for Sri Lanka’s manufacturing exports apply simple average MFN duties ranging between 5.0% and 9.7%. As opposed to agricultural tariffs and with the exception of India, the trade weighted average MFN duties tend to be higher than the simple average. This indicates that the products that Sri Lanka exports are generally sensitive to the importing countries and more protected. In the cases of major Western markets, especially apparel is a sensitive industry. Diverging from these MFN duties, however, tariffs applied to Sri Lanka’s exports are subject to preferential trade agreements to a certain extent.

Under the GSP+ scheme of the European Union and Turkey, Sri Lanka received almost full duty-free access until August 2010. Due to rules of origin and potentially other obstacles, the

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actual preference utilization in 2008 was calculated at only 72%. Since the suspension of the GSP+, Sri Lanka’s current non-reciprocal preferences granted by the European Union and Turkey under the GSP are strongly reduced.

Using 2009 trade data for weighting, only a 2.1% hypothetical preferential margin over the MFN rate would remain for access to European Union markets. The United States, as the second largest market, and Canada apply relatively high tariffs to the products that Sri Lanka exports. Trade-weighted MFN rates exceed 13% and only low average preferential margins of 0.3% and 1% are granted to Sri Lanka by the United States and Canada, respectively. While India, as a major regional partner, applies MFN duties of about 9%, Sri Lanka’s applied preferential tariffs are reduced to about 1.5%. This offers an advantage over non-regional competitors.

Non-tariff measures applied by Sri Lanka
Sri Lanka has notified the WTO of 103 technical measures and 18 sanitary and phytosanitary (SPS) measures (as of June 2010). The technical standards were all included in the Import Standardization and Quality Control Regulations of 2006 and state the requirement of complying with the Sri Lanka Standard (SLS). The national focal point in this respect is the Sri Lanka Standards Institution (SLSI), a member of the International Organisation for Standardization (ISO), which defines both standards according to international norms and also plays a central role in providing testing and certification facilities. Affected products under these technical regulations are also subject to import inspections. SPS measures mostly concern packaging standards, meat and dairy products, plants and soils, tea, coffee and cocoa, genetically modified food. The Ministry of Healthcare and Nutrition and the SLSI are the main Sri Lankan bodies for definition and implementation of SPS regulations.

A number of charges and levies in addition to regular duties raise the overall cost of importing significantly. While a 15% customs surcharge on most goods was eliminated as of June 2010, the following charges remain in place: the Sri Lanka Export Development Board (EDB) levies a cess of mostly around 20% on many goods, including raw and processed agricultural products, rubber and plastic products, textiles and sanitary products. The EDB cess was mentioned to have revenue purposes in order to finance the domestic export development programme. Excise duties are applied to tobacco products, oil products, beverages, motor vehicles and some electronics. The PAL (Ports and Airports Development Levy) adds another 5%, with lower rates for imported inputs for later processing and export. Firms with a quarterly turnover of over US$ 5,800 are charged a nation building tax (NBT) of 3% on their imports. Eleven essential food products are subject to the special commodity levy that replaces all other taxes and duties on these items. The standard value added tax (VAT) is 12%, with tax exemptions for basic foods, fertilizers and fuels, and 20% on luxury goods.

Imports are restricted or prohibited for a few products, mainly arms, certain meats, used vehicles and some medicaments and chemicals. Non-automatic import licensing requirements according to the Special Import Licensing Scheme are applied to several grains, chemicals, fuels and motor vehicles. Sri Lanka has not implemented any legislation on anti-dumping measures, countervailing duties or safeguards.

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84 Ibid.
Apart from regular documentation and inspection procedures, Sri Lanka also applies a number of NTMs to exports. The Sri Lanka Tea Board (SLTB) levies a specific duty on tea, the Coconut Development Authority, on raw and processed coconut products, the EDB on cashew nuts, raw hides and skins and metal scrap.

Cess and export taxes also apply to natural rubber and some quartz varieties. In 2009, these export charges affected an estimated US$ 1,464 million worth of exports, or 22.3% of Sri Lanka’s total exports. Revenue considerations for refinancing of domestic development activities, increasing availability and lowering prices of raw materials for higher value-added domestic processing are the most important reasons for the levies according to official legislation. Exports are prohibited or require licensing for sensitive product categories, such as endangered animal and plant species, arms, drugs, ivory products, antiques and minerals.

National trade and development strategies
Domestic trade promotion measures and also some wider development activities stand in close relation to NTMs or directly concern the sectors affected by NTMs. The following paragraphs will therefore provide a useful background for further analysis of NTMs.

Trade promotion and facilitation
A large part of export promotion is conducted by means of exemption from taxes and charges. The temporary importation for export processing (TIEP) scheme relieves firms from paying fiscal levies when importing goods for later processing and export. The scheme is divided into TIEP I that allows duty-free imports of raw materials, components or packaging material as direct inputs for production, and the TIEP IV that fully or partly exempts from import charges for investment goods for general business operations of exporting firms, according to the percentage of exports in the firm’s output. While the TIEP requires prior application to the Customs Directorate, the duty rebate scheme works on a shipment-by-shipment basis and only refunds regular customs duties on the imported inputs for export products. The manufacture-in-bond scheme allows storing and processing in designated warehouses without payment of duties and taxes on imports. As ad-hoc measures to alleviate the impact of the recent global economic downturn, the SVAT (simplified value added tax) scheme suspends or defers the VAT liability of direct and indirect exporters on inputs for production, and the export development reward scheme assists exporters of tea, rubber, cinnamon, clothing and leather.

As the only domestic agency, the Sri Lanka Export Credit Insurance Corporation (SLECIC) insures exporters and provides guarantees for lending at commercial financial institutions. To expand the scope of this rather limited financial assistance, the Central Bank of Sri Lanka has proposed an initiative to set up an export-import (exim) bank in order to increase domestic trade facilitation.

The Board of Investment (BOI) not only acts as a focal point for investors, but also offers tax and duty concessions to member firms in non-traditional export sectors. Firms exporting more than 80% of goods or 70% of services are granted duty-free imports of raw materials and
capital goods, as well as full tax exemptions on new investments. Furthermore, several trade procedures are facilitated at BOI Customs, such as import licensing, foreign exchange controls, inspections and documentation requirements.\textsuperscript{85} The BOI also operates twelve export-oriented industrial areas that provide infrastructure, facilities, and administration support services for a variety of enterprises, so-called export processing zones (EPZ). Firms located in these EPZ are exempted from taxes and import duties. Established in 1978, today about 65% of Sri Lanka’s exports are operated by members of the BOI.

The Sri Lankan customs system is based on the Automated System for Customs Data developed by UNCTAD (United Nations Conference on Trade and Development). This customs management system is computerized, but did not allow for the submission of documents electronically in its original version. Trade processes were further automated with the introduction of the electronic data interchange (EDI) facility in 2002, which allows processing of trade documents such as customs declaration messages electronically.

Implementation and actual use of the EDI, however, has been very limited, with most document-tation still submitted manually.

National development framework and infrastructure

The Mahinda Chintana aims at consistently attaining an annual GDP growth rate of at least 8%. The strategy covers all major industries as well as infrastructure, with a particular focus on regions outside the Western Province in order to reduce spatial inequalities.

Given that poorer regions tend to be predominantly rural and in order to improve Sri Lanka’s food security, the Mahinda Chintana concentrates on growth in the agricultural sector and of SMEs (small and medium-sized enterprises). The tea, rubber and coconut plantation sectors, with their major employment and trade significance, will be central, but diversification into higher value-added products is also among the priorities. In order to protect local producers, maintaining relatively high duties on strategic agricultural commodities is proposed until 2016. Active promotion measures that are already in place include subsidized fertilizer to domestic agriculture (since 1962), with the latest scheme being introduced in 2005.

Subsidy expenditure has risen dramatically, nearly tenfold, since earlier in the decade to approximately US$ 235 million in 2009. Currently, guaranteed price schemes for rubber and purchasing schemes for paddy aim to protect producers from low international prices due to the financial crisis. In addition, the Mahinda Chintana envisages improved technological development in the agricultural sector, including research credits, seeds extension, and the development of irrigation infrastructure.

The Mahinda Chintana Industrial Policy remains focused on exports and aims at diversifying the industrial base, expanding manufacturing in rural regions, reducing dependence on imported inputs and strengthening backward linkages. In this effort, the government intends to increase the number of EPZs to twenty six by 2016. In addition, the policy looks to support research and development with a technology development fund, and strengthen

\textsuperscript{85} Ibid.
microenterprises, SME initiatives and infrastructure. The framework contains both comprehensive sectoral initiatives, including the ceramic, rubber, coir, gems, spices, leather, and apparel industries, as well as regional development initiatives. Similar to the aforementioned exemption and rebate schemes, the Mahinda Chintana aims to provide unrestricted and duty-free access to imported inputs and required technical services, and targets improved implementation and access to market information.

Situated in the path of major sea routes, Sri Lanka is a strategic naval link between West Asia and South East Asia. Apart from the port in Colombo that handles the vast majority of shipments, there are ports in Galle, Trincomalee and Kankesanthurai. The state-owned Sri Lanka Port Authorities (SLPA) has actively engaged in establishing domestic ports as a major shipping hub in the region. Projects aim at significantly increasing the capacity of the Colombo port and establishing a new major port in Hambantota, which was inaugurated in November 2010. Air transport has increased with tourism since the 2002 ceasefire in the domestic conflict and due to deregulation, and the Colombo international airport is expanding, with ambitious aims for future capacities. While the road network is extensive, it mostly consists of single-lane roads with low speed limits, and a lack of maintenance has caused deterioration and resulted in high transportation costs. Railroads have been suffering from very low investments, the long civil war and the 2004 tsunami, and nowadays only represent a negligible faction of cargo transport.45 Within the Mahinda Chintana, provisions for transportation infrastructure, entitled Mahinda Randora, focus on the development of roads in rural areas to improve market access, and at re-establishing freight transport by rail to reduce traffic congestion and air pollution.86

86 Ibid.
Learning Objectives

• The aim of this particular module is to provide a basic idea about the notion of special and differential treatment in multilateral trading system.
• Learners will learn about the issue of special and differential treatment, its evolution, rationale and its scope and coverage within WTO.
• Learners will also learn about the current debates on the structure and design and subsequent enforcement of S&DT in the MTS.

Why Special and Differential Treatment and what is it?

General Agreements on Tariffs and Trade (GATT) and its successor the World Trade Organisation (WTO) granted developing countries special right and privileges through a number of special and differential provisions to increase the development relevance of international trading system. From its very onset, the underlying notion of S&DT urged advanced countries (ACs) to give to the developing countries (DCs) access to their markets without reciprocity in order to reap the benefit from export growth, and consequently economic development, for the DCs. S&DT has been described by the experts in the following terms, "To call something 'special treatment' is to say that the person getting the treatment is getting an unfair advantage. However, in the same way we wouldn't tell stair-lifts for wheelchair users or Braille writings for the blind 'special treatment', we should not call the higher tariffs and other means of protection 'special treatment'- they are just differential treatments for countries with different capabilities and goal."

Special and Differential Treatment

(S&DT) has been an integral part of the multilateral trade rules right from the Havana Charter and re-emphasised its importance till the Doha Development Round (DDR) of the multilateral trading negotiations.

Special and differential treatment (S&DT) provisions in the multilateral trading system emerged as recognition of the specific problems that developing countries (DCs) and least developed countries (LDCs) were facing in their effort to integrate with global markets for goods, services, capital and labour. WTO Member Countries generally tend to agree that most of the LDCs have not been able to benefit fully and equitably from a liberalising global trade environment because of their weak institutions, inadequate infrastructure, weak bargaining capacity, scarce human resources and formidable supply side constraints. On the part of developed countries, the offer of S&DT was also informed by the fact that if DCs and LDCs fail to integrate with the global trading system from a position of strength, it will limit the overall benefits in terms of global welfare that could potentially originate from the ongoing process of liberalisation and globalisation. The S&DT provisions in the various WTO

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89 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
90 Rahman, Mustafizur; Rahman, Kazi Mahmudur (2006) - Proposed Changes to WTO Special and Differential Treatment Provisions: An Analysis from the Perspective of Asian LDCs
Agreements were designed to address these concerns. At the Doha Ministerial Conference of the WTO, member states in their joint declaration on 14 November 2001 (WT/MIN/(01)DEC/1), reaffirmed that S&DT provisions are an integral part of the WTO agreement. The Ministerial declaration stressed that integration of LDCs into the multilateral trading system will require meaningful market access, support for diversification of their production and export base, and trade-related technical assistance and capacity building. S&DT provisions were to play a critically important role in achieving these objectives. The Hong Kong Ministerial meeting further reiterated this support and reaffirmed that “provisions for special and differential (S&D) treatment are an integral part of the WTO Agreements”. However, S&DT provisions in the WTO have come under increasing criticisms.

It is these concerns that led to the inclusion of paragraph 44 of the Doha Ministerial Declaration which stipulated that, "members agreed that all S&DT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational". The recent report by the Consultative Board to the Director General of the WTO also states that “S&DT is part of the legal acquires and remains a valid concept, although the mechanisms of S&DT have to be compatible with WTO aims”. In identifying theoretical rationale for granting of temporary S&DT to DCs and LDCs in terms of both protection of domestic market and also ensuring preferential market access as part of WTO agreements, Conconi and Perroni, 2004 have argued that, under the WTO rules, S&DT can be interpreted as a “transitional equilibrium feature of a self-enforcing international agreement between a developed and a developing country, where both transitional and post-transitional policy choices can be sustained by each party because of the policy path followed by the other”. So, in away S&DT provisions in GATT/WTO reflected a confluence of interests of both DCs and LDCs on the one hand, and the Developed Market Economies (DMEs) on the other.

**S&D Treatment and its Rationale in Current MTS**

According to UNCTAD, in 2004, LDCs share in world trade (export plus import) stood at 0.68 per cent (approximately $13 billion), compared to 3.06 per cent in 1954, although it is true that the share of the LDCs in global export has increased marginally from 0.46 per cent to 0.58 per cent between 1998 and 2003, and that their share of import has also registered a marginal increase from 0.69 per cent in 1998 to 0.71 per cent in 2003. In this connection, it is pertinent to remember that the top 5 exporters among the LDCs in 2003 (Angola, Bangladesh, Yemen, Equatorial Guinea and Myanmar) accounted for about 57 per cent of the total exports of the group. This process of concentration within the LDC group has been on the rise in the recent past, which would mean that the overwhelming majority among the LDCs are being marginalised at an accelerated pace.

More than half of the LDC population continues to live on less than $1 a day, while about 81 per cent live on less than $2 a day. The number of people living in extreme poverty in LDCs is

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92 https://www.wto.org/english/tratop_e/trad_e/wto_e_personal_e.htm
likely to increase from 334 million in 2000 to 471 million in 2015 (UNCTAD, 2004). It is in the aforesaid context that relevance and role of S&DT provisions in the WTO need to be reviewed and examined as tools that aspire to address and correct the existing vulnerabilities of the LDCs in the multilateral trading system. This Special Treatment could be achieved through providing greater access in the markets of the developed countries, allowing them greater flexibility to pursue policy options with fewer obligations and commitments.

How S&DT Become an Important Issue for Developing Countries

After the WWII, negotiations for establishing international trade organisation (ITO) took place between November 1947 and March 1948, where the interests of developed countries got priority. The developing countries were asked to introduce an additional clause in order to protect their infant industries which were not in a position to compete with the advanced countries. But due to the reservation from the US Congress, no special provision was incorporated in the original GATT code.

Since the establishment of GATT, there was no formal difference between the contracting parties, even though 11 members of the total 23 GATT contracting parties were so called developing countries. It was in the GATT review session in 1954-55 where developing countries were allowed to derogate from their scheduled tariff structure (i.e. article XVIII: B allowed the countries which are at early stage of development to use quantitative restrictions). During the 1950s the Prebisch-Singer thesis stipulated the declining tendency of prices of primary products in relation to manufacturing products. Around the same time, the notion of ‘equity and justice’ also came about, which ‘reflects towards the internalisation of welfare state principles by introducing at the international level such legal concepts as the collective responsibility of the community for the social and economic development of the members’. The doctrine of S&DT is normally associated with the name of Dr Raul Prebisch, the first Secretary General of UNCTAD, and was intended to promote the notion of industrialisation. The inward-oriented trade measures of the late 1960s and early 1970s were paralleled by outward-oriented demands for preferential access to developed-country markets. Unilateral trade preferences became an integral part of S&DT, culminating in a resolution of the second United Nations Conference on Trade and Development (UNCTAD) in 1968. UNCTAD II recommended the establishment of a voluntary GSP that was ‘generalised, non-reciprocal and non-discriminatory’ amongst beneficiary countries. The creation of New International Economic Order (NIEO) during 1970s further put forward the demand for developing countries’ market access.

A Brief Review of S&D Treatment in the WTO

From GATT to the WTO

GATT started by treating all contracting parties as equal and without any S&DT provisions. All the 23 original contracting parties of GATT, 11 of which would today fall into the category of developing countries, took on all the obligations without any exception. The adoption of Article XVIII in 1955 is the first instance of S&DT provisions being incorporated into GATT. This
Article allowed countries at an 'early stage of development' and those that could only support 'low levels of living standards' to adopt measures otherwise restricted by GATT. Incidentally, even though fairly imprecise, these phrases still remain the closest definition that we have of a developing country. Later, in 1966, a Part IV on Trade and Development was added to the General Agreement, containing three new S&DT provisions. Article XXXVI called for the Contracting Parties to provide more favourable market conditions for products of export interest to the developing countries, notably primary and processed products, and introduced the principle of 'less than full reciprocity'. Article XXXVII called for the highest priority to be given to the elimination of restrictions that differentiated between primary and processed products and required the participants to take full account of the impact of trade policies permitted under the GATT on the trade interests of developing countries. And finally, Article XXXVIII called for joint action by the contracting parties through international arrangements to improve the market conditions of products of export interest to developing countries. More than ten years later, in 1979, one of the more fundamental provisions of the multilateral trading system, the so called Enabling Clause, was adopted.

This clause established the principle of differential and more favourable treatment for developing countries and laid the legal basis for the granting of preferential market access (both with respect to tariffs and non-tariff measures) by developed countries in favour of products originating in developing countries, without having to extend the same treatment to other contracting parties.\(^{96}\) It also allowed developing countries to opt out of certain plurilateral agreements that were being finalised, the so called Tokyo Round codes. Interestingly, the Enabling Clause also introduced (implicitly) the principle of 'graduation', by stating that the capacity of developing countries to make contributions to the GATT system of rights and obligations would increase with the improvement over time of their economic and trade situation.\(^{97}\) The Uruguay Round Agreements (1995) introduced a number of provisions aimed at promoting the participation of developing and least developed countries in international trade and at addressing their particular concerns. The developing countries obtained a number of new and strengthened S&DT provisions in the form of less onerous commitments, exemptions from certain disciplines and extended transitional time frames for implementation of the new rules and technical assistance. At the same time developed countries committed or made best endeavour offers to improve market access for products and service sectors of interest to developing countries, and to implement the agreements in ways that were beneficial (or least damaging) to the interest of developing countries. Special provisions for LDCs were also included.

However, as the Uruguay Round Agreements were implemented, developing country members began to express certain concerns in the context of the benefits that they had hoped would come out of the S&DT provisions. In large part their concerns, first expressed in the build up to the Seattle Ministerial Conference as part of the larger 'implementation issues', were related to the perceived ineffectiveness of some of these provisions because of the best endeavour language they were couched in. In any case, these concerns continued to be expressed, including in the preparatory process to the Doha Ministerial Conference.

\(^{96}\) https://www.wto.org/english/tratop_e/region_e/regatt_e.htm

As the concept of preference was rooted in the Havana Conference, therefore S&DT was very much there from the onset of the GATT. Table-1.1 illustrates the milestones of the S&DT from pre-GATT to the WTO.

The Doha Declaration and Beyond

The recognition in the Doha Ministerial Declaration of the need to review the S&DT provisions is a reflection of these concerns. Paragraph 44 of the Doha Ministerial Declaration reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements" and directed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational". Ministers also endorsed the Work Programme on special and differential treatment set out in the Decision on implementation-related issues and concerns and directed Members "to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions". Members were also asked to "examine additional ways in which special and differential treatment provisions can be made more effective" and to "consider, in the context of the Work Programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules". The Ministers also directed that a report be made "to the General Council with clear recommendations for a decision by July 2002".

Paragraph 44 of the Doha Ministerial Declaration along with paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns provided the basis of the work that Members have carried out since the Doha Ministerial Conference. A very large number of Agreement specific proposals were made, mainly by the LDCs and the African Group and although the Special Session considered many of the proposals, both in open-ended informal meetings and smaller pluri-lateral consultations, positions could not be bridged on most of them. In its report to the General Council in February 2003, the Special Session reported that "an important area of difference has been the interpretation of some aspects of the Doha Mandate. While Members recognised the importance that Ministers attached to the S&DT work programme, and accepted the need to review all S&DT provisions 'with a view to strengthening them and making them more precise, effective and operational', there were significant differences on how this could be achieved. Some Members considered that one way to make S&DT provisions more precise, effective and operational, was to make them mandatory by changing the existing language of some of the 'best endeavour' provisions, and that doing so was part of the mandate. Others did not wish to consider amending the text of the Agreements or otherwise altering what they considered to be the existing balance of rights and obligations. Some delegations held the view that such proposals might be best referred to negotiating bodies, while others did not consider that this was course consistent with the Doha Mandate. The General Council took note of this report and directed its Chairman to carry out further work on this issue.

In the course of the work carried out in the General Council, Members did finally agree to

[98 https://www.wto.org/english/tratop_e/region_e/regatt_e.htm]
make recommendations for possible adoption by Ministers at Cancun on 25 Agreement-specific proposals. During consultations carried out in Cancun by the facilitator on development issues, some developing countries had expressed concern about the value of these recommendations, contained in Annex C of the draft Ministerial text and reiterated their view that the proposed package should be strengthened by the addition of some more Agreement-specific proposals. Accordingly, in an endeavour to meet these concerns, a further three recommendations were included in Annex C at Cancun. However, these 28 recommendations are yet to be adopted by the Members and therefore remain only as text that has been agreed to in principle.

A number of systemic and institutional cross-cutting issues were also raised both in Members submissions and the subsequent discussions on those submissions. These included issues relating to the principles and objectives of special and differential treatment; a single or multi-tiered structure of rights and obligations; utilisation; and universal or differentiated treatment, including graduation.99 The discussions showed that there were evidently major differences of opinion on most cross-cutting issues. Some Members felt that these issues were important, in some cases as fundamental, which should be examined in greater depth. These Members were of the opinion that an improved understanding on these issues would facilitate consensus on the Agreement-specific proposals whereas others felt that the principles and objectives of S&D treatment were already reflected in Part IV of GATT 1994 and questioned whether these issues were within the mandate of the Doha Ministerial Declaration. Some Members also felt that, in certain cases, differentiation amongst developing country Members would be necessary if special and differential treatment was to be made effective and targeted. The question of the definition of developing countries was also raised in this context, with some Members saying that such a definition was necessary to make special and differential treatment more precise, effective and operational and to confer legal predictability and certainty regarding the beneficiaries. A large number of Members however disagreed, saying that any attempt to differentiate amongst, or define a developing country went beyond what the Ministers had mandated at Doha.

S&DT Provisions by Type and Agreement

There were a total of 154 S&DT provisions incorporated within the GATT structure and of these, 12 provisions were aimed at increasing trade opportunities, 49 provisions called upon WTO Members to safeguard the interest of DC’s, 30 provisions offered flexibility of commitments, 18 provisions were for providing transitional time periods, 14 provisions were related to technical assistance and finally, 22 provisions were particularly placed in favour of least developed countries. The following types of S&DT provisions can be found in the UR Agreements.

Provisions Aimed at Increasing Trade Opportunities of Developing Countries

This provision basically encourages developed countries to adopt positive measures which would result in increased trade for DC’s. For example, Article XXXVII of the GATT 1994 provides that: “…the developed … [Members] shall to the fullest extent possible … accord high priority to the reduction and elimination of barriers to products currently or potentially of

particular export interest to … [developing countries]." Therefore this provision creates opportunities to increase trade of developing countries.

**Measures Safeguarding the Interests of Developing Countries**

This provision requires developed country Members to take into account the special situation of developing countries before imposing any measures which might affect their trade interests. For example, Article 10(1) of the SPS Agreement states that, "In the preparation and application of SPS measures, Members shall take account of the special needs of developing country Members, and in particular of the least developed country Members". This provision requires developed country Members to take into account the special situation of developing countries before imposing any measures which might affect their trade interests. For example, Article 10(1) of the SPS Agreement states that, "In the preparation and application of SPS measures, Members shall take account of the special needs of developing country Members, and in particular of the least developed country Members". Similarly, Article 15 of the Anti-Dumping Agreement states "It is recognised that special regard must be given by developed country Members to the situation of developing country Members when considering the application of antidumping duties". Through this provision developing country members can adopt special safeguard measures.

**Provisions Permitting the Assumption of Lesser Obligations by Developing Countries**

A number of provisions permit developing country members to take lesser obligations. In Agriculture, for example, developed countries had to reduce their tariffs by 36 per cent over a six-year period, while developing countries by 24 per cent over ten-years. Minimum tariff reduction on each tariff line was: Developed countries 15 per cent and developing countries 10 per cent. With the exception of Anti-Dumping Agreement and Pre-Shipment Inspection Agreement, almost all the agreements contain longer transitional periods for developing countries.

**Provisions Relating to Transitional Periods**

With the exception of Anti-Dumping Agreement and Pre-Shipment Inspection Agreement, almost all the agreements contain longer transitional periods for developing countries. For the TRIPS & TRIMS, developing countries were given 5 years to comply with their obligations. For customs valuation, developing countries which were not parties to the Tokyo Round Code on Customs valuation were given 5 years to comply with their obligations. These provisions are legally enforceable.

**Provisions Relating to Technical Assistance**

A number of S&DT provisions also put forward the notion of technical assistance by the developed country member. For example, Art. 9 of the SPS Agreement, provides that: "Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organisations. Where substantial investments are required in order for an exporting developing country Member to fulfill the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance." As noted earlier, 14 provisions were related to technical assistance.

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100 Kessie, Edwini (1999) - Enforceability of the legal provisions relating to special and differential treatment under the WTO Agreements

101 https://www.wto.org/english/tratop_e/region_e/regatt_e.htm
Provisions Relating Specifically to LDCs

The objective of this provision is to increase participation of developing countries in the functioning (including negotiating process) of the multilateral trading system. Provisions on Enabling Clause, Agreement on Agriculture, Agreement on Subsidies, Agreement on Textile and Clothing, and TRIPs Agreement are stipulated for the LDCs.

Concerns with Regard to S&DT Provision

S&DT provisions in the WTO have come under increasing criticisms in recent years. These criticisms focused on three issues: (a) design and formulation; (b) enforceability; and (c) assistance for implementation of S&DT clauses. Many of the S&DT provisions were criticised because of their interpretative ambiguities and absence of any binding commitments on the part of the developed countries in implementing these provisions that were often articulated through best endeavour clauses. Many developing countries said that most of the S&DT provisions are nonbinding, in the form of ‘best endeavour clauses’, i.e. apparently mandatory, yet de facto non-binding; with only a few provisions which are mandatory or could be taken as binding provisions. They highlighted these concerns at Doha, where Ministers launched a work programme on S&DT. Besides, out of the 88 agreement specific proposals, only 5 were adopted during the Honk Kong WTO Ministerial. Some examples which reflect these concerns:

A number of provisions employed purely discretionary language: For example, "During consultations Members should give special attention to developing country Members' particular problems and interests." (Article 4.10 of the DSU). The modalities of special attention were not described.

Best Endeavour Clauses: For example, "Members agree to facilitate the provisions of technical assistance to other Members, especially developing country Members" (Article 9 of SPS), implies only the willingness, which solely depends on advanced countries.¹⁰²

De facto non-binding provisions: For example, "Members shall take into account the special needs of the developing country members in preparation and application of new SPS measures" (Article 10.1 SPS agreement) and "It is recognised that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement."¹⁰³ S&DT provisions are criticised mostly due to its legally non-binding nature, therefore these provisions are not a subject of WTO dispute settlement body.

Doha work Programme and Phases in the S&DT work programme

The S&DT work programme was designed to be undertaken through the following phases:

- Procedural and submissions phase
- Responses (including cross cutting issues) phase
- General Council phase
- Development at Cancun

¹⁰² https://www.wto.org/english/tratop_e/region_e/regatt_e.htm
¹⁰³ Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
• Developments at Hong Kong
• Way Forward

Procedural and Submissions Phase
The TNC in its first meeting after Doha mandated the Committee on Trade and Development (CTD) in special Sessions to carry out the work programme on SDT. Some of the procedural issues include the structure of negotiating body, symbols of documents and reporting requirement. Afterwards a very large number of (finally 88) Agreement specific proposals were submitted by DC’s, primarily by the African group and the LDCs.

Responses and Discussions Phase
Developed countries took time to provide (oral) responses, saying the number of proposals was too large. They also raised a number of systemic issues including those related to principles and objectives of SDT, utilisation, graduation and universal vs. differentiated treatment. In its report to the General Council, initially in July 2002, and then in December 2002, the CTD detailed the above status and sought more time to complete the work.

Negotiating Phase
Actual negotiations and drafting of possible language for recommendation to the GC only started in Dec 2002. Members could agree in principle to four proposals in December 2002 and a further 8 proposals by February 2003. However, most developing countries felt that the agreed language did not make the provisions more precise, effective and operational, owing to lack of progress linked to the differences in the interpretation of the mandate.

General Council Phase
The CTD recommended that the GC provide a clarification on how to give effect to the Doha mandate. But in reality, there was no consensus in the GC to provide this clarification. The GC only took note of the report and asked its Chairman to undertake consultations on how to take forward the mandated review of all S&DT provisions. The Chairman of the General Council put forward an approach based on two fundamental premises: 1) all proposals would be addressed without prejudice to the outcome, and 2) an informal categorisation of the proposals was necessary to make the work more efficient. Members also agreed to referrals and to consider possible changes in the existing language. Accordingly, all the 88 Agreement-specific proposals were divided into three categories. Category I comprising 38 (12 had been agreed prior to the Cancun) proposals on which it seemed that agreement may be possible. Category II comprising 38 proposals made in areas currently under negotiation, for referral and Category III comprising 12 proposals on which there appeared to be a wide divergence of views.

Development at Cancun
During the ministerial, members recalled Doha mandate on S&DT and reaffirmed S&DT as an integral part of WTO agreements. Out of the 88 proposal, 28 proposals were tabled where

105 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
106 https://www.wto.org/english/tratop_e/agric_e/negs_bkgmd14_devopcount_e.htm
107 http://slideplayer.com/slide/8458097/
members were not in different views. Therefore, the meeting took notes of the progress made, but did not propose adopting of the proposals. Though the Cancun failed to reach in an agreement, GC instructed the special session of the CTD to pursue the work on remaining agreement and report to GC with clear recommendations by July 2005. It also instructed the Special Session to address all other outstanding work, including on cross-cutting issues. Other bodies to which proposals had been referred to also asked to report by July 2005.108

Developments at Hong Kong
During the July 2005 Committee on Trade and Development – Special Session (CTDSS) negotiations, which included both informal consultations and meetings of the CTD-SS, delegates worked on five Agreement specific proposals for S&DT, submitted by the LDCs. These five proposals belonged to the group of 88 Agreement-specific proposals that were considered by the Members.109 These are: proposal 22/23 (Understanding in Respect of Waivers of Obligations), 36 (Duty and Quota-Free Access for LDCs), 38 (On Coherence of IMF, WB and WTO Measures), 84 (Exemption from Agreement on Trade-Related Investment Measures, or TRIMs), and 88 (Measure in Favour of LDCs). Subsequently, Hong Kong Ministerial adopted five agreement-specific proposals.110 The DF-QF market access related proposal was perhaps the single most important S&DT proposal from LDCs perspective since it was a longstanding demand of all LDCs which was also supported by a majority of developing and developed members of the WTO. For the first time LDCs will get DF-QF market access under WTO discipline, which is very important. However, meaning of ‘on a lasting basis’ is not clear which leaves scope for the developed countries not to provide DF-QF market access for up to 3 per cent of LDCs products. Furthermore, the possibility of greater market access in USA (which does not provide GSP for many products of export interest to Asian LDCs) remains severely constrained in terms of coverage of exported value. The introduction of additional text referring to consideration of interest of other developing countries along with the allowance of (up to) 3 per cent exclusion list will allow developed members not to provide DF-QF to all products from LDCs if they so desire.

Way Forward
Since the Hong Kong Ministerial, progress regarding the S&DT work programme remained stagnant. The discussion on cross-cutting issues remained focused by the developed country members and some of the developing countries. The CTD presented the progress on the 88 proposals submitted. 50 proposals from category III were picked to discuss in the Special Session, whereas 38 proposals from category II referred to other bodies. Out of the 50 proposals, 28 proposals were agreed to in principle at Cancun and of the remaining 23 proposals in the Special Session, 5 were adopted at the Hong Kong Ministerial. Since two of the proposals on ATC were not discussed due to the expiry of ATC, therefore CTD focused on the remaining 16 proposals, of which 8 (5 AG & 3 dc’s) are from Cat I. and the remaining 8 (6 AG & 2 DC’s) belonging to Category III. The CTD also initiated discussion on the issues like graduation and monitoring mechanism.

109 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 0155 6
Issues for Future Consideration

Several important issues have emerged during the course of the S&DT work programme and which can have important implications for developing countries. These issues include, principles and objectives of S&DT; definition of a developing country; differentiation amongst developing countries; and Graduation from S&DT. They were often termed as the systemic or cross-cutting issues. It has been an ongoing debate within the WTO to set priority on the discussion and subsequent implementation of the agreement-specific issues and cross-cutting issues.

Principles and Objectives of S&DT

One of the areas of contention is the principles and objectives of S&DT. Number of issues need to be considered, whether the objective of SDT is to give DCs time to develop their administrative capacity to implement the WTO Agreements; or, should it be to ensure that DCs are able to implement trade policies that are appropriate to their developmental goals (issue of policy space). Issues like uniform multilateral rules became prominent and thus questions may arise if it should be ensured that the otherwise uniform multilateral rules can result in maximum gain to countries at different levels of development.

Differentiation amongst DCs

Proponents of opined S&DT that in order to make SDT meaningful, it must be targeted. However, targeted SDT can only be possible if there is an objective definition of developing countries. What would be the benefits of a differentiated approach as compared to the existing universal approach to S&DT. The criteria for differentiation is also an issues of debate as there is no concrete answer whether differentiation be horizontal on the basis of economic indices or should it be Agreement wise?

Graduation

From the above discussion, the question arises, whether developing countries graduate out of SDT. If so, what should be the approach to graduation (experience of LDCs; disincentive to develop)? Should SDT, especially the transition periods, be linked to certain economic indicators? Should the time period and/or level of economic development up to which SDT would be available to different groups of developing countries, be specified?

Questions for Discussion

1. What is the meaning of S&DT?
2. Is there any special treatment in the GATT 1947?
3. When was the special and differential provision adopted in the GATT/WTO architecture?
4. What are the current debates regarding S&DT?
5. How many proposals were adopted for negotiation regarding the S&DT?
6. What are the three groups of category of the S&DT proposals?
Learning Objectives

- From this module learners will be able to acquire knowledge about the technical standards used in trade to protect animal or plant life or health which often act as a non-tariff barrier.
- Learners will also be able to know about the political economy of standards as how these standards act as technical barriers in trade with practical example.

What is Standard and why do Standards Matter for Trade?

The Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS) together cover issues relating to standards in the WTO. Standard is a means of communication. It represents an object or entity or instructions, for example, name of a product or service (terms), number, quantity, time or money, or symbol (road signs). Standards in trade stand to convey requirements of customer to supplier, define product or service and to verify or assess products. Standards in industry mean product specification for material components, defining processes and test or inspection method.

Types of Standards

- **Product Standards**: Characteristics, that goods must possess, such as minimum nutritional content, maximum toxic or noxious emissions.
- **Production Standards**: Conditions under which products are made.
- **Labelling Requirements**: Informing the consumers about a product's characteristics or its conditions of production.

Why do Standards Matter for Trade?

Government regulations or industry standards for goods can impact trade in at least three ways- firstly, they can facilitate exchange by clearly defining product characteristics and improving compatibility and usability; secondly, they also advance domestic social goals like public health by establishing minimum standards or prescribing safety requirements; finally, they can hide protectionist policies. During the Uruguay Round of multilateral trade negotiations, member nations established The Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures and the Agreement on Technical Barriers to Trade (TBT) to address the debate over the use of standards in international trade. The SPS and TBT Agreements can be interpreted as an attempt to balance the application of the first two (abovementioned) standards and to minimise the third. In other words, these Agreements balance the competing demands for domestic regulatory autonomy and the global harmonisation of product standards. At the same time, the agreements attempt to prevent standards from becoming a protectionist device. 

Background of SPS and TBT

In 1947, GATT recognised the need to introduce trade restrictions to protect public health concerns. In this regard, exceptions from GATT rules were allowed for measures necessary

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111 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
to protect human, animal, plant life or health [Article xx(b)]. GATT members had the right to take these measures as long as they were not applied in a manner which would be a means of arbitrary or unjustifiable discrimination between countries, or a disguised restriction on international trade. Through successive rounds of negotiations while tariffs were reduced, temptation to use non-tariff barriers to protect domestic industries increased. Included in these on-tariff barriers were sanitary and phytosanitary measures. There was thus a growing need to give precision to the exceptions of Article XX of the GATT. Among many other concerns, sanitary and phytosanitary measures were one of the areas addressed by the Uruguay Round of trade negotiations, which ultimately led to the creation of the WTO in 1995. The Marrakesh Agreement establishing the World Trade Organisation contains a number of trade agreements in its annexes, including the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Another agreement, the Agreement on Technical Barriers to Trade (TBT Agreement), covers technical regulations not covered by the SPS Agreement.

In addition, the WTO Agreement contains, among others, two important mechanisms; a dispute settlement mechanism, and another mechanism through which member's trade policies are regularly reviewed. The implementation of the WTO Agreements is overseen by committees and all Members of the WTO are automatically accepted as Members of these committees. Decisions in the committees, in most of the cases, are taken by consensus. The implementation of the SPS Agreement is overseen by the SPS Committee.

The Basic Goals of the SPS Agreement
The SPS Agreement has a two-fold objective. It aims to both:

• Recognise the sovereign right of Members to provide the level of health protection they deem appropriate; and
• Ensure that SPS measures do not represent unnecessary, arbitrary, scientifically unjustifiable, or disguised restrictions on international trade.

Indeed, the SPS Agreement allows countries to set their own food safety and animal and plant health standards. At the same time, however, the SPS Agreement requires that such regulations are based on science, that they are applied only to the extent necessary to protect health, and that they not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

What is an SPS Measure?
According to Annex A of the SPS Agreement, an SPS measure is any measure applied:

• to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
• to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

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112 http://www.docin.com/p-53670782.html
113 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm

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• to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests. For the purpose of definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticides and veterinary drug residues and extraneous matter.

**SPS measures can take many forms and include the following:**

• requiring animals and animal products to come from disease-free areas;
• inspection of products for microbiological contaminants;
• mandating a specific fumigation treatment for products; and
• setting maximum allowable levels of pesticide residues in food. (WTO, 2007)

**The SPS and TBT Agreements**

GATT (1947) specified that countries could take measures to protect human, animal or plant life or health [Article XX(b)]. This forms the basis of the Agreement on Sanitary and Phytosanitary Measures (SPS) which was accepted in the Uruguay Round. The SPS agreement allows members to take scientifically based measures to protect public health. The agreement also commits the members to base these measures on internationally established guidelines and risk assessment procedures, with further obligations that in the case of particularly stringent measures, countries must present scientific justification. When existing scientific evidence is insufficient to determine risk, members may adopt measures on the basis of available information, but must obtain additional information to objectively ground their assessment of risk within a reasonable period of time. Generally speaking, the SPS Agreement is a compromise that permits countries to take measures to protect public health within their borders as long as they do so in a manner that restricts trade as little as possible.

Standards Code (Tokyo Round 1973-1979) was revised in the Uruguay Round and the Agreement on Technical Barriers to Trade (TBT) was included in the final act of the round. Like the SPS, the TBT agreement strikes a delicate balance between the policy goals of trade facilitation and national autonomy in technical regulations. The agreement attempts to extricate the trade-facilitating aspects of standards from their trade-distorting potential by obligating countries to ensure that technical regulations and product standards do not unnecessarily restrict international trade. The TBT Agreement works toward this end in three ways. The agreement encourages ‘standard equivalence’ between countries, in other words, the formal acceptance of the standards of other countries through explicit agreements. It also promotes the use of international standards. Lastly, it mandates that countries establish enquiry points and national notification authorities (the two may be the same body) in order to answer questions about SPS regulations and notify other nations of new regulations respectively. Enquiry points compile all available information in that country on product standards and trade regulations and provide it to other members upon request. The national

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114 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
115 http://www.cid.harvard.edu/cidtrade/issues/spstbt.html

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notification authorities report changes in trade policy to the WTO and receive and take comments on these measures.

**Why an Agreement?**

The following trends were being observed in global trade:
- Increasing number of technical regulations and standards
- Proliferation of conformity assessment procedures
- Evolution in consumer demand
- Impact on trade

As a result, creation of a framework for the use of technical regulations and standards was necessary, which:
- Provides balance between legitimate political imperatives and trade facilitation
- Tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles

**Understanding the WTO Agreement on Sanitary and Phytosanitary Measures**

Article XX of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety, and animal and plant health and safety, and with product standards. The **Agreement on the Application of Sanitary and Phytosanitary Measures** (the "SPS Agreement") entered into force with the establishment of the World Trade Organisation on 1 January 1995. It concerns the application of food safety and animal and plant health regulations. The introduction discusses the 'text of the SPS Agreement' as it appears in the 'Final Act of the Uruguay Round of Multilateral Trade Negotiations', signed in Marrakesh on 15 April1994. This particular agreement and others contained in the Final Act, along with the General Agreement on Tariffs and Trade as amended (GATT 1994), are part of the treaty which established the World Trade Organisation (WTO). The WTO superseded the GATT as the umbrella organisation for international trade.

**Doha Development Round**

In August 2002, the WTO initiated a programme to enhance the capacity of developing countries to participate in negotiations and implement standards. The program, called the Standards and Trade Development Facility, joins the efforts of the WTO, World Health Organisation (WHO), the Food and Agriculture Organisation (FAO), the World, the Codex Alimentarius, and the World Bank. The principle aims are to increase participation of developing countries in forming international standards and to facilitate the implementation of existing requirements. At the April 2003 meeting the SPS committee adopted a principle of applying special and differential treatment for developing countries. This was based on a Canadian proposal whereby members agree to consultations whenever a developing country identifies a problem with an SPS measure. Implementation details were yet to be finalised by March of 2004.

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116 [http://www.cid.harvard.edu/cidtrade/issues/spstbt.html](http://www.cid.harvard.edu/cidtrade/issues/spstbt.html)
At the March 17-18 2004 meeting, the WTO Committee on Sanitary and Phytosanitary Measures finalised their Decision on Equivalence, whereby equivalence is defined as the mutual acceptance of another Member's standards. The decision is aimed at helping the developing nations to establish that their products are as safe as the developed nations and also aims to speed up recognition of equivalence of SPS measures for products previously traded or those for which information already exists.

The Content of the Sanitary and Phytosanitary Measures Agreement
The Agreement on the Application of Sanitary and Phytosanitary Measures sets out the basic rules for food safety and animal and plant health standards. It allows countries to set their own standards. But it also says that regulations must be based on science and that any such regulations should be applied only to the extent necessary to protect human, animal or plant life or health; and should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. The agreement, nonetheless, still allows countries to use different standards and different methods of inspecting products and includes relevant provisions on control, inspection and approval procedures in this regard. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information.

Technical Regulations and Standards
Technical regulations and industrial standards are very important for trade. But they vary from country to country and inevitably, such multiplicity of standards has been found to pose tremendous difficulties for producers and exporters. If the standards are set arbitrarily, they could be used as an excuse for protectionism and can easily become obstacles to trade. The Technical Barriers to Trade Agreement (TBT) is meant to ensure that regulations, standards, testing and certification procedures do not create such unnecessary obstacles. However, the agreement also recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, and for the protection of the environment or to meet other consumer interests. Furthermore, members are not prevented from taking measures necessary to ensure the conformity of standards within their territories.

SPS vs TBT
It should be noted that health-related trade restrictions are addressed by both the SPS Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement). There are, however, differences in the scopes of the two agreements. While the SPS Agreement covers health protection measures as defined above, the TBT Agreement covers the technical requirements, voluntary standards and the procedures to ensure that these are met (called conformity assessment procedures), with the exception of the measures as defined by the SPS Agreement. However, the TBT measures could also cover a variety of subjects, from car

117 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm
safety to energy-saving devices, to the shape of food packages. To give some examples pertaining to human health, TBT measures could include pharmaceutical restrictions, or the labelling of cigarettes.

Most measures related to human disease control are under the TBT Agreement, unless they concern food safety or diseases which are carried by plants or animals (such as rabies). In terms of food, labelling requirements dealing with nutrition claims, quality and packaging regulations are not considered to be SPS measures and hence are normally subject to the TBT Agreement. However, labelling requirements dealing with food safety are considered to be SPS measures.

**Example of SPS and TBT Measures**

*Fruit*
- Regulation of treatment of imported fruit to prevent pest spreading - SPS
- Regulation on quality, grading and labelling of imported fruit – TBT

*Bottled Water: Specification for Bottles*
- Material that can be used because safe for human health - SPS
- Requirement: No residues of disinfectant, so water not contaminated - SPS
- Permitted size to ensure standard volume - TBT
- Permitted shape to allow stocking and displaying – TBT

**Similarities between SPS & TBT Agreements**
(i) International standardisation
(ii) Transparency provisions
(iii) Provision for developing countries

**International Standardisation: Harmonisation**
- **For SPS**
  - Office Internationale des Epizooties (OIE) è Animal Health
  - Secretariats of the Plant Protection Convention (IPPC) è Plant Health
  - Codex Alimentarius Commission (Codex) è Food Safety

- **Transparency**
  - Publication of all measures
  - Notification of all measures – if they are new or changed; if they have any effect on trade
  - Right to request explanation
  - SPS and TBT committee meetings
  - Dispute Settlement

**Provision for Developing and Least Developed Countries**
- To ensure that the technical regulations, standards and conformity assessment procedures maintained by developed countries do not create unnecessary obstacles to market penetration by developing countries (including market expansion and export diversification). Developed countries should not expect that developing countries will be in a position to use international standards, because such standards may be

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inappropriate for the level of their technological development, environmental conditions and resource availability situation of the small scale producers. Developed countries should take initiatives to ensure that developing countries effectively participate in international standardising bodies and international systems for the conformity assessment.

Special & Differential Treatment (S&DT) for LDCs
Developed countries should help developing countries and LDCs to prepare international standards for products which are of export interest to them. They should also allow developing countries and particularly the LDCs to obtain certain time bound exceptions from obligations. WTO will review the provisions from time to time to address concerns of the LDCs.

Contents of SPS Measure
Protection or Protectionism?
SPS measures, by their very nature, may result in restrictions on trade. While all governments generally accept the fact that trade restrictions may be necessary to ensure food safety and animal and plant health protection, the governments are also sometimes pressured to go beyond what is necessary for health protection and to use SPS measures in order to shield domestic producers from economic competition. Such pressure is likely to increase in the future as other trade barriers are reduced as a result of the Uruguay Round agreements.

SPS measures which are not actually required for health reasons can be very effective protectionist device; and because of their technical complexity, a particularly deceptive and difficult barrier to challenge.

Scientific Justification
Article 2 of the SPS Agreement stresses that Members have the right to adopt SPS measures to achieve their self-determined health protection level. This level, called the appropriate level of protection (ALOP) or the acceptable level of risk, represents a key feature of the SPS Agreement. The right to adopt SPS measures to achieve a given appropriate level of protection is accompanied by basic obligations. Essentially, countries may adopt SPS measures provided the measures:

• are applied only to the extent necessary to protect life or health; • are based on scientific principles and not maintained without sufficient scientific evidence (except emergency or provisional measures); and
• do not unjustifiably discriminate between national and foreign, or among foreign sources of supply. Members have two options to show that their measures are based on science. They Members have two options to show that their measures are based on science. They may base their measures on either:
  • international standards, or
  • scientific risk assessment

119 https://www.wto.org/english/tratop_e/sps_e/spsumd_e.htm
120 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
Harmonisation - Basing Measures on International Standards

Article 3 of the SPS Agreement encourages Members to base their measures on international standards, guidelines and recommendations, where they exist. This facilitates harmonisation, or the establishment, recognition and application of common SPS measures by different Members. Needless to say, by harmonising SPS measures with international standards, food safety and animal and plant health protection can be achieved without unduly restricting international trade. The SPS Agreement recognises in particular three international standard-setting bodies (the three sister organisations). For food safety measures; standards, guidelines and recommendations are established by the Codex Alimentarius Commission. Similarly, the Office Internationale des Epizooties addresses animal health measures, and the Secretariat of the International Plant Protection Convention sets norms for plant health measures. It should be noted that the SPS Agreement makes no legal distinction between the 'standards', 'guidelines' and 'recommendations' of these three organisations. All three types of norms have equal status under the SPS Agreement. Measures based on international standards, guidelines or recommendations developed by the three sister organisations are presumed to be consistent with the SPS Agreement, and Members who base their measures on them can be confident of their compliance with the SPS Agreement, as international standards are sometimes described as providing a 'safe harbour' for governments. However, Members clearly retain the right to challenge all such SPS measures, and particularly if they believe that the claim of being based on an international standard is ill-founded.\(^{121}\)

The process of harmonisation is monitored by the SPS Committee in cooperation with the three sister organisations and it allows the Members to identify trade significant problems related to the use or non-use of relevant international standards, guidelines or recommendations, as outlined in WTO document. The WTO Secretariat produces an annual summary report on the monitoring process.

SPS Measures not Based on International Standards

Members do not always base their measures on internationally-agreed standards, for several reasons. For example, the three sister organisations have not elaborated international standards for every aspect of food safety, animal and plant health. Furthermore, Members may desire to adopt SPS measures that achieve a higher level of health protection than that achieved by the relevant international standards may base their measures on either:\(^{122}\)
  - international standards, or
  - scientific risk assessment

Harmonisation - Basing Measures on International Standards\(^{123}\)

Article 3 of the SPS Agreement encourages Members to base their measures on international standards, guidelines and recommendations, where they exist. This facilitates harmonisation, or the establishment, recognition and application of common SPS measures by different Members. Needless to say, by harmonising SPS measures with international standards, guidelines and recommendations, where they exist. This facilitates harmonisation, or the establishment, recognition and application of common SPS measures by different Members. Needless to say, by harmonising SPS measures with international

\(^{121}\) https://www.wto.org/english/tratop_e/spse/spssund_e.htm

\(^{122}\) https://ecampus.wto.org/admin/files/Course_385/Module_1509/ModuleDocuments/SPS_Risk-L2-R1-E.pdf

\(^{123}\) Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
standards, food safety and animal and plant health protection can be achieved without unduly restricting international trade.

The SPS Agreement recognises in particular three international standard-setting bodies (the three sister organisations). For food safety measures; standards, guidelines and recommendations are established by the Codex Alimentarius Commission. Similarly, the Office Internationale des Epizooties addresses animal health measures, and the Secretariat of the International Plant Protection Convention sets norms for plant health measures. It should be noted that the SPS Agreement makes no legal distinction between the 'standards', 'guidelines' and 'recommendations' of these three organisations. All three types of norms have equal status under the SPS Agreement.

Measures based on international standards, guidelines or recommendations developed by the three sister organisations are presumed to be consistent with the SPS Agreement, and Members who base their measures on them can be confident of their compliance with the SPS Agreement, as international standards are sometimes described as providing a ‘safe harbour’ for governments. However, Members clearly retain the right to challenge all such SPS measures, and particularly if they believe that the claim of being based on an international standard is ill-founded. The process of harmonisation is monitored by the SPS Committee in cooperation with the three sister organisations and it allows the Members to identify trade significant problems related to the use or non-use of relevant international standards, guidelines or recommendations, as outlined in WTO document. The WTO Secretariat produces an annual summary report on the monitoring process.

**SPS Measures not Based on International Standards**

Members do not always base their measures on internationally-agreed standards, for several reasons. For example, the three sister organisations have not elaborated international standards for every aspect of food safety, animal and plant health. Furthermore, Members may desire to adopt SPS measures that achieve a higher level of health protection than that achieved by the relevant international standards.

In this context it is important to note that the encouragement to use international standards does not mean that these constitute a floor or a ceiling on national standards. National measures do not violate the SPS Agreement simply because they differ from international norms.

According to Article 3 and Article 5 of the SPS Agreement, Members are permitted to adopt SPS measures which are more stringent than the relevant international standards or adopt SPS measures when international standards do not exist, provided the measures are:

- based on scientific risk assessment;
- consistently applied; and
- not more trade restrictive than necessary

**Scientific Risk Assessment**

The requirement to base SPS measures on a scientific risk assessment (when they are not based on an international standard), articulated in Articles 5.1, 5.2, and 5.3, is a key

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component of the SPS Agreement’s reliance on scientific evidence for the justification of SPS measures. Article 5.1 requires that SPS measures be based on an assessment of the risks to human, animal or plant life or health. It does not necessarily require that the importing country itself must do the risk assessment — but the importing country must be able to demonstrate that its measure is based on an "appropriate" risk assessment. Members are to take into account the risk assessment techniques developed by the three sister organisations.\footnote{124} Article 5.2 explains what kinds of information shall be taken into account when undertaking a risk assessment:

- available scientific evidence;
- relevant processes and production methods;
- relevant inspection, sampling and testing protocols;
- prevalence of specific diseases or pests;
- existence of pest- or disease-free areas;
- relevant ecological and environmental conditions; and
- quarantine or other treatment.\footnote{125}

Article 5.3 identifies the economic factors which shall be taken into account when undertaking a risk assessment for animal or plant health:

- the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
- the costs of control or eradication in the territory of the importing Member; and
- the relative cost-effectiveness of alternative approaches to limiting risks.\footnote{126} The SPS Agreement contains two definitions for risk assessment, depending on whether it deals with a pest or disease risk affecting humans, plants and animals, or whether it is a food-related risk to human or animal health. In the case of food related risk, it is sufficient to evaluate the potential for adverse effects.\footnote{127} In the case of pest or disease risk, one must evaluate the likelihood of entry, establishment or spread according to the SPS measures which might be applied, and the associated potential biological and economic consequences.\footnote{128}

Article 5 refers explicitly to risk assessment. It should be noted that the international organisations recognise risk assessment to be part of a wider process called risk analysis.

**Consistency**

The consistency requirement, articulated in Article 5.5, means that Members must avoid unjustifiable differences in the level of health protection they require in different situations, if such differences result in discrimination or a disguised restriction on international trade. For example, if a Member restricts the importation of one animal product because of disease risks, yet allows the importation of other animals presenting identical or similar risks, there would be a concern that the objective may be protectionism (protection from competition), and not health protection.

\footnote{125}{https://www.wto.org/english/tratop_e/spse/spseg_e.htm}
\footnote{126}{https://www.wto.org/english/tratop_e/spse/spseg_e.htm}
\footnote{127}{http://www.oie.int/doc/ged/D901.PDF}
\footnote{128}{Alemanno, Alberto; Butter, Frank den; Nijsen, André; Torriti, Jacopo (2012) - Better Business Regulation in a Risk Society, pages 328, ISBN-1461444055, 9781461444053}
Not More Trade Restrictive than Necessary

Article 5.6 requires Members to adopt measures that are not more trade-restrictive than required to achieve their appropriate level of protection. This implies that when there are alternative ways to achieve that appropriate level of protection, the government should use those measures which are the least trade-restrictive, if technically and economically feasible. For example, if a country wants to avoid the introduction of an insect associated with fruit imports, requiring fumigation might be a less trade-restrictive alternative to an import ban.

Provisional Measures

Article 5.7 of the SPS Agreement permits the taking of provisional measures when there is insufficient scientific evidence to permit a final decision on the safety of a product or process. In such cases, measures can be adopted on the basis of the available pertinent information about the health risk(s) of a product or process. However, when taking such a provisional measure, a Member must seek the additional information necessary for a more objective assessment of the risk(s), and review the SPS measure within a reasonable period of time. Provisional measures could be taken, for example, as an emergency response to a sudden outbreak of an animal disease suspected of being linked to imports.

Control, Inspection and Approval Procedures

Annex C of the SPS Agreement requires that testing and inspection procedures used by governments to enforce SPS measures do not themselves act as unnecessary trade barriers. The basic requirement is that any such procedures should not be less favourable for imported products than they are for domestic goods, and should be no more than what is necessary to ensure compliance. This applies for time delays, information requirements, fees, sampling procedures, siting of facilities, etc.

Transparency

One of the key goals of the SPS Agreement is to increase the transparency of sanitary and phytosanitary measures. Governments are required to notify other countries of any new or changed SPS measure which affects trade. They also have to set up offices (called “Enquiry Points”) to respond to requests for more information on new or existing measures. Such increased transparency protects the interests of consumers, as well as trading partners, from hidden protectionism through unnecessary technical requirements.

The transparency obligations of the Agreement are contained in Article 5.8, Article 7 and Annex B. In addition, the SPS Committee has elaborated recommended procedures for implementing the transparency obligations of the SPS Agreement. These clarify some of the language used in Annex B, and give guidance on how to notify (including how to fill in the notification formats), how to handle comments on notifications, and how to provide additional information.

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129 Anderson, Kym; McRae, Cheryl F.; Wilson, David William (2012) - The Economics of Quarantine and the SPS Agreement, pages 414, ISBN-1922064327, 9781922064325
130 https://ecampus.wto.org/admin/files/Course_385/Module_1508/ModuleDocuments/SPS_Risk-L2-R1-E.pdf
131 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
132 https://www.wto.org/english/tratop_e/spse/spsagr_e.htm
133 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
documents related to a notification. It also gives some guidance on the operation of National Notification Authorities and Enquiry Points, and on publication of regulations.  

**Publication of Measures**

All SPS measures that have been adopted have to be published promptly, so that interested Members can become acquainted with them. Except in urgent situations, Members have to allow a reasonable period of time between the publication of a measure and its entry into force. This is to allow exporters, particularly developing countries, to adapt their products and methods of production to the new requirements. At the Doha Ministerial Conference in 2001, Members decided that normally a period of six months shall be allowed between the publication of a regulation and its entry into force. However, the entry into force of measures which liberalise trade should not be unnecessarily delayed.

Members have the obligation to notify SPS measures if they

- are new or changed;
- are not based on an existing international standard or no relevant international standard does exist; and
- have a significant effect on trade.

The above requirement covers measures that restrict trade as well as trade facilitating measures. Hence, a notification should be made as soon as a complete draft of a proposed regulation is available, and when changes can still be made to take into account any comments received. For the sake of increased transparency, many Members notify even measures that are based on an international standard or measures where it is not clear if they will have an impact on trade. As of April 2002, about 85 per cent of Members had established an Enquiry Point, and 80 per cent had established National Notification Authorities. The lists of National Notification Authorities and Enquiry Points are regularly updated by the WTO Secretariat. These are publicly available documents. The most recent lists can be requested from the Secretariat, or downloaded from the WTO home page.

**Enquiry Points**

Each Member has to ensure that an Enquiry Point exists which is responsible for the provision of answers to all reasonable questions from Members. The Enquiry Point also provides the relevant documents regarding:

- all existing and proposed SPS measures;
- control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures;
- risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of protection;
- membership and participation in international and regional sanitary and phytosanitary organisations, as well as in bilateral and multilateral agreements and arrangements (including on equivalence), and the texts of such agreements and arrangements.

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The TBT Agreement and Health

Protection of human, animal, plant and environmental health are among the legitimate objectives for which product requirements may be developed.\(^{135}\) Examples of measures that Members have notified and which include human health as their objective include regulations related to radio communications equipment to reduce human exposure to electromagnetic radiation; regulation to reduce substances used in cosmetics which may instigate allergies; and regulation of chemicals that may cause occupational health hazards.\(^{136}\) Of all TBT regulations notified to the WTO in 1997, 37% had human health as their objective. Measures taken for the protection of animal and plant life or health usually fall under the SPS Agreement, and thus less than 0.5 per cent of all TBT notifications had these objectives. There is a difference in coverage between the TBT Agreement and the SPS Agreement. The SPS Agreement covers a narrower or more precisely defined set of measures relating to human, animal and plant life or health than does the TBT Agreement. To assess whether or not a health measure is covered by the TBT Agreement it is best to first figure out if it is an SPS measure. If it is an SPS measure, then it is not a TBT measure.

International Harmonisation

One of the main principles of the TBT Agreement is harmonisation. The TBT Agreement does not contain a list of international organisations whose standards are considered international standards; it leaves the decision up to Members. Members do not have to use an international standard if they consider it ineffective or inappropriate to achieve their objective. They are free to set standards at a level they consider appropriate, but have to be able to justify their decisions if requested to do so by another Member. The Agreement also calls upon Members to play an active role in the process of international standardisation.

The Shrimp-Turtle Case of Bangladesh\(^{137}\)

The Shrimp-turtle debate was related to export of shrimp to the USA. In 1997 the US government threatened to ban import of shrimp from countries which do not use turtle extrude machines in open-water catch of shrimps. This was to protect sea-turtle population which was facing extinction and was declared an 'endangered species'. Bangladesh along with other countries faced the threat of sanction. In the end, the dispute ended up in the dispute settlement body (DSB) of the WTO. At first the DSB upheld the sanction. However, the WTO Appellate Board later decided against the USA. Policy as applied in the USA had an unjustifiable 'coercive effect' on policy decisions made by foreign governments. The USA did not assure that its policies were appropriate for the specific local and regional 'conditions prevailing' in other countries. The USA made far greater efforts to transfer the required TED technology to countries in the Caribbean/Western Atlantic region 'than to other exporting countries, including the appellants'. The application of the US measure was 'arbitrary' in that the certification process is not 'transparent' or 'predictable', and does not provide any 'formal opportunity for an applicant country to be heard or to respond to any arguments that may be made against it'.

\(^{135}\) https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm
\(^{136}\) Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
\(^{137}\) Dispute Settlement Reports 1998: Volume 7, Pages 2753-3324
Ban on Imports of Bangladesh Shrimp by the EU

After an inspection of Bangladesh's seafood processing plants in July 1997, the EU put a ban on imports of shrimp products from Bangladesh into the EU member countries due to failure to meet the stringent provisions of the Hazard Analysis Critical Control Point (HACCP) regulations. The EU ban originated from (a) concerns regarding standards in areas related to health, quality control, infrastructure and hygiene in the Processing plants; and (b) lack of trust in the efficiency of the controlling measures carried out by the Department of Fisheries (DoF). The ban remained effective for five months, from August to December 1997. The responsibility for the ban was put on both farms and the Government of Bangladesh (GOB).

Reasons for Imposition of the Ban

Lack of satisfaction on the quality of compliance at various phases, such as:

a) Pre-Processing Phase: at the stage of handling of raw shrimp - harvesting, sorting by size and colour, removal of heads and peeling
b) Processing Phase: absence of high quality of water and ice, irregular electricity supply, poor infrastructure and transportation facility
c) Post-Processing Phase: when processed shrimp is packaged for marketing and export

Weak capacity of implementation by the GOB institutions and the doubt regarding the efficiency and reliability of the inspectors of the GOB were responsible for the ban. On the basis of their inspection, the EU determined that "consuming fishery products processed in Bangladesh posed a significant risk to public health in the EU member countries".

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Questions for Discussion

1. What are SPS and TBT?
2. What is the difference between SPS and TBT?
3. What are the current issues within WTO regarding SPS and TBT?
4. Discuss the issues of Sri Lanka’s concern
FTAs in Asia – The Rise, the Causes and the Prospects of Regional FTAs

The late emergence of Free Trade Agreements as the chief vehicles for greater trade liberalisation amongst Asian nations ought not to be a puzzling phenomenon, albeit it has to be conceded that it is much in need of extensive researching. The facts themselves can be quite easily narrated. While multilateralism was the dominant theme of the Asian preference until late 1980s and even the 1990s, primarily on account of the then Asian economic super power Japan, beginning with only three FTAs in 2000, by end of that decade over 60 FTAs had been concluded in Asia. Such a rapid rise of FTAs obviously raises serious concerns about prospects for multilateralism, impact of corruption and ulterior motives benefitting only a few targeted groups as opposed to broader based social welfare and the soup bowl effect that such dependence on FTAs could have in terms of regulatory complexity and diminishment of trade benefits from ideal typical trade regimes. This paper examines, in brief, the emergence of FTAs, the underlying reasons and prospects in Asia and what this could imply for Global trade regime.

Much of economic literature in 1960s essentially regarded Asia as an agrarian backwaters, with few natural resources, overpopulated and consequently with limited chances of emerging as industrial powerhouses. Yet, by mid 1990s scholars had begun to talk about Asia’s performance as an “economic miracle” (Stiglitz, 1996). However, what benefitted Asian economies were the facts that they were in geographic proximity to Japanese MNCs seeking to expand production facilities to lower cost centres. 

The development of advanced production networks that chiefly undergirded Asian economic expansion via global export expansion. These networks have deepened regionally (Kimura 2006). The reasons are well known – development of low cost communications technologies, emergence of technically proficient younger population in Asia, falling costs of logistics and declining salience of regional trade barriers. One of the more salient features of such deepening of production networks is that production processes have been successfully disaggregated into smaller processes. And each of such smaller processes could and were subsequently farmed out for production in wide spread locales all across the continent, with cost and quality efficiency being the chief factors.

The results were spectacular. Many decades worth of market driven economic expansion, trade and FDI implies that Asia emerged as the global factory. Hobday, 1995, Mathews and Cho 2000, and Wignaraja 2008 report that Asian businesses acquired the technological capabilities to compete internationally and/or become efficient suppliers to western Multi Nationals. This became possible through strategies of innovation through learning, acquisition of production engineering skills and becoming a part of advanced global production networks formed by MNCs. Exploiting a growing younger population, with traditional emphasis on disciplined learning, systematic learning and innovation occurred at the firm level. This meant that dependence on labour intensive exports declined, to be supplanted significantly by technology-intensive exports. Finally, this also led to the building of

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significant R&D capabilities and emergence of Asian firms as leaders in production networks and supply chains. From a trade perspective, most Asian nations adopted outward looking growth strategies, rapid development of human capital, massive investments in infrastructure and promotion of high domestic savings rates. The simultaneous expansion, or rather the booming of the global economy, particularly United States, and massive increase in hunger for imported cheap goods from Asia helped Asia in its outward looking expansion path.¹⁴²

The brute testimony to the above description of the “economic miracle” that Asia has been is the emergence of Peoples Republic of China as the second largest economy of the world, and its factory, and the fact that Japan, Republic of Korea and Singapore are amongst the richest nations on earth, in terms of per capita incomes.

Yet, the shift from global multilateralism to regional and often bilateral FTAs needs an explanation, in as much as the economic miracle that Asia has been occurred in an environment of multilateralism, and that too at a global level. Many scholars argue that trade related developments are amongst the motivating and causal factors for such a move. Some of the significant trade related developments on a global scale include the formation of NAFTA, deepening of EU as a common market and economic union, and the 1997-98 Asian Financial crisis. The first two implied that increasingly Asia would have had lesser voice in trade negotiations. This put pressure on policy makers, and indeed even the industry to exert pressure on national governments to drive towards greater localized and Asian cooperation. The fourth one is that the slow progress of the Doha Round of WTO talks implied that many Asian nations began to perceive bilateral and regional FTAs, led by and/or centred around ASEAN nations, as the promising route for further economic liberalisation and trade related gains. The consequent policy shift can be gleaned from the rapid expansion of FTAs in the Asian sphere and the intensity of FTAs in Asia.

Starting with 3 FTAs in 2000, ADB reports that currently there are now 119 FTAs that have been signed and in effect concerning an Asian economy. Those which have been signed, but not yet in effect number an additional 25, with 56 yet additional negotiations launched, and those proposed/under consultation and study are a further 65.¹⁴³ The fact that FTAs are here to stay, and will continue to be a significant policy tool is revealed by the fact that many of the larger economies of Asia are actively pushing them. To gain a perspective, the following may be considered:

<table>
<thead>
<tr>
<th>Name of the Country</th>
<th>No of FTAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peoples Republic of China</td>
<td>29</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>5</td>
</tr>
<tr>
<td>India</td>
<td>37</td>
</tr>
<tr>
<td>Japan</td>
<td>27</td>
</tr>
<tr>
<td>Indonesia</td>
<td>25</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>33</td>
</tr>
<tr>
<td>Malaysia</td>
<td>27</td>
</tr>
<tr>
<td>Singapore</td>
<td>40</td>
</tr>
</tbody>
</table>

SOURCE : Masahiro Kawai and Ganeshan Wignaraja, 2010

¹⁴³ http://www.aric.adb.org/fta-all (June 2014).WTO article on FTA presented in 4th Global Economic Summit
The above shows that on the whole Asia is choosing bilateral agreements rather than multilateral agreements. One reason can be easily adduced: as Asian economies grew rapidly, the slower pace of negotiations and conclusion of global scale or even regional scale multilateral agreements on account of greater complexity means that they are less likely to be available for an appropriate political economy intervention by national governments. Consequently, more than 80% of Asian FTAs are comprised of bilateral FTAs and only 20% or thereabouts comprise of multilateral FTAs. Market driven growth and intensification of production networks has provided its own compulsive logic for further attempts at outward strategy, even if through attempts at bilateralisation of gains from trade. Further liberalisation has meant increased cross border FDI flows, greater regulatory and policy harmonization and consequent harmonization effects such as elimination of cross border impediments. Consequently, it can be stated confidently that most Asian nations and particularly the powerhouses therein view FTAs as supporting tools for further linkages into production networks, and that with wider scope can lead to further expansion of trade and FDI. Masahiro Kawai and Ganeshan Wignaraja, 2010 also report that for stronger economies cross regional FTAs are significant, implying that Asia is not necessarily looking inwards, but has still and continues to retain its outward look. However, with increasing emphasis on domestic consumption, as for instance by declared policy in China, whether Asia will continue to look outward as significantly as it has so far remains to be seen.
Any rapid expansion of FTAs that are significantly bilateral ought to necessarily raise immediate concerns in many areas. The more important ones could be seen to be about diminishment of welfare based on true global level multi-lateral regimes, the potential for hijacking of particulars of FTAs regarding the sectors, particular goods and services that are made the subject of the bilateral FTAs and the reasons thereof, and the soup bowl effect in terms of regulatory complexity. From the perspective of whether Asia will emerge as the main fulcrum for the global economy, and whether it will truly be the Asian century again, it is imperative to evaluate the current scenario in terms of whether a pan-region Free Trade zone would be better.

The noodle bowl effect
As noted above, one of the principal features of the explosion of Asian FTAs is that nearly 80% of the FTAs effectuated in the past decade and half are bilateral in nature. Given such a plethora of FTAs the free movement of goods and services will face considerable problems, especially with regard to Rules of Origin (“ROO”). As can be easily appreciated, ROOs are policy tools encoded into FTAs to determine which goods/services will enjoy preferential treatment, one of the chief objectives of a bilateral FTA. Scholars such as Manchin and Pelkmans-Balaoing 2007 have suggested that Asian FTAs have made ROOs highly complex, and that this will certainly raise the cost of doing business, not to mention uncertainty with regard to treatment. This could be a particular problem for smaller enterprises with less financial resources and knowledge network access to deal with varying ROO requirements across jurisdictions.

Current empirical research suggests that the situation is not as bad as theory would lead us to believe. Kawai and Wignaraja 2011 suggest that a limited burden is actually imposed on firms engaged in external trade within Asia. While 20% postulated that they would experience significant rise in business costs, a majority seemed to think they were a problem. Country level variations present interesting features, with firms from Singapore exhibiting the greatest concern and firms from PRC exhibiting the least bit of concern. The variation in size and nature of economy between those two countries should be good enough causal factors for the variations in concerns!

While empirical studies seemed to indicate that at present firms do not seem to be significantly affected, the situation could change rapidly. At present only the firms from PRC seem to be aggressive in using the FTAs to their fullest extent; hence, when other nationals also expand in the intensity of their usage, conflicts could become manifold. Moreover, as the numbers increase (which they are likely to do so given the numbers under consideration) increase in complexity will inevitably invite greater interpretational stress on the regulatory regimes. ROOs are but one of the areas where the stress could be felt. It is imperative that Asian nations embrace the rules for rationalization and harmonisation on the ROO front.
Regional FTA as opposed to Noodle Bowl FTA regime

Much of economic and trade scholarship and theory would suggest that a regional FTA would be a far superior outcome than the noodle bowl FTA regime that has emerged in Asia. The improvements are perceived to be via (a) increased market access, particularly for smaller economies; (b) harmonisation and simplification of rules, standards, tariffs etc., (c) increased market size will permit specialization and thereby realize returns to scale; and (d) better cross border FDI activity and technology transfers.

Empirical data also suggests support for the above. Kawai and Wignaraja 2010, suggest that ASEAN, the first FTA of Asia, is “emerging as an integration hub”, as PRC, Korea and Japan have accorded their FTAs with ASEAN, with India, Australia and New Zealand following suit. The two models that are emerging as alternative for region wise FTA proposals are East Asia Free Trade Agreement, EAFTA, among ASEAN +3, and Comprehensive Economic Partnership for East Asia, CEPEA, among ASEAN +6 countries. These two models have been studied with regard to impact on the economies of chief Asian nations, based on CGE models, (of Francois and Wignaraja 2008) and (Kawai and Wignaraja 2009a). The income effects to baseline 2017 vary from 12% (EAFTA) to 12.5% (CEPEA) at one extreme for Thailand, to the more prevalent additional income generation of 2% to 8% for countries ranging from India to Vietnam. Based on such CGE evaluations it would appear that CEPEA offers larger gains to the world income than the current noodle bowl regime.

While the arguments for a region wide FTA are easily appreciated, one cannot be sure that sheer economic logic will carry the day. Many geo-political and political economy aspects might have a huge bearing on whether the desired result is achieved. Amongst the many such factors, we can briefly outline a few:

China favours EAFTA while Japan favours CEPEA. Add to this the fact that China is seriously considering furthering its BRICS obligations, which could have an additional bearing on which form, if any, would the Asian regional FTA take.

Not including the US, which provides security to many Asia nations, or Russia (now with BRICS) is an additional geo-political spanner that needs to be considered. What impact the Natural Gas pipeline from Russia into China, and whether that will be extended on to Japan and possibly India, is an imponderable at this stage. Who becomes the FTA leader, and struggles over it are yet other factors we need to consider.

Unless the sequencing of integration of existing FTAs is undertaken with finesse, and care, the regional integration of FTAs, notwithstanding the huge economic gains, may yet remain an illusion.
Learning Objectives

- The aim of this particular module is to provide a general understanding on the WTO negotiation groups.
- The module also highlights the process of negotiations in order to make participations equipped enough to understand the negotiation process.
- The module highlights the rationale and importance of negotiations and emergence of negotiation groups.
- Participants will understand the issue of pluri-lateral negotiations and the importance of group based negotiations in order to carry forward the interest of the developing countries and the LDCs.

The Idea of Trade Negotiation

The developing countries (DC) and the least developed countries (LDCs), in their attempt to benefit from the globalisation process and to improve access to the regional and global markets, are increasingly taking part in trade negotiations. As with so many occasions, a developed country does not only put forward its ideas and seek to implement those, but it attempts to initiate these new ideas without or partially considering the possible consequences for the developing countries. It is in this context that group based negotiations and often, issue based negotiations, become prominent. Moreover, the emergence of groups like G-20 in the Cancun WTO Ministerial indicate new platform for WTO negotiations. Clear understanding and appropriate handling of negotiations are now two of the major conditions to achieve success in the world trade negotiations.

The term "negotiation" originates from the Latin word negotiari, which means "to carry on business". Negotiation may be defined as: "A process whereby two or more parties seek an agreement to establish what each shall give or take, or perform and receive in a transaction between them" (Saner, 2000). Alternatively, it is an act of discussing an issue between two or more parties with competing interests, with an aim to identify acceptable trade-offs for reaching an agreement (Raihan, 2004). Therefore negotiations take a crucial stance in the process of multilateral trading system. The WTO acts as a platform for multilateral trade negotiations and although negotiations process was incorporated in the GATT architecture, its importance, relevance and context changed dramatically during the post Uruguay Round trading system, signalling important differences of the latter from earlier rounds.

Importance of Trade Negotiations

Trade negotiations are an integral part of the WTO. All decisions regarding implementation are carried out through negotiations. Over the previous decades on a number of occasions, negotiations were carried out within the developed countries, developing countries and the LDCs. In the latter case, negotiations under GATT, often referred as the Uruguay Round, the international trading system witnessed a number of changes and a number of new issues found new prominence.

146 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
147 Iqbal Ahmad; (2013) - Industrial Relations and Labour Management of Bangladesh, pages 594, ISBN-1426996527, 9781426996528
Furthermore, besides these new issues, emergence of countries like China, India and Brazil also propelled and diverted the negotiation power, which used to be influenced by the quad countries (USA, EU, Japan and Canada). Also the LDCs and the developing countries are now much more aware of the WTO issues and therefore group based negotiations on various relevant issues have also become important. In the WTO, countries get not what they deserve, but what they negotiate. Multilateral economic negotiations are often explained by such exogenous factors as the identifiable economic interests of participants, or their domestic industries, and the general political and economic context.  

Trade Negotiation Process
Success and effectiveness of any negotiation depends a lot on planning and preparation. A thorough understanding of the negotiation process always helps to prepare for this. Bhattacharya (2005) has described the WTO negotiation process in a very informative and illustrative manner. For the benefit of the trainees, we have reproduced below the relevant section from the above said document. Thoughtful planning and preparation based on good research and analysis are as important determinants of a negotiation outcome, as are good negotiating skills at the bargaining table.

The key steps of a negotiation process are based on a review of the relevant literature. The seven steps leading to a negotiated agreement are discussed below, with emphasis on the five steps involved in planning the negotiations.

Step 1: Problem Identification
Negotiations take place when parties identify a problem or an opportunity that, they believe, can be resolved or positively exploited through a negotiated agreement. The first question to be answered at the start of the negotiation process is whether there is, a problem (or an opportunity) that cannot be resolved (or realised) on the basis of domestic action and that may be amenable to intergovernmental negotiations. For example, the opportunity associated with liberalised service trade is that it may increase economic growth and contribute to poverty alleviation, while the major problem is that most of the countries are protective in this area. Recognising the necessity of preference on the movement of service suppliers under Mode 4 of the GATS, Bangladesh emphasised this issue during the WTO Ministerial Conference in Cancun, and succeeded in achieving recognition of this aspect in the final draft of the Ministerial Declaration. This would not have been achieved if the problem had not been identified at an early stage of the negotiation process. By understanding the nature of a problem or conflict, the interests of other parties can be anticipated and proposals and options can be formulated. This usually involves:

Establishing the history of the conflict
This essentially involves the following two questions:
- What is the history of the conflict between or among parties? In a trade dispute, the history may include past practices, tariffs, quotas, dumping, or other trade-related practices that have defined a trading relationship.

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b. What has changed since the original conflict began? This may include changes in political parties or representation, in key players within administrations or in business interests.

Once the problem has been deconstructed into its discrete parts, the key issues can be identified and prioritised. Multiple solutions can then be evolved for different aspects of the problem.

**Step 2: Interest Identification**

Once the problem is well understood, one has to identify who may benefit and who may lose in the negotiation. It is particularly important to recognise whether there are any powerful interest groups that may either support the efforts to negotiate a solution to the problem or strongly oppose the negotiations.

Monning and Fekete (2004) explain that interests are at the core of what drives parties in a negotiation. Better understanding of one’s own interests as well as those of the counterparts will lead to a successful negotiation outcome. In international negotiations, interests may revolve around issues of economic interests, domestic policy objectives—such as environmental integrity and resource protection, national security, domestic political considerations, bureaucratic interests, national legal requirements, issues of legitimacy (recognition), and moral or ethical standards. The ability to identify the divergent interests or varying priorities of the different negotiating parties and their stakeholders can provide the basis for generating workable solutions. Stakeholders, while not directly involved in the negotiations, include individuals, groups and organisations that may be affected by the trade negotiations depending on their outcome. Three major categories of domestic stakeholders are identified by the World Bank Institute (WBI, 2004).

- **First**, various government Ministries and departments responsible for administering the regulations likely to be covered by the negotiations
- **Second**, the enterprises producing the goods or services likely to be covered by the prospective negotiations
- **Third**, other stakeholders can include labour unions, non-governmental organisations, consumer groups, etc. By the end of step 2, domestic stakeholders and their general interests should be identified

**Step 3: Consultation Process**

Once stakeholders and their interests have been identified, it is important to plan and organise an effective consultation process to further understand their needs and gather information needed to develop a negotiating agenda and determine a national position on each of the issues to be negotiated.

By their very nature, international negotiations involve people of different national, ethnic, racial, religious, and cultural backgrounds. These people represent governments, businesses, NGOs, and other entities that have a stake or interest in the outcome of the negotiations. However, only those people who are sufficiently interested and influential may be involved in the consultation process (WBI, 2004).
The innermost circle should consist of the stakeholders within the central government, i.e. the key Ministries and departments responsible for regulations covered by the negotiations. Consultations with the members of the inner circle would be frequent and regular, and may be held throughout the consultation process.

The second concentric tier is comprised of representatives from key private stakeholder groups who may be invited to participate in various advisory bodies. These advisory bodies can give negotiators direct feedback on proposed negotiating positions and serve as a vehicle for building consensus with the most influential private stakeholders. Such advisory bodies can also serve as sources of information on trade opportunities and problems, industry practices, and the most difficult barriers to trade expansion.150

The third concentric tier includes all other interested stakeholders, who may be invited to participate in briefings or conferences covering the negotiations, during which they will be given an opportunity to express their views.

Consultations held during the negotiation process may include:
• Interdepartmental consultation, to develop and assess the analytical basis for the negotiation and to pool all relevant information available from government officials.
• Political consultation, to assess the political basis for negotiation and to secure strong political commitment to trade negotiations from top decision makers.
• Ongoing consultations with central, provincial/state governments, private sector, and other interest groups as required, to build broad-based support (and avoid surprises) for the negotiation. This may require establishment of an institutional machinery to facilitate consultations among all affected interests.
• Consultations or pre-negotiations with trading partner(s), to confirm interest and test issues.

**Step 4 : Establishment of a Negotiating Machinery and Developing a Negotiating Agenda**

At this stage, the chief negotiator and a team of supporting officials drawn from relevant Ministries and government agencies are appointed. The team of negotiators may also be assisted by experts hired by the government or provided by business associations, civil society and other organisations. Individuals and institutions in this group are referred to as trade negotiation actors, as they work directly on the negotiation and help the negotiating parties in reaching an agreement, often by providing much needed information, analysis, and feedback.

In Bangladesh, the government Ministries play the most vital role in the negotiation of trade agreements, especially the Ministry of Commerce, Ministry of Finance, Ministry of Foreign Affairs and the Tariff Commission. Other Ministries and departments, such as the Ministry of Planning, the Board of Investment, and the Economic Relations Division, also provide direct or indirect support.151 Bangladesh, like most LDCs, became more proactive about WTO

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150 Ibid.
151 OECD (2014) - The Development Dimension Regional Perspectives on Aid for Trade, pages 220, ISBN-9264216030, 9789264216037
related issues after the DDA was adopted. As a result, the Ministry of Commerce set up a special "WTO Cell" to improve its capacity to negotiate on the DDA. The government is also setting up the Bangladesh Foreign Trade Institute (BFTI), an institution under public-private partnership that will work as a think-tank for the government and private entrepreneurs in the field of international trade.

Many of the private actors, civil society groups and think-tanks in Bangladesh also play an important role in trade negotiations. The participation of these private actors contributed to the success of the Second LDC Trade Ministers’ Meeting held in Dhaka just before the Cancun Ministerial in June 2003. The growing trade negotiation related capacity of Bangladesh was further recognised when the Bangladesh government was requested to provide support in preparing the Declaration of the Third Meeting of the LDC Trade Ministers held in Dakar in May 2004.

The compilation and assembling of information becomes necessary at this stage of the negotiation process (CTPL, 2003). Further consultation may be held to develop the negotiating agenda based on issue identification, empirical and policy research analysis, and inputs from stakeholders and trade actors. If necessary and desirable, a separate negotiating track could also be established to address trade-related issues (e.g. environmental, labour, intellectual property rights, etc.).

Step 5 : Formulation of Negotiating Positions and Strategies
Based on the available information, continuing analysis and consultations, negotiating positions and strategies may be formulated. Selection of a negotiating objective at the very beginning of this step is highly recommended, in order to provide a clear focus for both the preparatory work leading to a negotiation and to the management of the negotiation itself.

Step 6 : Negotiation
It is during this phase the negotiation strategy will be implemented and requests will be made, concessions offered, and compromises reached. In the context of multilateral trade negotiations, an effective and well-known method, for gaining support for negotiating proposals and to increase negotiating power, is to build coalitions among like-minded groups and countries. According to the WBI, 2004, a coalition partner may support efforts to prepare negotiations in some or all of the following ways:

- Help brainstorm possible solutions (options) to present in the negotiation
- Reach out to their constituents (members) to involve them in collateral legislative, lobbying, media, or other supportive activities
- Help to raise resources including funds to advance various aspects of a concerted campaign which will support the negotiators
- Provide market research, scientific research, and other data to support then negotiating objectives.

Findings from the research community, international governmental organisations (IGOs) and non-governmental organisations (NGOs) could also be used to press fora particular point of view. In that form, partnerships can also go beyond, strictly speaking, negotiating parties and include IGOs or NGOs representing civil society groups. A point to note is that it is necessary to first work with coalition partners in order to align on the most important issues among the coalition partners, then work with the other parties.

The LDCs could gain significantly if they are able to build up coalitions and stand firmly against groupings of powerful developed countries. The united stand that LDCs displayed at the Cancun Ministerial Conference is one of the best examples of the effectiveness of coalition building and partnership, especially in a multilateral trade negotiation. The developed countries failed to insert new issues into the agreement, mainly because such a coalition was built up by the LDCs together with other developing countries. During the WTO Ministerial Conference in Cancun, Bangladesh and some African countries helped each other in the case of cotton and Mode 4 of the services agreement.

**Step 7: Assessment**

After the actual negotiation has finished and the elements for an agreement have been put together, a short evaluation of the whole outcome becomes necessary to decide whether a successful agreement is possible, or another round of negotiations might be needed. Assessment is required after the parties reach a point of consensus. Making an assessment tends to be a task assigned to officials with legal expertise, who base their effort on the substantive work done by the negotiators and work in close collaboration with the negotiators. However, it is useful to assign the legal officers to the negotiating team from the start in order to assist in development of draft texts. If consultations have been pursued throughout the draft text, political approval should be a final, formal step that would create little or no difficulty.

**Success Factors in Negotiation Planning**

- Widest possible range of options
- More attention to common ground
- Greater attention to long term factors
- Setting upper and lower limits rather than fixed target points
- Planning of issues without establishing a rigid sequence
- More time devoted to studying the conflict
- Less attention paid to own objectives than to a jointly achieved solution
- Less attention to tactics: these are often overrated

Eight success factors in negotiation planning are listed and as part of the strategic planning of the negotiation, systematic analytical methods may be used to establish priorities and to assess value trade-offs. Steps involved in developing a negotiating strategy may include:

- Establishing outcomes and priorities for self
- Estimating outcomes and priorities for other parties

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Identifying and assessing major trade-offs

- Identifying all possible outcomes and consequences. When establishing preferred outcomes and priorities for self as well as for other parties, ranking of issues related to the negotiation, according to their importance and relevance to the problem may be particularly useful. Each issue may be assigned an importance weight (for example, on a scale from 0 to 1) both from the perspective of self and other parties.

Maximum and minimum expectations from the negotiation of each issue should be determined. The maximum expectation from the negotiation should be the opening position of the negotiators, while the bottom line (minimum expectation) should be their reserved position. A number of alternative outcomes should be identified in between these two extreme positions on each of the issues to be negotiated. All the possible outcomes should be taken into account and the consequence of inability to achieve an agreement should also be determined. Evaluating the consequence of an agreement, not being reached, is one of the major challenges in strategizing and formulating the whole negotiating position. The countries should reserve their alternatives for such outcomes and do appropriate analysis of the non-agreement consequences, though it is never in anyone's expectation to fail in negotiating and thus reach no agreement. In this connection, an example may be cited from the ongoing negotiations under BIMSTEC. During these negotiations, Bangladesh demanded compensation for revenue cost by the LDCs during trade liberalisation undertakings. The other negotiating parties, particularly the developing countries, did not agree to this demand. Bangladesh, on the other hand, could not show much flexibility by offering alternatives and was the only LDC which did not sign the agreement. Later, Bangladesh joined the BIMSTEC agreement by withdrawing its demand. An important aspect of the strategy is the selection of an appropriate behaviour during the actual negotiation of the different issues. The negotiating behaviours, also referred to as modes of conflict management, can be classified into five broad categories, depending on the combination of assertiveness and cooperation that is selected.

a. Competitive Behaviour

The essence of this power-oriented behaviour lies in its effort to achieve goals by trying to persuade the other party to make concessions. Under a competitive strategy, the other party may be convinced to concede by:

- Augmenting to encourage concessions
- Firming commitment to demands
- Refusing to reveal/share information
- Delaying
- Misrepresenting
- Rejecting the other's demands for concessions
- Withholding concessions
- Refusing to exchange offers
- Threatening walkout or retaliation

The competitive mode of behaviour may be useful to achieve desired results on some of the issues under negotiation, but it may also lead to impatience and loss of flexibility, leaving little room for movement towards cooperative approaches and a constructive solution to the conflict.

b. Accommodative Behaviour

This behaviour gives highest priority to cooperation and reaching an agreement. It is opposite to a competitive behaviour, as the negotiator is willing to adjust most self-interested objectives in order to satisfy the interests of the other party.

c. Avoidance

This behaviour combines non-cooperative behaviour with a lack of assertiveness, generally leading to a no-win solution where the interests of none of the parties are met. This strategy could be used to defer or postpone awkward issues that might not be amenable to an agreement until a more favourable moment. It is a position that is extremely versatile and possibly useful, but it should be used in a focused and targeted manner, since frequent avoidance of conflict reduces the chances of satisfactory results in the future.

d. Collaborative Behaviour

Collaboration requires the parties to familiarise themselves thoroughly with the conflict and its causes in order to work towards finding a constructive joint approach. Without losing sight of their own principles and interests, each party works through the differences separating them and learn from each other’s point of view and experiences. This strategic choice of behaviour may be implemented by:

- Signalling desire for agreement
- Exchanging information about needs/priorities
- Brainstorming and joint assessment of options


e. Compromise

Parties in the negotiation may come to a compromise in order to achieve a satisfactory alternative that might be partially acceptable to both of them. Positions for such a solution lie between avoidance and collaboration. It is where the parties make moves towards one another or look for rapid agreement that is satisfactory because it is acceptable to them.

The following aspects should be considered in selecting a strategic behaviour:

- Importance of the negotiation
- Consequences of non-agreement
- Common interests of the parties
- Relationship quality
- Power to impose demands\(^{157}\)

Decision Making in the WTO: Formal Consultations

WTO Ministerial Conference is the highest authority for decision making at the WTO. At least one Ministerial meeting is supposed to be held every two years. The Ministerial Conference can take any decision under any agreement of the WTO. At the second level of Ministerial Conferences there is the General Council. The General Council has three different components: General Council, the Dispute Settlement Body and the Trade Policy Review Body. There are several councils including, Council for Trade in Goods, Council for Trade in Services and Council for Trade Related Aspects of Intellectual Property Rights. Decisions are taken on the basis of consensus.

So it is critically important that countries engage themselves during the negotiations and try to influence an outcome that is favourable to them and addresses their concerns and interests. In case a decision cannot be reached by consensus, it is to be arrived at through a majority vote (unless otherwise provided in the particular agreement under reference). In the Ministerial Conference and the General Council, each member has one vote. Till now all decisions in the WTO had been reached through consensus.158

The WTO is run by its Member governments. All major decisions are made by the membership as a whole, either by Ministers (who meet at least once every two years) or by their Ambassadors or delegates (who meet regularly in Geneva). All decisions fall under the Single Undertaking Rule.

Informal Meetings
Informal meetings serve a unique role—the brokering of deals on particularly thorny issues by supplementing the formal meetings, not usurping them. These meetings, that have to be transparent and inclusive, are used as mediums for breaking down the bigger council into smaller groups which engender a better environment for discussion between interest groups and the Chairperson to fulﬁl what they are designed to do—hammering out a compromise.

Informal Consultations
Normally important breakthroughs are rarely made in formal meetings of the bodies (either in the TNC or WTO ministerial. As decisions are made by consensus, informal consultations used to play an important role in bringing a vastly diverse membership to an agreement.

Smaller Group Meeting
“One step away from the formal meetings is informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). More difficult issues are thrashed out in such smaller groups. A common recent practice is for the Chairperson of a negotiating group to attempt to forge a compromise by holding consultations with delegations individually, in twos or threes, or in groups of 20-30 of the most interested delegations.”159

“These smaller meetings demand to be handled sensitively. The key is to ensure that everyone is kept informed about what is going on (the process must be ‘transparent’), even if they are not present in a particular consultation or meeting, and that they have an opportunity to participate or provide input (it must be ‘inclusive’).”160

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158 http://www.searo.who.int/entity/intellectual_property/trh.pdf
159 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
Green Room Consultation

The term 'Green Room' has become controversial especially after the Cancun Ministerial, more among outside observers than delegations (but often small delegation do not have the access into the Green Room). The phrase has been taken from the informal name of the Director General's Conference room, which is used to refer to meetings of 20-40 delegations. Meeting can be called by a committee Chairperson as well as the Director General, and can take place elsewhere such as at Ministerial Conferences. "In the past, delegations often felt that Green Room meetings could lead to compromises being struck behind their backs. No members have been able to find an alternative way of achieving consensus on difficult issues, since it is virtually impossible for members to voluntarily change their positions in meetings of the full membership. Hence, extra efforts are made to ensure that the process is handled appropriately, with regular feedback to the wider membership. In the end, decisions have to be taken by all members through consensus" (WTO, 2007).

WTO Global Coalition Groupings

A group is formed at any level of multilateral negotiations through incorporating similar interests of its stakeholders and it seeks to exert pressure on the negotiating processes in view of their respective concerns and subsequent interests. The formation of groups can be stated to have at least one principle political economy effect - it has allowed for greater information sharing within and outside members, whereby it has had a spill over effect in other negotiations fora (bilateral, regional, pluri-lateral or multilateral). It has strengthened developing countries' (and LDCs) stance in the negotiation processes and provided a sui generis 'safe domain' for cooperation for its stakeholders.

Often negotiating proposals are submitted on behalf of a number of countries with common concerns and interests. Developing countries particularly follow this strategy as a way to enhance their negotiating leverage and to extend their scarce resources as far as possible. These 'blocs' are fluid and they vary from issue to issue. Following are some of these coalitions, ranging from those that include mostly least developed countries to those that have a number of developed countries. It should be noted here that the LDCs often participate through coalition with other groups. Increasingly countries are getting together to form groups and alliances in the WTO. In some cases they even speak with one voice using a single spokesman or negotiating team. This is partly the natural result of economic integration — more customs unions, free trade areas and common markets are being set up around the world. It is seen as a means for smaller countries to increase their bargaining power in negotiations with their larger trading partners. It implies that a country with a small delegation might increase its participation, if it has an alliance with other members with similar objectives. In addition, countries with diverging interests may get together to narrow differences and help achieve consensus among the wider membership. In this case, groups are specifically created to compromise and break a deadlock rather than to stick to their initial positions. 161

Below are the compositions of some of the most active groupings in the WTO and also some formal regional and economic alliances (which are not always necessarily present in the WTO debates). 162

160 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm
161 https://www.wto.org/english/thewto_e/minist_e/min05_e/brief_e/brief25_e.htm
162 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
African Group

Of the 41 WTO-Member countries that make up the African Group, only 3 are upper-middle income developing countries; 13 are lower-middle income developing countries; and 25 are least developed countries, of the 32 least developed countries that are members of the WTO. These groups are vocal on the issues of S&DT, cotton, agriculture and others.

Developing Country Grouping (DCG)

The 13 members of the developing country grouping include 11 countries in the lower income developing country bracket, and 2 in the least developed country bracket. They are located in South America, South East Asia and Africa.

CARICOM

Of the 13 members of the CARICOM Group that are in the WTO, 7 are upper income developing countries, 5 are lower income developing countries, and 1 is a least developed country. All of the CARICOM countries are in the Caribbean/Central America region, and are also members of the Small Island Developing States (SIDS) grouping.

G21

This bloc emerged prior to the Cancun Ministerial meeting and proved to be very influential. Countries included are developing countries from Africa, the Caribbean, Latin America, and Asia. It includes 16 lower income developing countries and 6 upper income developing countries. Small Island Developing States (SIDS).

The list of Small Island Developing States is created by the United Nations, based on the specific economic constraints these countries face. There are 25 SIDS countries in the WTO, of which 3 are developed countries, 9 are upper income developing countries, 9 are lower income developing countries, and 4 are least developed countries. There is a lot of overlap in the countries in the SIDS and CARICOM groupings.

ASEAN

There are 7 members of the ASEAN group in the WTO, all located in South East Asia. 2 members of this group are developed countries, 1 is an upper income developing country, 3 are lower income developing countries, and 1 is a least developed country.

Cairns group (17)

This group was founded in Cairns, Australia, in 1986, consists of the world's largest agricultural exporters. At the 2003 Cancun Ministerial many of its key players preferred to partner along other lines, and the G20 took its place as the most influential grouping of countries in the Agriculture talks. Cairns group are located in North and South America, South East Asia, and South Africa. The group is basically a coalition of agricultural exporting countries and account for one-third of the world's agricultural exports. 3 members of the Cairns group are developed countries, 6 are upper income developing countries, and 9 are lower income developing countries.

\[163\] Crompton, Barb (2011) - Caribbean-Canada Emerging Leaders' Forum 2011
\[164\] https://www.wto.org/english/thewto_e/minist_e/min03_e/min03_minutes_meet_dates_e.htm
\[165\] https://www.wto.org/english/res_e/booksp_e/casestudies_e/case27_e.htm
countries. In practice, the membership of coalition groupings evolve over time and groups can have more or fewer members than their name suggests. Members of this group are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay.

**Friends of Multifunctionality (6)**
This group seeks to pursue agricultural policies that encourage environmental protection, rural development and food security. Member of this group include: EU, Switzerland, Norway, Japan, Korea and Mauritius.

**G10 (10)**
These group members are agricultural importers that maintain heavy protectionist rules for their own products, and are keen to protect their domestic agricultural sector. Group members include: Bulgaria, South Korea, Iceland, Israel, Norway, Liechtenstein, Mauritius, Switzerland, Taiwan and Japan.

**G20 (19)**
A group striving for agricultural reform and created at the initiative of Brazil shortly before the 2003 Cancun Ministerial consist solely of developing countries. The references to the group as G20+ or even G22 are due to the variation in numbers of the members. While a few countries have joined, others — such as Peru and Colombia— have left since September 2003. Member of this group include: Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Venezuela and Zimbabwe.

**G33 (30)**
The G33 consists of developing country-importers of agricultural products and many of them are also single-crop producers and exporters. The group advocates that developing countries be granted flexibility to self-designate a number of 'special products' (SPs) on which they would not have to make any tariff reduction or tariff rate quota (TRQ) commitments. G33 also seeks a new safeguard mechanism for developing countries to enable them to counter market volatility and sudden import surges.

Members of these group includes, Barbados, Botswana, Congo, Côte d’Ivoire, Cuba, Dominican Republic, Haiti, Honduras, Indonesia, Jamaica, Kenya, South Korea, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Senegal, Sri Lanka, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe. This group is also referred to as the Alliance for Special Products and a Special Safeguard Mechanism.

**G90**
The G90 is an umbrella group of three partly overlapping groupings: namely the ACP Group, the African Group and the LDCs. The ACP Group, consisting of developing countries from Africa, the Caribbean and the Pacific Ocean have signed the Cotonou Partnership Agreement with the EU. The Africa Group, consisting of the members of the African Union, which contains all African countries except Morocco; and The Group of Least Developed Countries(LDCs), which contains all the LDCs that are WTO members.
Like the G20, this group was also born in Cancun, among others, to oppose attempts by the US and EU to include the so-called Singapore issues — investment, competition policy, transparency in government procurement and trade facilitation — in the negotiations.\(^{167}\)

**Group on Cotton (4)**
Group of four comprises of Benin, Burkina Faso, Chad and Mali and currently seeks a complete phase-out of developed countries' cotton subsidies.

**Group of Small Island Developing States (SIDS) (9)**
These group members are the small island developing countries. Members of these groups are: Barbados, Cuba, Dominica, Jamaica, Mauritius, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago.

**Group of Small and Vulnerable Economies (SVE) (25)**
This group includes the SIDS group plus Antigua and Barbuda, Bahamas, Belize, Comoros, Fiji, Grenada, Guyana, Haiti, Maldives, Mauritius, Papua New Guinea, Samoa, Seychelles, Solomon Islands, Surinam and Vanuatu. Both these groups aim to put particular concerns and constraints faced by small islands and vulnerable economies on the agenda.

**Like-Minded Group (LMG) (13)**
The LMG pushes for the so-called implementation issues to be on the agenda, as well as special and differential treatment, and opposes the Singapore issues. Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe (Jamaica and Mauritius are observers) are the members of these group.

**P5, or Five Interested Parties**
United States, European Union, Brazil and India (on behalf of the G20) and Australia (on behalf of the Cairns Group) are members of "Five Interested Parties".\(^{168}\)

**Civil Society Group**
Civil societies also supply inputs to advocate stakeholders' concerns and provide a platform for interaction in the WTO on issues of concern among various civil society organisations, networks, and special interest and advocacy groups from various regions of the globe.

In connection with the WTO Ministerial Meeting in Hong Kong in December 2005 and as part of its activism to promote and advance the interests and concerns of Least Developed Countries (LDCs) in the ongoing negotiations under the Doha Development Agenda, the Centre for Policy Dialogue (CPD), organised a Civil Society Forum in Dhaka, Bangladesh titled Pre-Hong Kong International LDC Civil Society Forum during 3-5 October 2005. The objective was to prepare a Declaration on civil society's views, as regards LDC perspectives and to prepare a list of priority issues to be considered by LDC Trade Ministers.

\(^{166}\) Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
\(^{167}\) Gallagher, Peter; Low, Patrick; Stoler, Andrew L. (2005) - Managing the Challenges of WTO Participation: 45 Case Studies, ISBN-1139449001, 9781139449007
\(^{168}\) https://www.wto.org/english/res_e/booksp_e/casestudies_e/case27_e.htm
LDCs and Trade Negotiations

At the conclusion of the Uruguay Round of Multilateral Trade Negotiations (MTN), the total number of founding LDC members of the WTO was 30. Since the launch of the WTO in 1995, only two more LDCs, viz. Nepal and Cambodia, were able to accede to the WTO. However, ten other LDCs are negotiating accession and are associated with the WTO as observers. LDC members are also taking a more active role in the WTO trade negotiations. The Uruguay Round promised to generate significant welfare benefits for all countries through the strengthening of the Multilateral Trade System (MTS). The LDCs faced the major challenge of addressing possible negative effects from the obligations thrust upon them under the single undertaking of the Uruguay Round agreements. Fulfilling these obligations had to be implemented in the absence of the promised trade-related technical assistance (TRTA) for capacity building in the LDCs.

At the First WTO Ministerial Conference in Singapore (1996), while the concerns of LDCs were highlighted in the Plan of Action, new issues were added by the developed countries for subsequent negotiations. The High Level Meeting (1997) and the subsequent Second WTO Ministerial Conference in Geneva (1998) approved the Integrated Framework (IF), which promoted demand-driven TRTA to effectively meet the individual needs of the LDCs. After the break down of the Third WTO Ministerial Conference in Seattle (1999), some of the major concerns of the LDCs were incorporated into the WTO work programme during the Fourth Ministerial Conference in Doha (2001). These included issues related to implementation of existing agreements, elimination of tariff and non-tariff barriers for products of interest to LDCs, phasing-out of subsidies and trade-distorting domestic farm supports in the developed countries, and implications of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) on public health. As a result, the work programme of the Doha Round was called the Doha Development Agenda (DDA).

During the preparations and at the discussions in the Cancun Ministerial Conference, held in September 2003, the LDCs effectively identified and pursued their interests. Various drafts of the Declaration of the Cancun Ministerial Conference incrementally integrated the views of the LDCs. Even though no Declaration resulted from the Cancun Conference, it was the first Ministerial Conference where the LDCs established themselves as an influential group whose views were noted in the WTO negotiations. Slowly, but steadily, LDCs have been realising their responsibilities and trying to build their capacities in order to effectively underline their concerns and interests, in a body dominated by both economically and politically powerful trading nations. In this regard, their recent experiences have shown that they have a long way to go, particularly in the area of trade negotiations. There is now greater recognition that the LDCs need to develop their own positive agenda in order to make effective use of the multilateral trading system. This implies mobilising their scarce resources.
for technical preparations, identifying areas of interest, and mounting a joint effort towards capturing the initiative from the very beginning of the negotiation (Bhattacharya and Rahman, 2004). While at the same time being involved in multilateral trade negotiations, either as members of the WTO or as observers in the process of accession, most LDCs in the region are engaged in an increasing number of bilateral and regional trade negotiations and agreements. Bangladesh, for example, is currently involved in all three categories of trade negotiations and aside from being one of the leaders of the LDC group in the WTO, it is discussing bilateral Free Trade Agreements (FTAs) with India, Pakistan and Sri Lanka, and has recently finalised a Trade and Investment Framework Agreement (TIFA) with the USA. At the regional level, Bangladesh is currently negotiating the details of a South Asia Free Trade Area (SAFTA) with Nepal, Bhutan and the Maldives (along with India, Pakistan and Sri Lanka). Issues being negotiated include schedule of tariff reduction, rules of origin and dispute settlement mechanism. Bangladesh also joined the Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC), another regional agreement in the process of forming an FTA that would not only include Nepal and Bhutan, but also Thailand, Myanmar and India. Cambodia is another LDC that has been involved in trade negotiations within the context of ASEAN, as well as at the multilateral level, as the latest acceded WTO Member. The only Latin American LDC, Haiti, is active in negotiations under the Free Trade Area of the Americas (FTAA) and the Central American Free Trade Area (CAFTA). The African and some Pacific island LDCs, along with non-LDC partners, are involved in trade negotiations with the EU under the African, Caribbean and the Pacific states (ACP) – European Union (EU) Cotonou Partnership Agreement. The growing number of bilateral and regional trade initiatives, combined with the increasing number of issues being addressed in multilateral trade negotiations under the Doha Development Agenda (DDA), requires that LDCs in Asia and the Pacific build additional negotiating capacity in order to formulate a commonly acceptable framework for discussions.

Questions for Discussion
1. What does the term negotiations stands for
2. Why negotiations are importance particularly in the light of the WTO?
3. What is the process of trade negotiations?
4. Why does the assessment of the whole outcome become necessary only after the actual negotiations?
Learning Objectives
• To get knowledge about the sources of trade statistics for further exploration of facts.
• To get acquaintance with the sources where one can participate in the online discussion or get online news periodicals on the burning issues related to trade and WTO.

Sources of Trade Statistics
Major sources of Trade Data are:
• TradeMap
• UN Commodity Trade Statistics Database (UN Comtrade)
• Office of Textiles and Apparel (OTEXA)
• EUROPA (online database and information on EU Trade)
• Different Annual Reports
• Food and Agricultural Organisation (FAO)
TradeMap: ITC-TradeMap Database

International Trade Centre (ITC)
The International Trade Centre (ITC) is a joint technical cooperation agency of the United Nations Conference on Trade and Development (UNCTAD) and World Trade Organisation (WTO), for the business aspects, in view of trade development. The ITC’s mission is to contribute toward sustainable development through technical assistance in export promotion and international business development.173

Trade Map
With TradeMap, one has online access to the world’s largest trade database. It is a market analysis tool, covering some 5,300 products and 220 countries. Developed by the ITC's Market Analysis Section (MAS), Trade Map provides indicators on national trade performance, international demand, potential for market and product diversification, market access barriers and the role of competitors from both the product and country perspective.

TradeMap operates in a web-based interactive environment and covers the trade flows (values, quantities, trends, market share and unit values, both in graphic and tabular format) of over 220 countries and 5,300 products defined at the 2, 4 or 6-digit level of the Harmonized System (HS revision).

1). TradeMap features include:

• **Analysis of present export markets**: Examines the profile and dynamics of export markets for any product, assess the value, size and concentration of exports and highlight countries where market share has increased.

• **Pre-selection of priority markets**: Highlight the world’s major importing countries; illustrate the extent of import concentration and increase of demand in the countries over the past five years.

• **Overview of competitors in global and specific markets**: Identify the leading exporting countries for a given product; highlight a country’s position in world exports or imports from partner and neighbouring countries.174

• **Review of opportunities for product diversification in a specific market**: Make a comparative assessment of import demand for related products in an export market; identify imports of similar products and possible synergies.

• **Identification of existing and potential bilateral trade with a partner country**: Identify product-specific opportunities by comparing actual bilateral trade, the total import demand of partner countries and the overall export supply capacity of the home country.

• **Information on tariffs and non-tariff barriers**: View information on a country’s instruments of trade control (ad-valorem and specific tariffs, MFN tariffs, tariff quotas, anti-dumping duties, prohibitions and norms).175


175 [http://legacy.intracen.org/marketanalysis/uci/trademap.aspx](http://legacy.intracen.org/marketanalysis/uci/trademap.aspx)
TradeMap is accessible on subscription and can be customised for trade-related institutions through a password-protected Website, which allows the dissemination of access to third-party users. The TradeMap information portal (www.trademap.org) and the TradeMap database have been developed and owned by the ITC. Utilising TradeMap information portal and database are subject to certain Terms and Conditions. TradeMap is based on COMTRADE ©, the world’s largest trade database maintained by the United Nations Statistics Division, and on market access data from UNCTAD, WTO and national sources. The United Nations Statistics Division holds the Copyright to COMTRADE.

As of 15 October 2007, TradeMap has been updated with the 2006 data based on trade information, reported by 99 countries (TradeMap, 2008). TradeMap free trial is available for the potential/interested users to acquire on initial impression regarding what TradeMap has to offer. Free trade data is also available in: http://beta.trademap.net.

More Analytical tools

Market Access Map
This web portal contains information on market access measures, trade agreements and rules of origin. Web: http://www.macmap.org

Investment Map
This is an online portal combining statistics on FDI, international trade, market access and information on foreign affiliates. Web: http://www.investmentmap.org

Country Map
It offers an overview of the ITC’s technical cooperation activities both at the country and regional levels. It also provides links to national trade related institutions and country-specific business information. In addition, it presents trade and market profiles, Country Map, based on trade statistics which benchmark national trade performance and provide indicators on supply of exports and demand for imports. Web: http://www.intracen.org/countries/

Product Map
The Product Map Web site consists of 72 Market Analysis Portals, accessible from the ITCs Web site (www.intracen.org/pmaps) or directly via www.p-maps.org, covering over 5,000 products classified within 72 product clusters, ranging from automotive components to wood products and fruit juice. Each portal offers:

- Extensive international trade statistics for over 180 countries and territories.
- Powerful market analysis tools for both quantitative and qualitative insights into the global market trends.
- Unique facilities to identify international trade opportunities in any product category.
- Networking tools for subscribers with a choice of facilities in order to create a presence on the Web.

176 http://www.intracen.org/itc/market-info-tools/foreign-direct-investment/
177 Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 001559 6
• Links to potential business contacts, to published market research and to numerous sources of market intelligence. All Product Map data are updated regularly while international trade statistics are updated annually.\textsuperscript{178} Web: http://www.p-maps.org

UN Commodity Trade Statistics Database (UN Comtrade)

The Statistics Division is committed to words the advancement of the global statistical system. It compiles and disseminates global statistical information, develop standards and norms for statistical activities, and support countries’ efforts in order to strengthen their national statistical systems. Web: http://unstats.un.org/unsd/comtrade/

Coverage of the Database

The UN Comtrade contains detailed import and export statistics reported by statistical authorities of proximally 200 countries or areas. It also possesses annual trade data from 1962 to the most recent year. UN Comtrade is considered the most comprehensive trade database available with more than 1 billion trade records.

Limitations of the Database

UN Comtrade is accessible to the general public. However, it should be used with sound knowledge of its limitations:

• The values of the detailed commodity data do not necessarily sum up to the total trade value for a given country dataset. Due to confidentiality, countries may not report some of their detailed trade data. This data will - however – be included at the higher commodity level and in the total trade value. For instance, trade data not reported for a specific 6-digit HS code will be included in the total trade and may be included in the 2-digit HS chapter. Similar situations could occur for other commodity classifications.

• Countries (or areas) do not necessarily report their trade statistics aerially. This means that aggregations of data into groups of countries may involve the latter with no reported data for a specific year. The UN Comtrade does not contain estimates for missing data. Whereby, trade of a country group could be understated due to unavailability of some country data.\textsuperscript{179}

• Data are made available in several commodity classifications, but not all countries necessarily report in the most recent format. Furthermore the UN Comtrade does not contain estimates for data of countries which do not report in the most recent classification.

• When data are converted from a more recent to an older classification, it may occur that some of the converted commodity codes contain more (or less) products than what is implied by the official commodity heading. No adjustments are made for these cases.

• Imports reported by one country do not coincide with exports reported by its trading partner. These differences are due to various factors including valuation (imports CIF, exports FOB), differences in inclusions/exclusions of particular commodities, timing etc. It is noteworthy to put here that recommendations for international merchandise trade statistics can be found in the 'International Merchandise Trade Statistics: Compilers Manual'. Additional methodological information can also be found on the same web page (UN Comtrade 2008).

\textsuperscript{178} http://krishikosh.egranth.ac.in/bitstream/1/2056477/1/TNV-625.pdf
\textsuperscript{179} Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 00159 6
Other Data Sources

Office of Textiles and Apparel (OTEXA)
OTEXA provides trade data regarding US import and export of textiles and apparels.

The Major Shippers' Report
This report provides General Import statistics from the Census Bureau, by date of import for a variety of recent time periods on countries that exceed certain thresholds. The statistics are also summarised in national categories. The status of any control on these imports is also provided. However, this data does not include plastic apparel and it looks up the category for an HTS or downloads the entire correlations a spreadsheet. The following information is provided in the report:

- Headnotes to the Major Shippers' Report
- U.S. Imports by Category
- U.S. Imports by Country
- U.S. Imports by Part Category
- U.S. Imports by Merged Category
- Interactive Correlation

Additional Import Data Reports (TQ Data)
These interactive reports show the U.S. Textile and Apparel Imports from all suppliers by MFA Category and Harmonized Tariff Schedule (HTS) line item.  
- Textile and Apparel Import Data in units
- Textile and Apparel Import Data in dollars

Current and Historical Data (back to 1989)
The U.S. textile and apparel imports data are available by MFA Category and Harmonized Tariff Schedule (HTS) line item. Data is also available as per group products or countries (annual only) and they can be viewed either in a table or downloaded as an Excel spreadsheet for generating both annual and monthly reports.

The Textile Correlation
There is a correlation between the Textile Import Category System and the Harmonized Tariff Schedule (HTS).  

The Export Market Report
U.S. Exports data of Textile and Apparel Products are available in dollar:
- By Group
- By Country
- U.S. Exports to the Middle East
- Fastest Growing Markets
- Historical data: 1989-2006
Expanded Export Data
U.S. Exports of Textile and Apparel Products by Schedule B line item in first unit of quantity and also in dollars. The data can be viewed either in a table or downloaded as an Excel spreadsheet.

The Textile and Apparel Trade Balance Report
In March 2007, OTEXA expanded its product coverage for the Trade Balance Report to correspond with the product coverage of textile provisions under Free Trade Agreements. This coverage is different from the Major Shippers’ Report which covers imports of textile and apparel in products that were subject to possible quota restrictions by the United States, under the MFA (Multi-fibre Arrangement). OTEXA plans to use this expanded product coverage in additional future reports.
Web address: http://otexa.ita.doc.gov/msrpoint.htm

EUROPA (online database and information on EU Trade)
EUROPA is the portal site of the European Union (http://europa.eu) and it provides up-to-date coverage of the European Union affairs and essential information on countries' integration in the European Community. Users can also consult the legislations currently in force or under discussion, access the websites of each of the EU institutions and inquire about the policies administered by the European Union under the powers delegated to it.
Web: http://europa.eu/index_en.htm
External Trade Database on EU is available in:
http://epp.eurostat.ec.europa.eu/newxtweb/

Locally Available Data
Bangladesh Bank
In Bangladesh Bank Website, different types of annual, quarterly and monthly reports are available. These are:
• Weekly: Statement of Affairs
• Fortnightly: Statement of Trends of Major Economic Indicators
• Monthly: Economic Trends, Major Economic Indicators, Monthly Update, Bank Parikrama
• Quarterly: Bangladesh Bank Quarterly
• Half Yearly: Financial Sector Review
• Annually: Annual Report, Balance of Payments, NGO-MFIs in Bangladesh, Import Payments, Export Receipts
Web: http://www.bangladesh-bank.org/
Foreign Trade Statistics of Bangladesh

Foreign Trade Statistics of Bangladesh is published by the Bangladesh Bureau of Statistics (BBS), Statistics Division, Ministry of Planning, part of the Government of People’s Republic of Bangladesh in Dhaka.
Independent Review of Bangladesh’s Development (IRBD) is an annual home grown publication by the Centre for Policy Dialogue (CPD) and University Press Limited (UPL). It contains research on Bangladesh’s development issues both from the current and strategic perspectives. It is divided into two parts. Part A essentially focuses on the review of macroeconomic management in Bangladesh for the last fiscal year, while part B presents a discourse on the specific issues of importance regarding Bangladesh’s development.

Food and Agricultural Organisation (FAO)

FAOSTAT is an on-line and multilingual database currently containing over 3 million time-series records, covering international statistics in agriculture, fisheries and other areas:

- Trade
- Producer Prices
- Forestry Trade Flow
- Forest Products
- Codex Alimentarius Food Quality Control
- Fertiliser and Pesticides
- Agricultural Machinery
- Food Aid Shipments
- Exports by Destination
Web: http://faostat.fao.org/

Other important online Sources of Information

- World Bank Group
- International Monetary Fund (IMF)
- United Nations Economic Commission for Africa (UNECA)
- Organisation for Economic Co-operation and Development (OECD)
- International Trade Centre (ITC)
- International Food Policy and Research Institute (IFPRI)
- Commonwealth Secretariat
- Common Fund for Commodities (CFC)

Annual Reports

United Nations Conference on Trade and Development (UNCTAD) Reports are available in web: http://www.unctad.org

Trade and Development Report
The Trade and Development Report (TDR), launched in 1981, is issued every year for the annual session of the Trade and Development Board. The Report analyses current economic trends and major policy issues of international concern and makes suggestions for addressing these issues within various levels. ¹⁸³

Current Issue:
TDR 2007 - Regional Cooperation for Development

Trade and Environment Review
The objective of the Trade and Environment Review is to enhance understanding of and promote dialogue on the development dimension of key trade and environment issues. Each edition of the Review comprises one or more lead articles on selected topics, commentaries on those articles by a range of experts, and an overview of UNCTAD technical cooperation activities in the area of trade, environment and development. ¹⁸⁴

Current Issue: Trade and Environment Review, 2006

World Investment Report (WIR) ¹⁸⁵
The World Investment Report (WIR) focuses on trends in foreign direct investment (FDI) at global, regional and country levels. The report contains:

- Analysis of the trends in FDI during the preceding year, with special emphasis on implications for economic development.
- Ranking of the largest transnational corporations in the world.
- In-depth analysis of a selected topic related to FDI.
- Policy analysis and recommendations.
- Statistical annex with data on FDI flows and stocks for 196 economies. ¹⁸⁶

Current Issue:
World Investment Report 2007: Transnational Corporations, Extractive Industries and Development

Least Developed Countries Report
UNCTAD's Least Developed Countries Report provides a comprehensive source of information on socio-economic analysis and data on the world’s most impoverished countries. The report is intended for a broad readership of governments, policymakers,

¹⁸³ Training Manual on WTO and Bangladesh Trade Policy (2008); ISBN 984 300 00159 6
¹⁸⁴ http://unctad.org
¹⁸⁵ http://unctad.org/SearchCenter/Pages/Results.aspx?k=investment%20report&r=unctadcontenttype%3D%22Page%22
researchers and all those involved with LDCs' development policies. Each Report contains a statistical annex, which provides the basic data with respect to the LDCs.

**Current Issue:**
2007 - Knowledge, Technological Learning and Innovation for Development

**UNDP Report**
Human Development Reports (available online)
The Human Development Report is the product of a collective effort. Members of the National Human Development Report unit (NHDR) provide detailed comments and advice throughout the research process. They also link the Report to a global research network in developing countries.

**Current Issue:**

In WTO web site information is available regarding the WTO, WTO news, trade topics, resources, documents and community/forums.

**The WTO in Brief**
The World Trade Organisation (WTO) is the only international organisation dealing with the global discipline of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. The WTO website provides information on the following topics:
- History
- Organisation
- Agreements
- Developing countries

And the website further provides information on:
- **10 benefits**: The WTO and the trading system offers a range of benefits; some are well-known, others not so obvious.
- **10 misunderstandings**: Is it a dictatorial tool of the rich and powerful? Does it destroy employment opportunities? Does it ignore health, environment and development concerns? Criticisms of the WTO are often based on fundamental misunderstandings of the way the WTO works.
- **Understanding the WTO**: An in-depth introduction to the WTO and its agreements.

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Available Data in WTO Website

International Trade and Tariff Data
New, improved and updated trade statistics are available from 12 November 2007.

Statistics Database
All tables from the World Tariff Profiles 2006 publication are now included in the Statistics Database.

International Trade Statistics 2007
The 2007 report marks a significant change in the design and contents and provides a more user-friendly presentation of the statistical tables. It provides comprehensive, comparable and up-to-date statistics on trade in merchandise and commercial services for an assessment of world trade flows by country, region and main product groups or services by category. The coverage of statistics on international trade in services is expanded to respond to increasing demands. Major trade developments are summarised in the highlights of each chapter in the report. Detailed trade statistics and times-series are provided in the Appendix.


Comprehensive Tariff Data
Available here: https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm

Online Documents: Search in WTO Website
Much of the detail of the organisation's work is recorded only in the official documents of the councils, committees, working groups etc. These are made available separately through the 'Documents Online' database, which has its own search facility.

Available Options
This Database provides access to the official documents of the WTO including the legal text of the WTO agreements.
Documents can be browsed as:
• Recently Distributed
• Frequently Consulted
• Relating to a Particular Subject Area
Search for Documents
There are two types of search:
• Simple Search
• Advanced Search

188 http://globaledge.msu.edu/global-resources/resource/241
189 https://www.wto.org/english/res_e/statis_e/its2007_e/its07_toc_e.htm
190 https://www.wto.org/english/res_e/res_e.htm
Other Related Links are:
• Legal Text
• Trade Topics
• Dispute Settlement
• Schedules of Concessions
Web: http://docsonline.wto.org

International Centre for Trade and Sustainable Development (ICTSD)

The International Centre for Trade and Sustainable Development (ICTSD) was established in Geneva in September 1996 to contribute to a better understanding of development and environmental concerns, in the context of international trade.

ICTSD's Mission
By empowering stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity building, it advances the goal of sustainable development.¹⁹¹

ICTSD's WTO Ministerial Section
ICTSD has been providing its audience with tools to gain a better understanding of the issues that emerge at the crossroads between trade and sustainable development during the lead-up, duration and aftermath of the Conferences. Here one can find information related to past, current and/or upcoming WTO Ministerial Conference proceedings (ICTSD, 2008). Website: www.ictsd.org¹⁹²

Third World Network (TWN)
The Third World Network is an independent non-profit international network of organisations and individuals involved in issues related to development in the Third World and the North-South regions.¹⁹³

Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines on relevant themes and issues; to organise and participate in the seminars; and, to provide a platform representing the South’s interests and perspectives at international fora such as the UN conferences. The TWN’s recent and current activities include: publication of the daily SUNS (South-North Development Monitor) bulletin from Geneva, Switzerland; the fortnightly Third World Economics and the monthly Third World Resurgence; the publication of Third World Network Features; the publication of books on environment and economic issues; organising various seminars and workshops and participation in international processes such as UNCED and the World Bank - NGO Committee.

¹⁹³ http://www.world-governance.org/site70.html?lang=en
The TWN's international secretariat is based in Penang, Malaysia. It has offices in Delhi, India; Montevideo, Uruguay (for South America); Geneva; and Accra, Ghana. The TWN has affiliated organisations in several Third World countries, including India, the Philippines, Thailand, Brazil, Bangladesh, Malaysia, Peru, Ethiopia, Uruguay, Mexico, Ghana, South Africa and Senegal. It also cooperates with several organisations in the North (TWN, 2008). Information available on the TWN website are:

- Recent News and Updates
- TWN Info Service on WTO and Trade Issues
- TWN Info Service on Finance and Development
- TWN Info Service on Health Issues
- TWN Info Service on Climate Change
- TWN Info Service on Intellectual Property Issues
- TWN Info Service on Sustainable Agriculture
- TWN Info Service on Free Trade Agreement
- UN and UN Reform Process

**Centre for Trade and Development (CENTAD)**

Centre for Trade and Development CENTAD is an independent, non-profit organisation, registered under the Indian Societies Act that carries out policy research and advocacy on issues reflecting trade and development, with a special focus on South Asia. CENTAD aims to strengthen the ability of governments and communities to make trade and globalisation work for economic development.

**Questions for Discussion**

1. What are the sources of Trade Data?
2. What are the sources of WTO negotiation?
3. Describe about some sources of WTO periodical news.
4. What other sources can be used as reference materials?
Standards and non-tariff barriers

Learning Objectives

• To get knowledge about the standards of trade.
• To get knowledge about the non-tariff barriers.

Successive rounds of multilateral trade negotiations at the World Trade Organisation (WTO), and the negotiation of numerous bilateral and regional trade arrangements have led to a substantial reduction in global tariffs. As tariffs have decreased, there has been increased focus on ensuring non-tariff measures or policies, including technical regulations and standards, do not restrict or distort international trade.

Governments use technical regulations and standards to achieve a range of policy goals, such as ensuring the health and safety of their citizens, protection of the environment, and consumer protection. While the vast majority of technical regulations and standards are designed to achieve non-trade related objectives, they can also have the unintended effect of restricting or distorting trade. Furthermore, as the use of tariffs as a trade-policy tool has diminished, there can, at times, be an increased incentive for governments to use regulations and standards as an alternative, and less transparent means of restricting the entry of foreign products.

Through its participation in the WTO, the North American Free Trade Agreement (NAFTA) and ongoing bilateral free trade negotiations, Canada is promoting the adoption of and compliance with, rules and procedures related to technical regulations and standards.

The WTO Agreement on Technical Barriers to Trade (TBT Agreement) is aimed at ensuring that technical regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) imposes disciplines on measures aimed at ensuring food safety, and animal and plant health. Important principles of these agreements include transparency, the use of international standards, proportionality (measures should not be more trade-restrictive than necessary), and equivalency (countries should accept each other’s standards, where they offer an equivalent level of protection). Similar rules are found in the NAFTA.

In recent decades, tariff and quota barriers to trade in many agricultural, food, and manufactured products have declined, enabling a range of developing countries to accelerate their economic growth through expanded exports. Yet, international trade is also governed by an increasing range and variety of product and process standards and technical regulations. Standards and technical regulations, whether for products, labour, or for the environment, are applied to mitigate against health and environmental risks, to prevent deceptive practices, and to reduce transaction costs in business by providing common reference points for notions of ‘quality’, ‘safety’, ‘authenticity’, ‘good practice’, and ‘sustainability’. In practice, however, standards and technical regulations may be used strategically to enhance the competitive position of countries or individual firms.
Among policymakers and private entities in developing countries, there is growing concern about the proliferation and strengthening of standards and technical regulations and how this is impacting upon their competitiveness. This concern is multi-faceted, involving (1) the suspicion that important standards and technical regulations can and will be used as a trade protection measure and be applied in a discriminatory manner; (2) the contention that developing countries lack the administrative, technical and other capacities to comply with the emerging requirements, or that the costs incurred to attain compliance will undermine their comparative advantage; and (3) the proposition that such institutional weaknesses and rising compliance costs will serve to marginalise weaker economic players, including small countries, small enterprises, and small-scale farmers.

However, rather than constituting barriers to trade, some of the emerging public and private standards may serve as catalysts, further reducing the transaction costs in long-distance trade, providing both a stimulus and guide for investments in firm and supply chain modernization, and providing increased incentives for the adoption of better and safety farming and manufacturing practices. Under such a scenario, the process of standards compliance could contribute to new forms of competitive advantage and contribute to more sustainable and profitable trade over the longer term.
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http://www.cid.harvard.edu/cidtrade/issues/regionalism.html
http://www.cid.harvard.edu/cidtrade/issues/spstbt.html
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http://www.intracen.org/itc/market-info-tools/foreign-direct-investment/
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