
India's International Trade Policy

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Introduction

Traditionally, the main objective of the Indian International Trade Policy has been to protect its market from foreign competition. Up until the 1980s, India was not interested in exporting its goods and services abroad and not ready to open its economy to foreign investments. The aim of its economic policy was to ensure the country's independent development (the *swadeshi* principle). At the end of the 1980s, India was one of the most closed economies in the world. Its bilateral trade policy, heavily skewed toward the former communist countries, was full of grand statements about technology transfer, mutually advantageous relations and partnership for development – to very little purpose. The idea of a Free Trade Zone was abhorrent. Therefore, India was left out of the Asian economic boom. With the Soviet Union's collapse and the first Gulf War, as well as the implementation of the International Monetary Fund's 1991 Structural Adjustment Program, India launched a new policy of privatization, deregulation and globalization of its economy, and a multifaceted trade policy.

India was a founding member of the General Agreement on Tariffs and Trade (GATT) in 1947 and of the World Trade Organization (WTO) in 1995, and so has actively participated in the different rounds of negotiations. In many ways, it is still influenced by its policy of non-alignment, since most favoured nation (MFN)¹ and the non discrimination-based GATT principles accord with India's desire to be treated as an equal by more powerful trading partners, while defending the situation of developing countries.² In the multilateral field, and during successive rounds of negotiations in Geneva (where India

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¹ MFN is a status accorded by one nation to another in international trade. It does not confer particular advantages on the receiving nation, but means that the receiving nation will be granted all trade advantages, such as low tariffs, that any third nation also receives. In effect, having MFN status means that one's nation will not be treated worse than anyone else's nation.

² Chawla, R. L. (2003), "India and WTO", *Indian Quarterly Journal of International Affairs*, vol. 59, n° 3/4, p. 257.

was an active player, as one of the few Third World-level founding members of GATT) it was mainly interested in promoting – with some success – the idea of a Special and Differential Treatment (SDT), allowing developing countries to exempt themselves from the central commitments made by developed countries. Furthermore, India was not interested in regional policy and did nothing to join any of the various regional groupings that were starting to emerge.

Nevertheless, it eventually became necessary for India to develop a regional trade policy, since, up until 2000 India had remained isolated from important regional strategic deals, not having joined either the Asia-Pacific Economic Community (APEC) or the Asia-Europe Meeting (ASEM, an informal process of dialog and cooperation) until recently. Its first experience in that domain, as part of the South Asia Association for Regional Cooperation (SAARC), was rather disappointing from an economic and political point of view. Today, Indian Regional Trade Agreements (RTA) are a multilateral rather than a regional strategy, strictly speaking. Indeed, since the Uruguay Round, many of the developing countries have also adopted an export-led growth strategy, which makes competition tougher. In addition, most Indian trade partners are members of multiple economic and trade blocs. After Cancun WTO Ministerial Meeting in 2003, the need to build sustainable alliances with large, industrialized emerging economies was felt. India has found like-minded and economically convergent partners in Brazil and South Africa. As a coalition, these three are called IBSA.³ China could also be a strategic partner for India in the Doha round of talks, while it remains interested in balancing the power of the EU and the US.⁴ India must also show that it is an attractive destination for goods, services, technology, and capital investments.⁵ Its relations with Association of South-East Asian Nations (ASEAN), for instance, are particularly important from this point of view, because they provide a powerful model and backing for further economic liberalization and structural reform.⁶ Finally, India needs to make its regional relationships more formal and comprehensive, as they are not traditionally part of New Delhi's foreign policy. One of the newer concerns of Indian trade policy is to secure its energy supply (fuel remains a major import item, accounting for 33.7% of total imports). A Framework Agreement was signed bet-

³ The first Ministerial Meeting of IBSA was held in March 2004 in New Delhi.

⁴ Chakraborty, D. and Sengupta, D. (2006), *IBSAC (India, Brazil, South Africa, China): A Potential Developing Country Coalition in WTO Negotiations*, New Delhi, CHS, "CSH Occasional Paper", n° 18, pp. 50 and 70.

⁵ Narasimhan, S. (2005), "India's Look East Policy: Past, Present and Future", in Reddy, K. R. *India and ASEAN: Foreign Policy Dimensions for the 21st Century*, New Delhi, New Century Publications, p. 32.

⁶ Saint-Mézard, I. (2003), "The Look East Policy: An Economic Perspective" in Grare, F. & Mattoo, A. *Beyond the Rhetoric: the Economics of India's Look East Policy*, New Delhi, Manohar, pp. 25-27.

ween the Gulf Cooperative Countries (GCC)⁷ and India in August 2004 and a Free Trade Agreement (FTA) is in preparation. Considering the value India is placing on energy supply, the latter seems to be highly strategic. However, some tensions have arisen around the inclusion or exclusion of crude oil in the FTA.⁸ Besides agreements of cooperation signed with the United States and France in the civil nuclear sector, a preferential oil and gas supply from Russia to India is envisaged in the India-Russia Joint Study Group's report⁹

The most recent new trend in Indian economic and trade policy is a response to the 'spaghetti bowl effect', which term refers to the development of overlapping bilateral and regional trade agreements. This effect can be perceived as a failure of regional integration, which is certainly the case in South Asia, but also as result of experiencing a rapid increase in trade relations. Recognizing this effect also foregrounds the fact that these days Indian trade policy is multifaceted, since it is composed of multilateral, regional and bilateral relations. Even its "regional" policy can be divided into two major trends. One is for increased dealings with international blocs on other continents, in two different directions: towards developed countries, in particular the United States (US) and the European Union (EU), India's main trading partners; and towards southern blocs such as Mercado Comun del Sur (MERCOSUR) and Southern African Customs Union (SACU).¹⁰ The second and certainly most important trend today – because of the growing importance of Asia in the world economy and trade – is towards more commerce with East Asia; although India is not thus far a competitor in this region, it will certainly soon become one. In the final assessment, whether it has been multilateral or bilateral, India's strategy has essentially remained the same: pursuing trade and economic liberalization while defending its interests as a developing but already powerful country.

⁷ This refers to the States party to the Gulf Cooperation Council's unified economic agreement, created in 1981 between the Persian Gulf States of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE.

⁸ "GCC-India FTA to be a reality soon", *Bahrain Tribune*, 17 July 2007.

⁹ *Report of the India-Russia Joint Study Group* (2007), p. 27 available on <commerce.nic.in/publications/Report_India_Russia_Joint_Study_Group_10_9_2007.pdf?id=15>.

¹⁰ MERCOSUR, (literally the common market of the South) came into being on 26 March 1991 (the Treaty of Asunción) and includes Argentina, Paraguay, Uruguay, Venezuela, and Brazil. It is a common market with an external tariff. As the world's oldest customs union, the SACU dates back to 1910. It was officialized in its current form by the 1969 SACU Agreement, signed by the sovereign States of Botswana, Lesotho, and Swaziland (BLS), and South Africa. With the independence of Namibia in 1990 and the end of apartheid in South Africa in 1994, member States signed the 2002 SACU Agreement, which provides for a joint decision-making process and a new revenue-sharing formula, and deals with the question of external (outside SACU) trade.

Multilateral trade: a defensive policy

As the Indian Government declared, “India has taken important policy initiatives since July 1991 to emerge as a significant player in an increasingly inter-dependent world economy. The policy reforms provided a free and conducive environment for trade and include various measures which helped to achieve the high export growth rates in some recent years”.¹¹ Thus, trade has now become a major plank of Indian economic policy. The Indian position in the multilateral trade system is to profit from and claim different trade preferences allowed to developing countries. As such, it has not fundamentally changed its stance in international negotiations, nor particularly in the negotiation of the Doha Development Agenda. Its objectives are, today as previously, to retain full control of its policy; to refuse, as far as possible, to make enforceable commitments; and, in the Doha Development Agenda, to prevent new commitments limiting the freedom of developing countries. However, while engaging only reluctantly in new trade, India has also become an efficient user of WTO mechanisms such as the Dispute Settlement Mechanism.

India's reforms as it adapts to global trade competition

India's liberalizing policy, as well as significant structural and trade reforms have clearly paid off, since Indian economic performances are distinctly impressive these days. Since the liberalization process began in 1991, India's real Gross Domestic Product (GDP) has grown at an average annual rate of approximately 6% and, despite the recent increase in international petroleum prices, GDP growth for 2006/07 was 9%. Services continue to be the largest contributor to GDP (over 54% in 2005/06), while the share of manufacturing has remained relatively stable, at around 16% of GDP, and agriculture's share has declined to around 18.3% of GDP in 2006. These good economic results are due to important unilateral reforms aimed at opening up Indian economy and trade.

¹¹ WTO, *Trade Policy Review Body, Trade Policy Review: India, Report by the Government*, WT/TPR/G/33, 30 March 1998, paragraph I (detailed data in Annex 1).

Trading performance, especially in exports, depends on an economy's openness to competition on the world market. With this in mind, India has launched important structural reforms to liberalize its market and attract Foreign Direct Investments (FDI), which are the main drivers of economic growth, especially in developing countries. An important feature of liberalized markets is the adoption of a competition policy, hence in this case the 2002 Competition Act. This legislation is comparable to modern economics-based legislation and contains provisions relating to anti-competitive agreements, mergers, and abuse of dominant positions. Nevertheless, the law's enforcement has been delayed.¹² The FDI regime has also been liberalized although it remains restricted in some sectors, where permission is still required. Foreign investment is still not permitted at all in a few sensitive sectors. Until 2003/2004, India's record in attracting investment was disappointing, with FDI accounting for only 1% of GDP in 2002.¹³ Since that time, however, investments have taken off, rising from a value of US\$ 6.2 billion in 2001-2001 to 23 billion in 2006-2007.¹⁴ Inward FDI has been particularly important in Information Technology (IT), not only in IT-enabled services and business process outsourcing, but also in the electronics and electrical equipment sector. Recently, FDI liberalization has been made easier by the abolition of the industrial licensing regime. Nevertheless, Indian industrial policy keeps certain strategic industries in the public sector, such as atomic energy, railways, and substances listed by the Department of Atomic Energy; it has also maintained licensing obligations in six strategic industries, among them public health, safety, and environmental considerations, and continues to protect small-scale industries (326 in 2007) against foreign and local investors.¹⁵

Lack of infrastructure, particularly in transport and electricity, is one of the main obstacles to trade and FDI development. One method of improving this situation has been to encourage private and foreign investments through public-private partnerships and relaxation of FDI restrictions. The electricity industry has been reformed, but structural reforms are still needed to improve efficiency, reduce loss, and to provide electricity to the 43% of the population which cannot yet access it. Even if private and foreign investment are now fully permitted, this particular industry remains relatively unattractive to private infrastructure investors because the cost of producing and transmitting electricity remains much higher than the sale price.¹⁶ In addition, while there is a clear policy of communications improvement, scale, quality, road maintenance and upkeep remain critical, especially for highways, which constitute 2% of the network but carry

¹² WT/TPRS/182, pp. 85 & 94-95.

¹³ WTO, *Trade Policy Review: India*, WT/TPR/S/100, 2002, § 24.

¹⁴ Ministry of External Affairs, *India in Business*, available on <www.indiainbusiness.nic.in/investment/investment.htm>.

¹⁵ WTO, *Trade Policy Review: India*, WT/TPR/S/182, p. 34.

¹⁶ WTO, *Trade Policy Review: India*, WT/TPR/S/182, pp. 116-118.

40% of the traffic. In addition, as for electricity, private and foreign investment are now allowed in this sector. Apart from the roads, other major communications networks in India include the railways and ports (around 95% of India's trade in goods is sea-borne). In these fields too, the Indian government has introduced policies favoring deregulation, encouragement of public-private partnerships and relaxation of foreign investment regulations in some sub-sectors, but improvement is very slow. As far as air transport is concerned, India adheres to the "open skies" principle, having signed numerous bilateral agreements on transport. The critical challenge in this sector is once again infrastructure. Modernization, in particular through joint ventures and private participation, has been very slow and is, at the moment, very much behind schedule.¹⁷

Table 1: Towards a more open economy

	1990-91	2005-06
Peak Import Duties (manufactures)	200% plus	12.5%
Import Controls	Tight, detailed	Negligible
Trade (goods)/GDP Ratio (%)	14.6	32.7
Current Receipts/GDP (%)	8.0	24.5
Software Exports (\$ billion)	Nil	23.6
Worker Remittances (\$ billion)	2.1	24.6
Foreign Investment (\$ billion)	Negligible	20.2
Foreign Currency Reserves (\$billion, as on March 31)	2.2	145.1
Debt Service Ratio (%)	35.3	10.2

Source: RBI, *Annual Report, 2005/06*, except for first two rows: quoted by WTO, *Trade Policy Review – Report by India, 2007*, WT/TPR/G/182, p. 6.

The second major step that should be undertaken in order to liberalize and modernize the Indian economy is to make important reforms related to trade and WTO engagements. One relevant area here is reform of intellectual property rights, which is very important for technological progress, innovation, and competition in the global economy. India is part of most key international conventions on this topic and has progressively made its domestic legislation conform to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), while enjoying a longer period of implementation by virtue of being a developing country.¹⁸ The 1970 Indian Patents Act was amended three times, in 1999, 2002 and 2005, with this aim. Revisions are partly the consequence of the WTO case that set India in opposition to the European Community and the United States. The panel reproached India for not having established a mechanism that adequately preserved novelty and priority in respect of applications

¹⁷ WTO, *Trade Policy Review: India*, WT/TPR/S/182, pp. 142-144.

¹⁸ Chaisse, J. (2005), *Ensuring the Conformity of Domestic Law with WTO Law: India as a Case Study*, New Delhi, "CSH Occasional Paper", n°13, p. 67.

for product patents for pharmaceutical and agricultural chemical inventions. It appeared that the Indian system lacked legal security due to the current administrative practices.¹⁹ The 2005 amendment goes even further than TRIPS requirements and permits renewal of a patent for the same period of validity as for the original, in case of improvement to a patented product. Thus, for instance, an additional patent may be obtained by a pharmaceutical company when one of its already patented drugs is discovered to be of use in combating other illnesses and conditions.²⁰

Although reductions in customs duties are limited by the fact that most lower duties are not bound, India had to reconsider its whole tax system in order to compensate for the losses engendered by external tariff reductions. On the domestic side, a value-added tax was implemented by 30 federated States at the end of 2006. The overall average applied MFN tariffs fell from over 32% in 2001/02 to almost 16% in 2006/07, except for that on agricultural products which retained an average duty of 40.8%. In fact, compared to global applied tariffs and taking into account *ad valorem* equivalents of *non-ad valorem*, they rise to 17.5%, which is relatively high. In addition, these figures reflect applied tariffs but India keeps a margin of appreciation. In fact, bound tariffs make up significant numbers and are high in value, currently at 48.6%, especially for agricultural products. Indeed, maintaining a large number of tariff lines non-bound permits India to retain both sovereignty and flexibility, for instance in the case of an abrupt rise in imports which may threaten its domestic economy. The inconvenience of such a system however lies in its creating uncertainty for importers by allowing scope for sudden increases in tariffs. For instance, between 2002 and 2007 Indian authorities raised tariffs substantially on 27 agricultural products. Nevertheless, the Government has continued to reduce applied MFN tariffs on non-agricultural products to meet its goal of reaching ASEAN tariff levels on these products by 2009. In addition, India continues to have a policy of tightly regulating trade: it monitors imports of around 300 sensitive products and uses State trading companies in agriculture, officially to ensure the country's food security. India does not hesitate to use anti-dumping and compensation measures to protect its economy, although it has recently been less active in this field. In addition, India is making efforts to harmonize national standards with international norms, for instance by consolidating its large number of laws dealing with sanitary and phyto-sanitary measures. Finally, one of the weaknesses of Indian trade policy is its export regime whose legislation remains over-complex.

¹⁹ Report of the Panel, India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS79/R, 24 August 1998, § 7.35.

²⁰ WTO Secretariat, *WTO Trade Policy Review*, WT/TPR/S/182, 18 April 2007, p. 85 and J. Chaisse (2005), *op. cit.* p. 68.

Currently the major trends in Indian trade include, on the one hand, diversification both of products and of their geographical origins and destinations, but also, on the other hand, lingering trade deficit, with imports growing more quickly than exports. The services are India's fastest-growing exports, especially software-related services and transportation, travel and other services (such as telecommunications, financial, construction, legal, and accounting). Merchandise trade as a percentage of GDP increased to approximately 33% in 2005/06. India is becoming a regional hub for automobiles, while its share of textiles and clothing exports has fallen.²¹

Even if India has liberalized and opened up its economy and trade, it is still a relatively closed economy in certain sectors. Rural poverty and agriculture remain serious weaknesses in the economy, and food security and price stability remain priorities for the Indian government. Indeed, agriculture provided 60% of employment even while contributing to only 18% of GDP in 2005/2006. Public interventions in this market are numerous but costly, comprising price support, input subsidies, price control, and restrictions on the movement of goods to ensure stable supply and prices. Tariffs are the main instrument of trade policy. The average MFN tariff applied in agriculture is more than 40%, while the average bound tariff is 117.2%. In addition to high import tariffs, India uses import restrictions on 7.7% of tariff lines. On top of this, import tariffs are adjusted to ensure domestic supply on key products. Finally, even while prohibitions, licensing, and other restrictions on exports have been removed, some essential and sensitive items can be subjected to *ad hoc* restrictions as the need arises (as for rice at the moment), in order to maintain stability on domestic supplies and prices.²²

Manufacturing is an economic sector which has opened up in the last few years. This has been conducive to a significant, though still slight, growth in this sector, which shared 16% of the GDP in 2005/2006. With the reduction of tariffs to an average of 14.9% in 2006/2007, manufacturing's share in total merchandise imports rose to 48.4%, although peak tariffs are still applied in some sectors such as automobiles. The textile and clothing industry is the largest manufacturing industry in India in terms of employment and it remains India's largest export sector, although its share of total merchandise exports had fallen to 17.1% in 2005/2006. To increase its productivity and competitiveness in this sector, government-run textiles and clothing production is no longer limited to small-scale industries and no longer holds to former restrictions on foreign ownership. In addition, although tariffs on textile machinery and equipment have been reduced, generally speaking the industry continues to be protected by relatively high tariffs.²³ Beside this traditional industry, IT

²¹ WTO, *Trade Policy Review: India*, WT/TPRS/S/182, pp. 1-18 and 99.

²² *Idem*, pp. 103-107.

²³ *Idem*, pp. 119-122.

is one of the sector's fastest growing industries, especially IT, services and software. It is true that this sector is particularly open to trade, thanks to policies of deregulation, import barrier reductions, relaxation of foreign investment restrictions and encouragement of private sector participation.²⁴ Finally, the service sector is the most competitive sector in the Indian economy. In 2005/2006, it counted for 54.1% of the GDP, and both import and export of services have increased in recent years, the overall sector being currently in trade surplus (US \$ 23.9 billion in 2005/2006).²⁵

India's status in the Multilateral Trade System

New Delhi makes use of the WTO Special and Differential Treatment in two ways: as a beneficiary, because of its status as a developing country; and as a provider, especially for Least Developed Countries (LDCs). Indeed, the WTO Agreements contain special provisions which allow for the possibility of more developed countries treating developing countries more favorably than other WTO members. These provisions include longer time periods for implementing agreements and commitments, measures to increase trading opportunities for developing countries, support to help developing countries build the infrastructure for WTO work, dispute resolution, and implementation of technical standards,²⁶ in addition to provisions relating specifically to LDC members. Secondly, India receives preferential market access in the EU, US, Russia and Japan, among others, under the General System of Preferences (GSP). The latter was first developed at the second United Nations Conference on Trade and Development (UNCTAD) session in New Delhi, in 1968. It is a non-contractual instrument by which developed countries unilaterally and on the basis of non-reciprocity and non-discrimination extend tariff concessions to developing countries. It is also at the origin of the "Enabling Clause", which emerged as a result of the Tokyo round of talks and provided for a legal basis for the GSP preferences in 1979. The "Enabling Clause" system also provides a legal basis for the Global System of Trade Preferences (GSTP), of which India is also a member alongside other developing countries within the G77.²⁷ The principle of this agreement, in force in India since 1989, is the exchange of trade concessions on the Most Favoured Nation (MFN)

²⁴ WTO, *Trade Policy Review: India*, WT/TPRS/S/182, pp. 125-126.

²⁵ *Idem*, p. 126

²⁶ See, Annex II.1: "Trade-related technical assistance", in WTO, *Trade Policy Review: India*, WT/TPRS/S/182, p. 33.

²⁷ Algeria, Argentina, Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chile, Cuba, Democratic People's Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Iran, Iraq, Libya, Malaysia, MERCOSUR, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, Tanzania, Venezuela, Vietnam, Zimbabwe.

principle on tariffs, para-tariffs, non-tariff measures, direct trade measures including medium- and long-term contracts and sectoral agreements. The GSTP is to be based and applied on the principle of mutuality of advantages, although the LDC's particular needs shall also be taken into account and they may benefit from special measures and concessions on a non-reciprocal basis. Finally, the Global System of Trade Preferences shall not replace, but supplement and reinforce regional and inter-regional economic groupings of developing countries of the Group of 77, and shall take into account the concerns and commitments of such economic groupings. Even if Indian offers of tariff preferences are ultimately limited, this agreement is nevertheless interesting because it provides, more broadly, for the spirit of Indian trade agreements with developing and Least Developed Countries.

In addition to the Enabling Clause, other WTO provisions allow exceptions to the Most Favoured Nation principle, pillar of the world trade system, in order to create Regional Trade Agreements (RTAs), but on certain conditions only, founded on articles XXIV GATT and V of the General Agreement on Services (GATS). In the WTO sense, a RTA is based on the formation of a customs union or of a free trade area (FTA), or the adoption of an interim agreement (generally a Preferential Trade Agreement [PTA]) necessary for the formation of a customs union or of a free-trade area. Besides, "regional" must not be taken here in a geographical sense but designates a trade agreement between two parties at least, whatever their continent of origin. Legal requirements to create a RTA compatible with WTO law are comparatively reasonable, especially for developing countries.²⁸ In practice, the main objective of RTAs is to facilitate substantially trade among their members and not to raise barriers to trade for other parties.²⁹ Most RTAs concluded by India and reported to the WTO, such as the South Asia Preferential Trade Agreement (SAPTA) and the Asia-Pacific Trade Agreement (APTA), are based on the enabling clause, except for the agreement with Singapore. In fact, most of them refer to the "relevant provisions of the GATT," without further detail. New RTAs, especially with South-East Asia, refer to article XXIV GATT and V GATS but, in the meantime, allow SDTs for the less developed partners, in conformity with the enabling clause. Furthermore, a full Free Trade Agreement should normally be established within ten years, while so far most Indian RTAs are in fact PTAs, achieved particularly through the system of Early Harvest Schemes (EHS), permitting a more rapid reduction of tariffs on certain items only. Finally, under its growing

²⁸ Crawford, J-A. & Fiorentino, R.V. (2005), *The Changing Landscape of RTAs*, Geneva, WTO, "WTO Discussion Paper", n°8, p. 19.

²⁹ Article XXIV § 4 GATT in fine "They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories". See also WT/DS34/R, 31 May 1999, *Turkey – Restrictions on Imports of Textile and Clothing Products*, § 9.105 and WT/DS34/AB/R, 22 October 1999, § 57.

number of RTAs, preferential tariff rates offered by India are generally not substantial, with the exception of those to Sri Lanka and LDC members of SAFTA.³⁰

India's policy at the WTO

The Indian position in the Doha Agenda negotiations

The Doha Agenda for development has led to the hope that developing countries' interests could be taken into account in more effective and fairer ways. Within the WTO, one of the most important negotiating groups including developing countries is the G-20.³¹ Created in the final stage of the Cancun Ministerial Meeting, this group, first concerned with agriculture, now deals with issues such as non-agricultural market access (NAMA), services, and trade facilitation. The G-20 position on agricultural products is that developed countries should eliminate trade-distorting subsidies. In the meantime, they should considerably reduce their customs tariffs, while allowing developing countries to maintain appropriate customs tariffs for the protection of their domestic production. India particularly defends the idea that developing countries should be able to self-designate and protect Special Products based on the criteria of food security, livelihood security and rural development.³² G-20 is a somewhat hostile alliance, frequently opposing the EU and the USA, and one in which the support of China will be crucial for bargaining.³³ Nevertheless, there are a fair number of contradictions between its members. Some of them, Brazil for instance, are also part of the Cairns Group, which advocates overall reductions, particularly of higher tariffs (in accordance with the "Swiss formula"), especially in agriculture, reductions to which India is firmly opposed.³⁴ These positions are also challenged by the proposals taken by the G-33 on Special Products and on the special safeguard mechanism in agriculture for developing countries.³⁵

³⁰ See below.

³¹ G-20 includes 23 developing countries, such as India, but also some of its close Southern partners: Indonesia, the Philippines and Thailand, China, Pakistan, for Asia, but also Brazil and South Africa.

³² "Kamal Nath Apprises Chief Ministers Key Outcomes of Hong Kong Ministerial: Enough Negotiating Space for India", *India & WTO*, vol.8, n° 1-2, Jan/Feb 2006.

³³ Chakraborty, D. and Sengupta, D. (2006), *op. cit.*, p. 88.

³⁴ Ranjan, P. (2005), *How Long Can the G20 Hold Itself Together? A Power Analysis*, New Delhi, Centre for Trade and Development, CENTAD Working Paper", available on <www.centad.org>, pp. 1, 3, 6, 12. See also G-20 Ministerial Declaration, New Delhi, 19 March 2005, <commerce.nic.in>, visited 11 February, 2006.

³⁵ G-33 comprises 42 States, mainly developing countries (including not only India, Indonesia, Philippines, but also China and Sri Lanka), concerned with food security,

In addition, specifically with regard to NAMA, India heads up one of the most recently formed groups of developing countries, the NAMA-11. Their position concerns industrial tariffs that should be subjected to the principle of “less than full reciprocity”, which means that developing countries should have proportionately lower reduction commitments than developed States and the flexibilities to exclude a certain percentage of tariff lines from tariff cuts.³⁶ India is nevertheless in a mid-way position concerning the Non-Tariff Barriers, including anti-dumping measures, abuse of sanitary, phyto-sanitary and technical barriers, and restrictive Rules of Origin (RoO), because it also uses these measures to protect its industry. Finally, if we turn to services, India has taken the position that developing countries should have adequate policy space and necessary flexibility to pursue their developmental objectives and to exploit their comparative advantage. India is specifically bargaining for better market access where it has an advantage, that is in method 1 (cross border supply: services supplied from one country to another, e.g. international telephone calls) and in method 4 (presence of natural persons: individuals travelling from their own country to supply services in another country). Nevertheless, in the latter case, the problem is more a question of immigration and developed countries' labour policies than one of international trade policy.³⁷

The improvement of the WTO dispute settlement system has been part of Doha's reviewing process since 2001. Once more, India's position is the defence of developing nations in the system. Indeed, the current system provides for SDT in various clauses but their interpretation needs clarification to really protect developing countries. In addition, because of the burden of proof, it is more difficult for a developing country to sue a developed country than the inverse, which creates an unbalanced system. With regard to the implementation “during a reasonable period of time” of the Dispute Settlement Body (DSB)'s decisions, the balance between developed and developing States is also a problem. On the one hand, a poor country may have more difficulties in adopting the required measures because of lack of means. On the other hand, as the DSB does not have any powers to force the defaulter to implement the provision within a specific, short period, the winner of a given dispute may continue to suffer losses, which naturally causes a breach in the balance between the parties. Finally, the winning party may nevertheless suspend favourable treatment if the losing party does not comply. What is more, in practice the measure is ineffective for

livelihood security and rural development, Third World Network Info Service and Trade Issues, “Group of 33 Submits Proposals on Special Products and Special Safeguard Mechanism in Agriculture”, 14 June 2005, <www.twinside.org.sg>, visited 10 February 2006.

³⁶ WTO document TN/MA/W/79, 6 July 2006.

³⁷ Brümmer, J. “India's negotiation positions at the WTO”, Geneva, FES, “Briefing Papers”, November 2005, p. 10-11, available on <library.fes.de/pdf-files/bueros/genf/50205.pdf>.

developing or Least Developed Countries, since the suspension of market access generally has little economic effect on the developed losing party.³⁸

Despite all these criticisms of the WTO dispute settlement system, India is quite active in its support.

India before the World Trade Organization Dispute Settlement Mechanism

India occupies a unique position with regard to the WTO Dispute Settlement Mechanism (WTO DSM), as a developing country and as it is the second complainant, after Brazil. Even if we take into account growing “aggressive legalism”³⁹ in East Asia, India is the first Asian complainant, responsible for the introduction of 17 cases, that is to say 23% of cases brought by Asian States⁴⁰. The EU and US are nevertheless India's main opponents with, respectively, nine cases (plus two indirect cases, DS 19 against Poland and DS 34 against Turkey) nineteen cases as complainant, and five cases out of a total seventeen as respondent against the EU. Before the WTO DSM, India mainly defended its position under the WTO Agreement on Textiles and Clothing (which expired on January 1, 2005) and the GATT. It defended its major exports, that is to say textiles (seven cases), steel (two cases) and pharmaceutical products (two cases). As far as textiles are concerned, India was particularly successful before the DSB. It is also very aware of the US and EU's anti-dumping legislation, with a total of seven anti-dumping cases against them. As respondent, India has often been attacked because of its protectionist policy: six cases concern quantitative restrictions on imports of agricultural, textile, and industrial products, while six others concern different aspects of its import policy. In 1997, India was also challenged by the US and EU and condemned under the TRIPS Agreement for not conferring appropriate protection on pharmaceutical, chemical, and agricultural products. Generally speaking, we may observe that India has henceforth held to a domestic policy more compatible with WTO requirements, since challenges have become fewer, with only six cases (out of nineteen in total)

³⁸ Chaisse, J. & Chakraborty, D. “Dispute Resolution in the WTO: the Experience of India”, in Sengupta, D., Chakraborty, D. Banerjee, P. (2006), *Beyond the Transition Phase of the WTO: an Indian Perspective on the Emerging Issues*, New Delhi, Academic Foundation & CSH, pp. 526-531.

³⁹ The expression was invented by Pekkanen, S. M.: see Gao, H. S. “Aggressive Legalism: the East Asian Experience and Lessons for China”, in Gao, H. S. & Lewis, D. *China's Participation in the WTO*, available on <www.worldtradelaw.net/articles/gaolegalism.pdf>.

⁴⁰ Brazil: 23 cases as complainant. As for ASEAN States: Indonesia 3, Malaysia 1, the Philippines 5, Singapore 1 and Thailand 12. East Asia: China 2, Hong Kong 1, Taipei 1, Korea 13 and Japan 12. South Asia: Bangladesh 1, Pakistan 3 and Sri Lanka 1.

brought against the country since 2000.⁴¹ India has been involved in a large number of cases as third party (fifty one cases), where its interests are challenged, especially in cases concerning TRIPS, textile products, primary products, and dumping. Finally, "it could be concluded that it [India] is fast emerging as a quick learner in the WTO dispute resolution process".⁴²

⁴¹ The statistics are mine, based on the WTO website. See also Davey, W.J. "The WTO Dispute Settlement System: The First Ten Years", *Journal of International Economic Law*, 2005, n°8, pp. 42-45.

⁴² Chaisse, J. & Chakraborty, D. "Dispute Resolution in the WTO: the Experience of India", *op. cit.*, p. 526.

India's regional trade policy: SAFTA disappointments and alternative trade agreements at the regional level

Although SAARC was one of the first international organizations in Asia, it has always been politically and economically under-powered. It was created by the eight South Asian Nations in 1983,⁴³ in order to develop cooperation in five areas: agriculture and rural development; telecommunications; science, technology and meteorology; health; and transport and human resource development. It has been affected by the trend towards development of regional trade agreements, in particular the South Asian Free Trade Arrangement (SAFTA) among its member States. It is also in competition not only with potentially more effective trans-regional groupings such as APTA and BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation), but also with bilateral trade agreements with India's South Asian neighbors.

The relative failure of SAARC as an effective economic community

The first experience of trade tariff liberalization in South Asia and among SAARC members started with SAPTA in 1997, based on a positive list approach.⁴⁴ It was soon replaced by SAFTA in 2004, which was formally launched on July 2006 (the Agreement adopts a definition of RoO that allows effective implementation). The agreement scheme is based on a trade liberalization program for items not included in each country's "sensitive" list⁴⁵. One of the characteristics

⁴³ Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

⁴⁴ Mohanty, S.K. (2003), *Regional Trade Liberalisation under SAPTA and India's Trade Linkages with South Asia: An Empirical Assessment*, New Delhi, Research and Information System for Developing Countries, "RIS-DP", n° 48, p. 2.

⁴⁵ Article 7 of the SAFTA Agreement provides for a phased tariff liberalization program under which, in two years, Non-LDCs would bring down tariffs to 20%, while LDCs would bring them down to 30%. Non-LDCs will then bring down tariffs from 20% to 0-5% in 5 years (Sri Lanka 6 years), while LDCs will do the same in 8 years. Non-LDCs will reduce their tariffs for LDC products to 0-5% over 3 years.

of SAFTA concerns the place accorded to its LDCs, namely Bangladesh, Bhutan, the Maldives, and Nepal. These countries have more time to implement the trade liberalization program and benefit not only from a mechanism for compensation of losses from the customs revenue collected, but also from technical assistance in capacity-building in standards, product certification, personnel training, institutional upgrading, improvement of legal systems and administration, customs procedures and trade facilitation, etc. The efficiency of SAFTA is nevertheless somewhat undermined by its heavily politicized stance. Indeed, its administration by the Ministerial Meeting is regretted by many, since the Meeting also adjudicates disputes over the basic recommendations put forward by the Committee of Experts.⁴⁶

The agreement has not had notable success thus far, mainly due to the professed attitudes of Pakistan and India. Pakistan refuses to give India MFN status and keeps a separate list of goods importable from India. In reaction, New Delhi decided unilaterally to withdraw tariff concessions accorded to Pakistan. Even if both countries base their stance on the fact that the other party is in breach of the Agreement, neither has yet brought the dispute to the SAFTA dispute settlement mechanism.⁴⁷ This shows that the conflict is more political than to do with economic concerns. Moreover, Non Tariff Barriers (NTBs) are one of the main obstacles to SAFTA implementation, and India, which is the major regional market, still restricts access to its territory through numerous domestic regulations and Non Tariff Barriers.⁴⁸ A recent report from the Asian Development Bank and UNCTAD cites the fact that the agreement is costly, especially for LDCs, because of loss of custom revenues and other negative aspects such as the lack of NTBs common legislation, related transport facilitation, trade restriction quotas or RoO. It also discovered that SAFTA was nevertheless effective in terms of comparative advantage and additional benefit, which means that the compatibility of each country's exports has increased and, finally, that SAFTA can provide a real opportunity to increase FDI.⁴⁹

The next step should be the signing of a framework agreement on services and on investment promotion by June 2008, even if FDI from Pakistan are still prohibited in India. Taking on board the political difficulties of the whole SAARC process, India has long been developing a web of bilateral trade agreements with its South Asian neighbors and is a founding member of alternative regional grou-

⁴⁶ Nath, A. (2006), "The SAFTA Dispute Settlement Mechanism: An Attempt to Resolve or Merely Perpetuate Conflict in the South Asian Region?", *American University Law Review*, pp. 333-359.

⁴⁷ Aftab, M. "Is a South Asia Free Trade Agreement sailing down?", *Khaleej Times* (Dubai), 18 March 2007.

⁴⁸ Srinivasan, G. "Investment barriers must go", *Sify* (India) 15 March 2008.

⁴⁹ "SAFTA: How successful has it been so far?", *Sunday Times* (Sri Lanka), 23/03/2008.

pings. In addition, India is not solely directing its efforts towards the success of SAARC but seems to prefer incorporating its neighbors, excluding Pakistan, in its "Look East Policy", in particular through the Bangkok Agreement and BIMSTEC.

Bilateral Trade Agreements between India and its South Asian neighbors

India's South Asian neighbors should make natural trade partners, but with the exception of Sri Lanka, the players are not equal in view of the size and power of the Indian economy.

Bhutan and Nepal have a long history of trade and legal relations with India, because of their geographical positioning and their historical political ties with India. Agreements with both countries include clauses on transit, which are of primary importance for these two landlocked Himalayan countries. Between Bhutan and India, all products are included in free trade arrangements. Between Nepal and India, free trade arrangements concern agricultural goods from both States but manufactured Nepalese goods only. Furthermore, as India is the largest foreign investor in Nepal, since 2003 New Delhi has been asking for a bilateral investment agreement between the two parties, since the political events in the Himalayan country could endanger its FDI.⁵⁰

India and Bangladesh were discussing the prospect of signing a Free Trade Agreement when the World Bank delivered a very negative report on this project. First, the report noticed that while India is by far the largest source of Bangladesh's imports (15% of total imports), Bangladeshi exports are an insignificant (<1%) share of India's imports. India's main interest in trading with Bangladesh is closely allied to its concerns to reduce the isolation of its seven eastern and north-eastern federated States. Nevertheless, a FTA with India appears risky for Bangladesh for various reasons and could even reduce the benefits of multilateral liberalization: "These risks for Bangladesh of an India-Bangladesh FTA are substantial and serious, and raise the basic question: why not aim to obtain the same economic welfare gains from a policy of multilateral import liberalization, which could produce the same consumer surplus benefits for Bangladesh consumers and the same net domestic economic benefits, while avoiding the risks?". Finally, the World Bank Report suggested that other cooperative endeavors could be encouraged.⁵¹ This undoubtedly led to the signing of the 2006 trade agreement,

⁵⁰ "Nepal Govt to negotiate with India on BIPA", *Kathmandu Post*, 27 August 2003.

⁵¹ The World Bank Office in Dhaka, *India-Bangladesh Bilateral Trade; Potential Free Trade Agreement*, World Bank, "Bangladesh Development Series", N° 13, December, 2006.

which deals with the unilateral elimination of non-tariff barriers and with the development of financial and trade facilitation. The arrangement also emphasizes the role of the two countries in the evolution of the international trading system, for India as leader of developing countries and for Bangladesh as a leader among the LDCs. Finally, it should be pointed out that this is not an agreement on tariffs, which is why the arrangement seems compatible with WTO rules on RTA.

India and Sri Lanka signed a Free Trade Agreement on goods on December 1998, under which tariffs were to be reduced immediately for some items and in a phased manner for most goods, except those on the negative list. All the FTA's elements were supposed to have been accomplished by March 2003 for India and by 2008 for Sri Lanka. Being less developed than India, Sri Lanka benefits from a longer period of implementation and also from being allowed longer lists of products for duty reductions or excluded from tariff reductions. Items not included in duty concessions are generally understood to be sensitive for local industry. Finally, tea and garments are also subject to annual maximum quotas.⁵² The FTA has been successful for both parties: it prompted a 257% increase in bilateral trade between 2001 and 2004. With 15% of the total, India is the biggest source of Sri Lanka's imports. It is also the third largest destination for Sri Lankan exports. Nevertheless, once more India is subject to criticism over its attitude towards Non-Tariff Barriers, and some difficulties were observed concerning trade distortions dealing with certain agricultural products. This qualified success has certainly led to negotiations on trade in services, investment, and economic cooperation, although these have yet to be signed. India is the first foreign investor in Sri Lanka, which now shows serious potential in this area, since it is now given access to the EU market, which does not charge duty on more than 200 Sri Lankan goods.⁵³

India has failed to be the centre of the South Asia free trade zone and is now looking East. One step could be to create trans-regional trade groupings in order to forge a link between the Southern and Eastern parts of Asia.

⁵² Mehta, R. and Narayanan, S. (2006), *India's Regional Trading Arrangements*, New Delhi, Research and Information System for Developing Countries, "RIS-DP", n° 114.

⁵³ S. Galagoda, "Lanka seeks more investments from India - Prof Peiris", *Sunday Observer* (Sri Lanka), 29 April 2007.

Alternatives at the regional level: linking India and South Asia to East and South-East Asia

India's first regional trade agreement was the Bangkok agreement, the major interest of which lies in its being still the only trade tariff agreement between India and China. BIMSTEC is another trans-regional initiative, which looked promising at the outset but has achieved nothing significant so far.

The Bangkok Agreement, signed on 31st July 1975, was the first important tariff agreement in the Asian region and the only regional trade agreement to link East, South-East and South Asia. It is an initiative of the Economic and Social Commission for Asia and the Pacific (ESCAP), which also acts as the agreement's secretariat. This agreement is based on the principle of a global system of trade preferences among developing countries (all developing members of ESCAP are eligible to accede to the Agreement). It provides for an exchange of tariff concessions and for Special and Differential Treatment for LDCs. Seven countries, namely Bangladesh, India, Laos, Republic of Korea, Sri Lanka, the Philippines, and Thailand, first signed the agreement, although Thailand and the Philippines ultimately did not ratify it, because of their ASEAN commitments, and Laos did not issue the tariff concessions granted to other participating States. The GATT Council approved the Bangkok Agreement in March 1978. China's accession to the Agreement was accepted in April 2000 and led to the signing of a revised text of the Asian Pacific Trade Agreement renamed as "APTA", which was finally signed in Beijing on 2 November 2005.⁵⁴ This version provides not only for new tariff concessions but also for a certain degree of institutional organization and for a political dispute settlement system. In recent years, indeed, APTA has been offering member States a growing list of concessions with a margin of preference around 25% less than the MFN tariff.⁵⁵ In the fourth round of negotiations in 2006, India accepted a list of tariff concessions on 570 products (plus 48 for LDC), that is an increase of 32% compared to the previous period. It is nevertheless a third less than China, which has 1,697 items subject to specific Chinese tariff concessions.⁵⁶ APTA is only a tariff agreement, and never intended as a step towards a formal Free Trade Agreement, however it went uncriticized by GATT at the time of its first adoption in the 1970s, and also by the WTO's Committee on

⁵⁴ India's Current Engagements in RTAs (As on: 02 May 2006).

⁵⁵ Article 1 § 10: APTA: "Margin of preference" means the percentage difference between the Most-Favored-Nation (MFN) rate of duty and the preferential rate of duty for the like product, and not the absolute difference between those rates".

⁵⁶ Factsheet of the Asia-Pacific Trade Agreement, October 2007, available on <www.unescap.org/tid/factsheet07.pdf>.

Regional Trade Agreements to whose attention it had also been brought.⁵⁷

BIMSTEC, established by the Declaration of Bangkok in June 1997, was born of a call to “establish a firm foundation for common action to promote sub-regional cooperation in the areas of trade, investment, technological exchange”.⁵⁸ It was originally based on the principle of open regionalism⁵⁹, until the adoption of the project to establish a Free Trade Area, and it highlights the importance of links in infrastructure, especially in the transport and communication sectors.⁶⁰ BIMSTEC was first conceived as a trans-regional bridge between ASEAN and SAARC, but it also competes with – or complements – similar projects in the region. As a regional initiative, BIMSTEC is clearly in competition with SAFTA, the South Asia Free Trade Agreement, which has been in force since 1st January 2006; among its aims are a preference for leaving Pakistan out of the bloc (with the Maldives, Pakistan is indeed the only South Asian State which is not a member of BIMSTEC).⁶¹ India's intra-regional trade with BIMSTEC countries increased from 4.12% in 2001 to 6.61% in 2003 and the promotion of rapid tariff liberalization in the BIMSTEC region could increase India's exports to BIMSTEC countries.

In 2000, the BIMSTEC Trade and Economy Ministers decided to study the possibility of establishing a Free Trade Area between their respective countries. The Framework Agreement (hereafter called the BIMSTEC FTA) was signed in Phuket on 8 February 2004 and included trade in goods, and services, investment, and economic cooperation. A maximum of 20% of items is excluded from the FTA, while 10% are subjected to a faster reduction of tariffs (as per the Early Harvest Scheme(EHS)). It must be accompanied by agreement on inclusions to the list, methods of implementation, RoO, NTBs and so on. Trade in services and investments are to be liberalized through a positive list approach (sector by sector) and, the aim specifically for services is to go further than GATS. The BIMSTEC FTA was supposed to enter into force on 30 June 2004 and to begin implementation on 1st July 2006 for the EHS. Nevertheless, essential accompanying

⁵⁷ WTO, Amendment to the First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia And the Pacific (Bangkok Agreement), Notification by China, 27 July 2007, WT/COMDT/N/22.

⁵⁸ Preamble of the Declaration on the Establishment of the BIMSTEC, Bangkok, 6 June 1997, available on <www.bimstec.org>

⁵⁹ The “open regionalism” policy is based on market forces, common regional orientations and national policies. It promotes a regional economic integration that is not discriminatory towards outside countries

⁶⁰ Joint Statement of the Special BIMSTEC Ministerial Meeting, Bangkok, 22 December 1997.

⁶¹ BIMSTEC Member States are: Cambodia, Myanmar, Vietnam and Thailand for South East Asia, and Bangladesh, Bhutan, India, Nepal, and Sri Lanka for South Asia.

steps have not yet been taken.⁶² Further, parallel cooperation is envisaged in the areas of trade facilitation, capacity-building, technical assistance and support to LDCs. Finally, the 2004 Summit also agreed to explore new sectors of cooperation and to emphasise the importance of the development of transport and communication infrastructure, hydropower, and hydrocarbon projects. In November 2006, after months of inaction, negotiations on the free trade agreement began to focus once more on issues like ROO, sensitive lists and NTBs. Nevertheless, these talks failed adequately to prepare for the BIMSTEC Summit, which was supposed to be held in New Delhi in February 2007 and which was postponed to an undetermined date. Talks between India and BIMSTEC are stuck mainly due to the habitual Indian stance in negotiations on the adoption of a liberal definition of Rules of Origin, the number of products to be included in the negative list and Non-Tariff Barriers.⁶³

Limited in scope or not fully implemented, mainly for political reasons, with the exception of the FTA between India and Sri Lanka, most of these regional agreements are ultimately of little importance for India. More significant is Indian trade policy towards other trade blocs, this being closely linked to Indian policy in the multilateral trade system. This is guided by a certain pragmatism, since the overall trend is towards a falling-off of Indian trade with the EU and US, although these remain India's two major partners for the moment (EC-25 22.5% of total exports and 17.2% of imports; while US 16.9% of exports and 6.3% of imports). Some of the newer partners' shares of trade have increased, especially, those of the Middle East (6.7% of Indian exports and the United Arab Emirates (UAE) 8.3% of imports) and Asia (27.4% of imports and China 6.6% of export).⁶⁴

⁶² "BIMSTEC finalizes dispute resolution rules", *Kathmandu Post*, 28 December 2005.

⁶³ Sen, A. "India restarts free trade talks with BIMSTEC", *Economic Times* (India), 27 October 2006.

⁶⁴ See WTO, *Trade Policy Review: India*, WT/TPRS/S/182, p. 13.

Bilateral Trade Agreements and Indian policy of closer relations with certain trade blocs outside the South Asian region

India's bilateral trade relations with developed countries, especially with the EU and US, are based on the GATT system and on the advantage of SDT, as a developed country – but India is looking to develop more ambitious bilateral agreements. Even if the latter remain its major trading partners, India currently hopes to develop South-South trade by signing agreements with strategic partners, first with IBSA countries, allies to its position in the multilateral system, second with its East Asian neighbors, who these days form our most dynamic trade zone.

Indian policy towards the US and the EU

The EU and US are India's main economic and trade partners; nevertheless they do not each have identical strategies towards India. The US has traditionally ignored India, in particular since its nuclear test in 1998. They nevertheless became closer more recently, first through organizing commercial dialog at a public-private level in 2000, the aim of which was to facilitate trade and maximize investment opportunities, especially in IT, infrastructure, biotechnology and services.⁶⁵ The next step was the creation of a US-India Trade Policy Forum in 2005 to institutionalize a regular dialog between the two parties and pave the way for a closer economic and strategic partnership. Their main common concerns, allied to the Doha Agenda negotiations, are agriculture, services, tariff and non-tariff barriers, investment, intellectual property, and transparency of regulatory practices, i.e. India's main economic weaknesses. From this point of view, the US is concerned by the fact that there is a real need to establish a more efficient domestic dispute-resolution

⁶⁵ Formation of and Terms of Reference for the India-United States Commercial Dialogue, New Delhi, 23 March 2000.

mechanism in order to resolve commercial and contractual disputes.⁶⁶ Partly linked to the Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy (the so-called “123 Agreement”) in July 2005, India and the US also signed an agreement on science and technology in October 2005 and a Memorandum of Understanding on bilateral cooperation on intellectual property in December 2006. Lastly, in accordance with its global strategy, the US is more interested in adhering to trade relations based on GATT with India, while still aiming to sign a bilateral agreement on investment. The objective is to sign a framework agreement by the end of 2008, while pursuing a long-term initiative for a free environment for trade, investment and technology transfer. In addition, this agreement will help India to be much more open to foreign investment, especially in sensitive sectors where restrictions remain, such as agriculture or the banking sector.⁶⁷

Since 1971, India has profited from the European Community (EC)’s Generalized System of Preference (GSP) but it is only since the UK’s accession to the EC that bilateral cooperation really started. Relations began anew at the 28 June 2000 meeting in Lisbon. India and the EU decided to improve coordination on political and economic issues in their bilateral, regional and multilateral dimensions.⁶⁸ India and the EU launched bilateral negotiations to explore ways and means to deepen and widen their bilateral trade and investment relationship, especially through the negotiation of a broad-based trade and investment agreement.⁶⁹ This corresponds to their respective policies of signing bilateral trade and investment agreements. The EU’s Global Europe Strategy indeed recommends a new generation of FTAs primarily based on economic criteria, thus reducing reliance on its traditional requirements for clauses on environmental, social and human rights. In addition, the new agreements would complement the EU’s strong commitment to the multilateral trading system by focusing on areas not currently covered by WTO rules, such as investment, trade in certain services and the removal of Non-Tariff Barriers. Based on these criteria, ASEAN, Korea and India emerged as priorities. They combine high levels of protection with large market potential.⁷⁰ At first sight, a FTA between EU and India promised to be easy to negotiate, for a number of reasons, the first being that there is very little overlap between sectors, especially

⁶⁶ Joint statement on the Inaugural Session for US-India trade policy forum, New Delhi; 12 November 2005, Report of the U.S.-India CEO Forum and US and India Joint Statement on Trade, 2 March 2006, available on <http://meaindia.nic.in/>

⁶⁷ “US to help address India’s energy security concerns: official”, New Delhi, December 22, 2005; “US, India consider negotiating investment pact”, *Philippine Daily Inquirer* (Manila), 23 February 2008, available on <www.bilaterals.org>.

⁶⁸ “India, the European Union and the WTO”, in Jain, R. K. (2002), *India and the European Union in the 21st Century*, New Delhi, Radiant Publishers, p. 173.

⁶⁹ The India-EU Strategic Partnership Joint Action Plan, New Delhi, 7 September 2005, available on <ec.europa.eu>.

⁷⁰ Rollo, J. (2007), “Spice Route to Europe? Prospects for an India-EU Free Trade Area”, available on <www.chathamhouse.org.uk/files/10167_bp1007euindia.pdf>.

in goods trade.⁷¹ Moreover, neither party was clamouring for agricultural liberalization, so the exclusion of sensitive products in that domain appeared easy to agree on. Nevertheless, Indian interests in low income and resource-poor agricultural producers made negotiations more difficult than predicted. Secondly, India and the EU both had an interest in including trade in services in their agreement. Indeed, while India wants to achieve better global access to its services, which it considers its most competitive sector, the EU wants better access to India's goods.⁷² Due to this concern, although the FTA was supposed to include 90% of trade in goods, India struggled to come up with an acceptable list of sensitive items. Domestic pressures were even felt in areas where there had so far been no real risk from European imports. India still needs to further open its economy to FDI, in order to foster technological as well as trading progress, which would form a great opportunity for European companies. Nevertheless, because doing business in India has a bad reputation, trade facilitation and government procurement issues (which raise similar problems of transparency, implementation and enforcement policies, complex procedures and the lack of appropriate systems for redressing grievances) are likely to be important for the EU.⁷³ Sharp differences have also arisen in intellectual property rights, competition, NTBs, and competition policies, to the extent that in the end there is little chance of the FTA's conclusion before the end of 2008.⁷⁴

So far, Indian trade with the US and EU has been based on the multilateral system, although this may change substantially for the EU on the signing of a FTA. Nevertheless, it is clear that such an agreement could be difficult to manage in view of European requirements with regard to the risks incurred by the Indian economy. To counterbalance the two huge blocs that these developed countries represent, India is initiating a political and trade alliance with some southern countries. Nevertheless, the association with regional organizations such as SACU and MERCOSUR seems to be more symbolic and political than the one with South East Asia.

⁷¹ CARIS and CUTS International, "Qualitative Analysis of a potential Free Trade Agreement between the European Union and India", Executive Summary available on <trade.ec.europa.eu/doclib/docs/-2007/june/tradoc_135101.pdf>, pp. 4-5. See also, *Report of the EU-India High Level Trade Group to the EU-India Summit*, 13 October 2006.

⁷² Cronin, D. "Trade: EU Policies 'Predatory'", *Inter Press Service*, 6 July 2007 and Sen, A. "India, EU to talk services agreement", *Economic Times* (India), 26 September 2007, <www.bilaterals.org>.

⁷³ India is not a party to the WTO Government Procurement Agreement.

⁷⁴ Sen, A. & Subramaniam, G. G., "Differences over negative list hold up India-EU trade pact", *Economic Times*, 7/ February 2008; Mehdudia, S. "EU-India Free Trade Agreement hits roadblock", *The Hindu*, 04 March 2008; Suryamurthy, R. "Free trade talks with EU lose pace", *The Telegraph*, 16 March 2008, available on <www.bilaterals.org>.

Agreements with MERCOSUR and eventually with SACU

Currently, India, Brazil and South Africa are coming together on the basis of their common interests as developing countries, especially in WTO Doha Round negotiations. While the structures of their economies are relatively similar, making them, therefore potentially competitors, a key feature of the creation of a PTA between India, on the one hand, and MERCOSUR and SACU, on the other hand, would be to link the three continents and to promote South-South trade cooperation. An agreement on trilateral trade in goods, services and investment between India, MERCOSUR and SACU is already on the table. Yet, although there are real possibilities of utilizing their complementary resources in the fields of industry, services, trade and technology, one of the strongest barriers to their trade and investment appears to be poor transport facilities.⁷⁵ In the end, the new links between India and these two trade blocs seem to be of more political than economic importance, in particular relation to the Doha Agenda multilateral trade negotiations.

SACU and India envisage signing a comprehensive FTA within a reasonable time and, in the interim, a limited-scope agreement on tariffs on selected items (PTA). In addition, so far MERCOSUR and, Chile, its neighbor and associated member, have only signed a PTA with India (applicable to 300 products only in each country), despite stating their ambition of signing a FTA.⁷⁶ The MERCOSUR-India Agreement, with its limited scope, will be operational after ratification (which has not yet happened), because subsidiary annexes on the list of tariff concessions (on 450 and 452 tariff lines respectively), Rules of Origin and safeguard measures have already been adopted. The aim of this Framework Agreement is to create conditions and mechanisms for negotiations at the first stage, by granting reciprocal fixed tariff preferences and at the second stage, to negotiate a free trade area between the two parties in conformity with the rules of the World Trade Organization. The link between this agreement and the WTO negotiations is clear from the signing of its annexes during the G-20 meeting held in New Delhi in March 2005. MERCOSUR-India trade is indeed low so far (US\$ 1416.65 million in 2003-04 and Indian export share only 0.83% of the global imports of MERCOSUR), but maintains a certain potential.⁷⁷ If trade is included in the agreement, investment could be another key objective of the union, especially between India and Brazil. In June 2007, Kamal Nath, the Indian Minister of commerce and

⁷⁵ De, P. *Trade in IBSA Economic Cooperation: The Role of Transportation Linkages*, New Delhi, Research and Information System for Developing Countries, "RIS-DP", n°104, p. 2.

⁷⁶ "Chile keen on free trade pact", *The Telegraph* (Calcutta), 16 July 2007.

⁷⁷ See <commerce.nic.in/flac/india_mercosur_pta.htm>.

industry, noted: "Indian investments in Brazil have also increased in recent years, particularly in the field of information technology, biotechnology and pharmaceuticals. Indian companies such as Tata Consultancy Services, Ranbaxy and Dr. Reddy's Laboratories, Strides among others have made a mark in the Brazilian market. Many others including other Tata group companies are exploring the opportunities for investment in Brazil".⁷⁸ Another feature of the Agreement is to provide for a dispute settlement procedure, subsidiary from the WTO DSU.

These agreements with major Southern powers seem to be more political and strategic for India than economically viable in the short term, even if they are supposed to increase South-South trade. The commencement of the India-MERCOSUR relationship – in the form of tariff cuts – has been delayed. Similarly, while India and SACU have been finalizing a framework agreement since 2005, India has had difficulties in persuading the African group to approve it.⁷⁹ However, similar difficulties of legal effectivity arise since delays in completing the ratification procedure and implementation measures also tend to occur over India's agreements with its Asian neighbors.

The core of India's Look East Policy: India's agreement with ASEAN

As the driving force of economic and trade liberalization and cooperation in the region, ASEAN's evolution is likely to be a model for cooperation throughout the region. ASEAN was originally an organization concerned essentially with politics and economics; it accomplished relatively little in its first ten years. The 1967 Bangkok Declaration, the source of ASEAN's establishment, was adopted by the five original members (Indonesia, Malaysia, Philippines, Singapore, Thailand – they are known as the "ASEAN-5") and has since been adopted by Cambodia, Myanmar, Laos and Vietnam as well. The Declaration provided only for general principles and aims related to social and economic stability, for States' political independence, and for a basic institutional framework. A Preferential Trade Agreement was signed the following year, in 1977, on a product-by-product basis. In 1992, the ASEAN States signed the ASEAN Free Trade Area agreement (AFTA), based on a mechanism of progressive reduction of custom tariffs of goods and agricultural products (which were added to the agreement in 1993). AFTA came into force in 1st January 2002 (instead of 2008 as originally envisioned), but did not effect any real increase in trading nor develop any new markets.

⁷⁸ Nath, K, "India, Brazil trade target fixed at \$10bn by 2010", *Asian Age*, India, 04 June 2007.

⁷⁹ "India to start FTA talks with Brazil, S Africa this week", *Times of India*, 04 October 2007.

On 7 October 2003, the Declaration of Bali Concord II States the will to found an Economic Community, together with a Defence Community and a Socio-cultural Community. The final aim is by 2011 to establish a common market and production base, founded, on the one hand, on the free flow of goods, services, skilled labor, investments and capital, and, on the other hand, an export development strategy based on further regional specialization and economies of scale. The development of ASEAN itself has often been linked to external developments. Even if the "ASEAN-Plus-Three" (with China, Japan, and South Korea) scheme remains its major external initiative, ASEAN has an increasingly broad view of its position, as could be seen at the first East Asia Summit, which included the "ASEAN-Plus-Three", but also India, Australia and New Zealand, and also at the first ASEAN-Russia Summit, held in December 2005.

India would do well to become a more intimate and integral part of ASEAN because of the latter's trade and export-oriented experience and because it is a gateway to North-East Asia and to the world economy in general.⁸⁰ In the context of its Look East Policy's development, India became an ASEAN Sectoral Dialogue Partner in 1992 and a Full Dialogue Partner in 1996, encouraged by the United States and Japan, which were interested in the process of India's further liberalization.⁸¹ Since 2002, with the first India-ASEAN Summit, a new phase of multifaceted policy was launched: India was presented as one of the major partners of ASEAN and as a counterbalance to China's power in the region. At the 2003 Summit, the Heads of State agreed on a plan to make the creation of a regional trade and investment area a long-term objective. India also expressed its support for the ASEAN initiative for regional economic integration and the granting of a preferential tariff treatment to new ASEAN members, CMLV (Cambodia, Myanmar, Laos, and Vietnam).⁸² More than the future constitution of a free trade area, the 2003 signing of the framework agreement on Comprehensive Economic Cooperation (hereafter ASEAN-India CECA) has a broader strategic and political significance. Nevertheless, the first objective of the CECA between the two parties was to strengthen trade and economic cooperation, to create a free trade area in goods, to liberalize trade in services and to establish a free and transparent investment regime in the zone. The trade liberalization process is considered sufficiently flexible to favor sensitive sectors and the interests of ASEAN's new members. Furthermore, two areas of economic cooperation should come in alongside it: trade facilitation measures and different sectors of cooperation (such as agriculture, fisheries and forestry, mining and energy services, science and

⁸⁰ Saint-Mézard, I. (2003), *op. cit.*, pp. 25-27.

⁸¹ Saint-Mézard, I. (2006), *Eastward-Bound: India's New Positioning in Asia*, *op. cit.*, p. 222 and pp. 286-287.

⁸² The first three of them are LDCs and Laos is under WTO accession procedure.

technology, transport and infrastructure, manufacturing, human resource development). Trade in goods is the primary concern here, particularly through the reduction or elimination of customs tariffs. The system is based on the principle of the negative list, which nevertheless permits numerous exceptions. Finally, an Early Harvest Program (EHP) was agreed on in order to accelerate the implementation of trade liberalization for some listed goods (about a hundred) for which tariff elimination was to be completed by 31 October 2007 for ASEAN-6 and India, and by 31 October 2010 for the CMLV. Concerning the trade in services, the aim is to go further than GATS, that is, to liberalize it on a preferential basis with substantial sectoral coverage. Finally, the parties wish also to adopt a liberal, transparent and protected investment regime.

While the Indian market shows signs of growing to vast size, its GDP per capita remains very different in the two zones – with an average of \$508 for India and \$1266 for ASEAN countries. However, there are huge differences within ASEAN between developed countries and the least developed ones.⁸³ On the other hand, ASEAN has the advantage as far as trade balance is concerned. Finally, imports and exports between the two tripled between 1991 and 2001,⁸⁴ and are now beginning to be significant.⁸⁵ Nevertheless, the 2003 Agreement provides for a short time-frame and needs numerous additional measures to be fully implemented. The implementation of the EHP was supposed to start on 1st November 2004, but the negotiations of the Rules of Origin date back only as far as November 30, 2004.

Another issue is the determination of the Indian list of sensitive products to be excluded from the FTA. Even if New Delhi has cut this list from more than 1,400 items to 400, it is still reluctant to make concessions on some sensitive agricultural products such as palm oil, tea, coffee and pepper, contrary to the wishes of supplier countries such as Malaysia and Indonesia. On this point, one commentator bitterly decried India's position: "Unfortunately, India refuses to recognize its vulnerability and at the same time, refuses to put itself into a position of strength to bargain more effectively".⁸⁶ The implementation negotiations tend to show that trade between India and South-East

⁸³ Karmakar, S. (2005), *India-ASEAN Cooperation in Services – an Overview*, New Delhi, Indian Council for Research on International Economic Relations, "ICRIER Working Paper", N° 176, available on <www.icrier.org>, p. 4 (see Appendix 2: "GDP per capita – international countries classification").

⁸⁴ Sen, R., Asher, M.G., Rajan, R. S. "ASEAN-India Economic Relations. Current Status and Future Prospects", *Economic and Political Weekly*, 17 July 2004, p. 3297.

⁸⁵ ASEAN now counts for 25% of Indian trade, a share almost equal to those of the EU and the US. As far as the main destinations of Indian exports are concerned, the respective shares are EU (23.54%), East Asia, (20.7%) and US (20.9%) in Chaisse, J. "Ensuring the Conformity of Domestic Law with WTO Law. India as a Case Study", *op. cit.*, p. 5.

⁸⁶ Chandrashekhar, G. "ASEAN FTA: Time to introspect on domestic oilseed cultivation", *Hindu Business Line*, 29 November 2007.

Asia is much more valuable to the former, and emphasizes the fact that India is only one ASEAN partner among others, at least from a commercial point of view.

The signing of the India-ASEAN CECA in 2003 is certainly a reaction to the one signed between ASEAN and China a year earlier. Since the Asian crisis and China's (People's Republic of China, PRC) entry into the WTO, China has indeed evolved into a major economic ally. Furthermore, the implementation of the ASEAN-PRC FTA is much further advanced compared to the India-ASEAN one. From an economic point of view, India can be compared neither with China nor the other East Asian countries, whose chain network and division of labor integration with South-East Asian States are not new but well-established and still significantly driven by the private sector.⁸⁷

India's bilateral agreements with East Asian States

In the process of globalization, India must broaden its domestic and regional markets and its economic space. India's economic strategy was initially conducted on a bilateral basis, especially towards Malaysia and Singapore. Singapore is promoting a "strategic alliance" with India and Indian firms, and benefits from its know-how and experience in working with multinationals and on investment in developing countries. Besides, like Singapore, Thailand has developed a web of bilateral Free Trade Agreements, notably with India but also with countries from the Asia-Pacific region, and can now be considered a hub for trade within and with the Asian region.

India and Thailand are close partners within the ASEAN and BIMSTEC groupings but, in 2003, they decided to sign a Framework Agreement for Establishing a Free Trade Area by 2010 (hereafter India-Thailand FTA), through the liberalization of trade in goods, services and investments, and through complementary economic cooperation, in the form of trade facilitation, trade and investment promotion, and specific sectors of cooperation. Once again, goods are listed in three different categories when it comes to trade liberalization: normal; sensitive and thus excluded from the FTA; and Early Harvest Scheme (EHS), which functions as a PTA. Liberalization also leads to the adoption of numerous subsidiary rules concerning RoO, NTBs, safeguard measures, etc. On 30 August 2004, a protocol adopted interim RoO for the products submitted to the EHS. It permitted the implementation of the Framework Agreement, which was supposed to begin on 1 March 2004.

⁸⁷ Boisseau du Rocher S. and Fort, B. (2005), *Paths to Regionalisation. Comparing Experiences in East Asia and Europe*, Singapore, Marshall Cavendish Academic, p. 4.

The last stage requires that the development of trade in services and investment be negotiated in order to go beyond existing agreements (GATS and the Agreement for the Promotion and Protection of Investment, 10 July 2000 between India and Thailand). The parties also seem willing to increase the number of items eligible for tariff cuts (5,500 for Thailand and 2,800 for India) and to sign a definitive FTA, as the implementation of the EHS is already successful in terms of trade growth.⁸⁸

Since the Asian financial crisis, Singapore has been eager to conclude bilateral trade agreements with major world partners such as India. The two countries' economic and trade relations are facilitated by the compatibility of their economies and economic experience and by pre-established people-to-people connections through the Indian diaspora and immigrants. In particular, Singapore has been impressed from the start with India's performance on infrastructure and IT, as demonstrated by the work of numerous Indian engineers in the City-State itself. The signing of the Comprehensive Economic Cooperation Agreement on 29 June 2005 (hereafter India-Singapore CECA) reflects Singaporean trade strategy in general but particularly towards India, which sees Singapore as a hub or bridge in South-East Asia.⁸⁹ Classically, the agreement concerns trade in goods, services, investment and economic cooperation. The India-Singapore CECA's particularity is that instead of being only a framework agreement, it is very detailed and operational without the need for further implementation measures. The commitments it provides for are unequal with respect to trade in goods, since Singapore will immediately eliminate customs duties on all Indian goods, while Singaporean imports to India are being treated to a phased elimination of duties, and some Singaporean items will remain excluded from the FTA. So far, unfortunately, Singaporean companies have complained that Indian customs authorities are not aware of the new lower duty structure under the India-Singapore CECA.⁹⁰ Nevertheless, a Supplementary Agreement on Goods is being negotiated offering better market access to the City-State.⁹¹ Moreover, national treatment is granted for investments listed in a positive list for India and in all sectors for Singapore, except those included in a negative list. For services inscribed in the schedule, each party shall accord Most Favoured Nation and national treatment

⁸⁸ The Early Harvest Scheme had covered just 7% of the bilateral trade between the two countries. In 2005-2006, India's exports of goods to Thailand stood at \$1,062 million while imports were higher at \$1,202 million: see Choudhury, G. "Trade pact with Thailand by July", *The Hindustan Times*, 11 April 2007.

⁸⁹ Saint-Mézard, I. (2006), *op. cit.*, p. 222 and p. 97. See also the preamble and article 1.2 (g) of the Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore signed in New Delhi, 29 June 2005 (hereafter India-Singapore CECA 2005).

⁹⁰ "Spore exporters face problems at Indian ports", *Times News Networks*, 28 August 2006.

⁹¹ Suryanarayana, P. S. "India, ASEAN talks on FTA in Manila by March-end", *The Hindu*, 26 March 2007.

to services and service suppliers from the other party (i.e. a treatment no less favorable than it grants to its own services or suppliers). The general chapter on services is complemented by two further chapters on air services and the movement of persons. Finally, cooperation is also under consideration in crucial sectors for relations between India and Singapore, including e-commerce, intellectual property rights, science and technology, education, and media.

India is also examining the possibility of signing more regional trade agreements (RTAs) with its Asian partners, at a bilateral level: countries it is considering include Korea, Japan, China, Malaysia, Russia and, lately, also Indonesia and Vietnam, although without positive results so far. Generally speaking, most Joint Study Group reports on India conclude by recommending the establishment of a Comprehensive Economic Cooperation Agreement, that is, an agreement covering, among other things, trade in goods and services, investment flows, and other areas of economic cooperation. The most problematic negotiations will certainly be with China, because such an agreement will suffer from strict internal opposition. Industry lobby groups such as the Federation of Indian Chambers of Commerce and Industry (FICCI) have already voiced their opposition to an FTA with China, stating that tariff reductions will harm Indian industry. On that point, the Indian government seems to agree, since China's share in India's imports has risen from around 4% in 2001-02 to 9.4% in 2006-07, whereas India's share in Chinese overall imports continues to be insignificant, at 1.3%.⁹²

⁹² India's Current Engagements in RTAs (As on: 02 May 2006), available on <<http://commerce.nic.in>>. "Chinese exports to India rising fast", *Times of India*, 14 January 2008.

Conclusion

Indian international trade policy is a good example of the central contradiction in India's economic policy, itself a reflection of the present political situation in New Delhi: How to reconcile a long, cherished history of hostility to capitalism and capitalist countries – very much associated with the Congress Party – with the constraints of a very high rate of growth?

In the final analysis, the attempts made are not very coherent and operate across a number of different levels. A first solution could be for India to lead a South countries alliance in the Doha Development Agenda on traditional lines, thus running the risk of a failure of negotiations and of multiplying purely political negotiations with many countries without any concrete commercial purpose; India's aims here being first to consolidate its position as leader of the developing world, and secondly to protect itself against isolation. The second option for India is to continue procrastinating over major commercial issues such as integration into the "Asian sphere of prosperity", and links with the EU and USA, its first and second markets respectively. It will be difficult for India to freeze this policy in place; some decisions cannot be put off forever. Action on these issues will depend on the future political dispensation in India. The current mood suggests prioritization of the "Look East Policy", including, perhaps, an agreement with China, at the expense of closer relations with Europe and the USA as well as of broadening the multilateral set-up regulated by the WTO. The strength of the resentment against western countries and the policies they have promoted in the past is often under-estimated, but economic realism may yet prevail.

Practically speaking, the scope of the trade agreements studied here will form an impression of redundancy and much overlapping, and this is partly true. In fact most of these agreements find their legal basis and reference-points in the WTO agreements (which are often quoted), yet they still offer the opportunity to liberalize and further open Indian trade with the rest of the world, step by step and still remaining dependent on political and economic parameters and needs. Nevertheless, on examination, Indian trade appears less open and less liberalized than the number of its economic and trade agreements would suggest at first sight. Indeed, RTAs (in the WTO's definition) are supposed to be laboratories for negotiation and trade liberalization whereas, in fact they show up India's weaknesses. First, even when called FTAs, India's agreements so far remain merely

preferential tariff agreements, since they include only positive lists of items. Second, while developing partners complain of Indian attitudes towards negative lists, RoO and non-tariff barriers, developed countries emphasize the lack of efficiency and transparency in the way the Indian State works. Moreover, WTO law acts as the basis and common law of these regional agreements, whereas RTAs provide an opportunity for more flexibility and originality between closer partners. As such, most arrangements can add up only to the capabilities of the least developed member countries' regimes. Economic integration will also be heavily dependent on legal integration, and the means given to appropriate dispute-settlement systems. In that respect, we can see that in Indian trade agreements, a balance is often sought between classic diplomatic and intergovernmental means and a more expert and time-limited dispute settlement mechanism. The introduction of more legal and trade expertise here recalls the fact that regional agreements are laboratories for expertise in trade fields for developing countries' specialists.

Furthermore, this trend towards multiplication of bilateral and regional agreements in parallel with WTO obligations is not particular to India but is rather universal, especially as States await radical change to the global system. Two factors will be decisive in the near future: first, the results of the Doha Agenda talks, in particular relating to protection of developing countries and the negotiation of new commitments for the constitution of RTAs, which are proliferating around the world; second, the capacity of East Asia, broadly understood, to create more incentives for regional integration will be critical.