Preferential Trade Agreements under WTO law

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INTRODUCTION

A. Multilateralism to Regionalism

The multilateral trading system existed first as the GATT from 1947 to 1994 and then as the WTO since 1995. Regional Trade Agreements\(^1\) (“RTAs”), defined as “a free-trade agreement, customs union or common market consisting of two or more countries”\(^2\), however, began coming into their own only in the 1990s. Before that, there were virtually no such agreements until 1970 and less than 50 in 1990. This suggests that greater reduction in trade barriers (both tariff and non-tariff) was achieved in the earlier rounds of the GATT, which precluded the need for countries to resort to RTAs. Once, however, this initial thrust via the multilateral route was saturated, countries had to look at other ways of expanding their trading opportunities and this phenomenon was further propelled by the lack of substantial progress in successive Trade Rounds.

B. Scope of RTAs

Regional cooperation has indeed been adopted as a means of expanding the process of economic development by many countries across the world. RTAs can enable a broader coverage of economic issues than what is available multilaterally, for instance, in terms of competition, investment and movement of natural persons. Politically, an increase in the bargaining power, which creates a necessity for economic reforms and precludes the reneging on such commitments, would be one of the benefits emanating from an RTA. Thus, in addition to expansion of trading opportunities, there are other reasons, both economic and political, for which a country might negotiate a RTA.

C. RTAs: The phenomenon


RTAs have been proliferating at an alarming rate and this has significant implications for a country’s market access in the major markets of the world (Figure 1).
Moreover, the phenomenon is so widespread that “such agreements have been concluded among high-income countries, among low-income countries, and, more recently, starting with the North American Free Trade Area (NAFTA) between high-income and developing countries”\(^3\). Nevertheless, “the South Asian region (has) lagged behind in terms of regional cooperation under the economic integration scheme in comparison to North America, Western Europe and South East Asia”\(^4\).

D. What is at stake for India?

An answer to the question of the magnitude of intra-regional trade in South Asia lays down the broad parameters of what is at stake. Of course, it must be mentioned here that this could

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be endogenous i.e. the actual trade in the region could well reflect the impediments to trade or the ineffective trade liberalization in this region as opposed to being a realistic measure of what is actually trade-able. Having said that, the reality would be a combination of both these factors including the supply-side capacities of these countries. But what remains unchanged is that irrespective of the magnitude of this trade, removal of tariff and non-trade barriers would definitely increase the volume of intra-South Asian trade.

This can be gauged from Figure below that shows South Asian intra-regional trade as a proportion of world trade declining from a high of 20% in 1948 to as low as 2% two decades later. While the generally low proportions indicate the magnitude of trade in this region, what is interesting to note is the slight upward trend in this percentage since the coming into existence of the SAPTA in 1993, indicating that whatever reduction in barriers has been attained, has had some impact.

E. Disciplines on RTAs in the WTO: GATT and GATS

Provisions on RTAs in the Legal Texts come primarily in the form of Article XXIV of the GATT and Article V of the GATS, which require *inter alia*, that substantially all trade between be covered between the parties forming an RTA and that the latter does not result in making *ex-post* conditions more trade-restrictive for non-parties to the Agreement than what they were *ex-ante*. Economic theory refers to the ‘trade creating’ and the ‘trade diverting’ effects of an RTA, while analyzing the welfare effects on both parties and non-parties to an Agreement. As a result, the necessary economic test then for an RTA to have a positive net welfare effect is for trade creation to exceed trade diversion. However, consensus on the conformity of the RTAs with the provisions of the GATT was reached in only one case – the Czech-Slovak Customs Union! Examinations of RTA issues have been plagued by divergences of view on a series of systemic lacunae both in the substantive rules of the WTO and in the very process of examination. Moreover, the WTO Understanding on the Interpretation of Article XXIV, adopted as part of the Final Act of the Uruguay Round, has done little to resolve the more difficult issues.\(^5\)

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Strategy of India's Preferential Trade Policy - A Contribution to the Study of Modern Economic Treaties”,
Connecticut Journal of International Law, 26(2); 415-455
Panorama of Indian participation in RTAs

India is a party to the following major Agreements:

A. **India-Bangladesh**

A trade agreement signed with Bangladesh, which came into force on 4 October 1980 and could be extended by further periods of three years, was valid up to 3 October 2001.\(^6\) India then proposed to extend the agreement up to 3 October 2004. In 1997, a transit route of 60 km. through Indian territory was opened for trade between Bangladesh and Nepal. India continues to grant duty exemptions to most goods produced in Nepal. Preferences apply to some basic goods and all manufactured goods other than: alcoholic liquors/beverages and their concentrates except industrial spirits; perfumes and cosmetics with non-Nepalese/non-Indian brand names; and cigarettes and tobacco. India revised and reviewed certain provisions of the India-Nepal Treaty, which was valid until 5 December 2001, because some Nepali products (e.g. hydrogenated vegetable oil, acrylic yarns, copper wire, iron pipes, and zinc oxide) flooded the Indian market.\(^7\) The agreement was renegotiated on 6 March 2002. Imports from Nepal are exempt from special additional duties (SADs), but are subject to additional duties (ADs) (Chapter III(2)(iii)). A new Transit Treaty between India and Nepal was signed on 5 January 1999. The new Treaty, valid for periods of seven years (until 5 January 2006), can be renewed automatically for further periods of seven years, unless either party gives written notice of its intention to terminate, six months before the date of termination of the treaty.

B. **India-Sri Lanka**

India and Sri Lanka signed a free-trade agreement (FTA) on 28 December 1998, which came into operation on 1 March 2000. India grants duty-free access to over 1,000 tariff lines and a 50% margin of preference to all other items except those on a negative list. Tariffs are to be reduced to zero over a period of three years. Tariff concessions on textiles are 25% below the MFN rate. India has retained some 400 items in the negative list, including garments,

\(^6\) Article XIII of the Trade Agreement between India and Bangladesh [Online]. Available at: http://commin.nic.in/doc/trade_agrmnt.htm [5 July 2001].

\(^7\) Reuters, 14 and 19 August 2001.
petrochemicals, alcoholic spirits, and coconut oil. Tariff quotas apply to tea and garments under the FTA. India's tariff quota for tea was set at 15 million kg./year at a preferential rate of 50%. The tariff quota for garments should not exceed 8 million pieces/year at a concession of 50%, of which 6 million should be manufactured from fabrics of Indian origin.\(^8\) Imports of tea are allowed only through the ports of Kochi and Kolkata, and garments may be imported only through Chennai and Mumbai. The agreement allows for the use of safeguard and anti-dumping measures. In addition, in case of balance-of-payments difficulties, members may provisionally suspend the preferential treatment.\(^9\) When any such measures are taken, the member that initiates the action has to simultaneously notify the other party. India also participates in the Bangladesh, India, Myanmar, Sri Lanka, Thailand–Economic Cooperation (BIMST–EC), which came into force in 1997 as a forum to facilitate and promote trade, investment, and technical cooperation among the member countries, with the objective of creating a free-trade area. BIMST–EC is designed to act as a link between SAARC and ASEAN.\(^10\)

C. **South Asian Preferential Trade Arrangement (SAPTA)**\(^11\)

1. **From SAARC to SAPTA (notified to WTO)**

“The Sixth South Asian Association for Regional Co-operation (SAARC)\(^12\) Summit held in Colombo in 1991 strongly mooted the idea of a SAARC Preferential Trading Arrangement...\(^8\) Origin is determined according to domestic content and substantial transformation. Thus, origin is granted when raw materials/inputs originate in countries other than the contracting parties (i.e. Sri Lanka or India) or are of undetermined origin if they do not exceed 65% of the f.o.b. value of the final good. If raw material/inputs originate in Sri Lanka for production in India (or vice-versa) domestic content can be reduced to 25%. The final good must also undergo substantial transformation at the four-digit level of the Harmonized System.


(SAPTA) and the Foreign Ministers of all the member states (India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan and Maldives) signed the Agreement on 2 April 1993 during the Seventh SAARC Summit in Dhaka. SAPTA became effective from 7 December 1995. The basic principles of SAPTA are as follows: overall reciprocity and mutuality of advantages, step-by-step negotiations and extension of preferential trade arrangement in stages, inclusion of all types of products—raw, semi-processed and processed, special and favourable treatment to LDCs. “The first round of negotiations under SAPTA took place in 1995. By December 2000\(^{13}\), three trade negotiations (were) completed, under which 5553 items at Harmonised System (HS) six digit levels (were) offered for tariff and non tariff concessions by the member states. India being the largest economy of the region, offered the maximum number of items (2925 items) for preferential trade”\(^{14}\).

\[\text{a) Salient Features of SAPTA}\]

SAPTA provides for the exchange of concessions between its Members on tariffs, para-tariffs, non-tariff measures and direct trade measures. Tariff preferences can be exchanged using any of the following four approaches:

- **Product-by-product**, which implies negotiations at the HS-6 digit tariff line level;
- **Across the board**, which connotes a uniform reduction applicable to all products being negotiated;
- **Sectoral**, construing agreements on specified products or groups thereof closely-related in end use or in production; and
- **Direct trade measures**, which include measures conducive to promoting mutual trade of Contracting States such as long and medium term contracts containing import and supply commitments for specific products, buyback arrangements, state trading operations, and government and public sector procurement.

\[\text{\(^{12}\) On the objectices of SAARC itself, See: Mangalamurthy S. : \textit{South Asian Association for Regional Co-operation}, Chethana Book House, Mysore 2003, pp. 19-41.}\]

\[\text{\(^{13}\) To go further in details in the successive stages of negotiations, See: Gupta Anshuman: \textit{SAARC – SAPTA to SAFTA}, Maulana Abdul Kalam Azad Institute of Asian Studies (Kolkata), Shipra Publications, New Delhi 2002, pp. 85-11.}\]

Additionally, the following provisions are significant from the perspective of the effectiveness of the SAPTA and the extent to which it can be used to increase the region’s exports and trading opportunities:

- **Coverage:** All products, manufactures and commodities in their raw, semi-processed and processed forms are covered under the SAPTA.

- **Rules of origin:** SAPTA has stringent and well-defined rules of origin requirements for both LDC and non-LDC SAPTA Members, which must be met for imports to be eligible for tariff preferences. There are rules for both goods “wholly produced or obtained” and for goods “not wholly produced or obtained” in an exporting SAPTA country. The former category includes domestic raw materials, agricultural products, fish, waste and scrap, and products wholly obtained from these inputs.

- **Special and differential treatment for LDCs:** These include, *inter alia*, provisions for deeper and wider tariff preferences, removal of non-tariff and para-tariff barriers, and favourable terms for technical assistance. Interestingly, concessions accorded by a non-LDC to an LDC SAPTA Member do not apply to non-LDC Members of this agreement. This is an exception to the general principle of MFN, which is otherwise applicable to the concessions extended under SAPTA from LDC/non-LDC to all Members and from LDC/non-LDC to LDC Members.

b) **Trade Liberalization under SAPTA: Tariff concessions and product lines**

There have been three rounds of trade liberalization under SAPTA so far. During the First and Second Round, trade negotiations were conducted\(^\text{15}\) on a product-by-product basis. In the Third Round, the negotiations were also conducted chapter-wise. For the Fourth Round, it has been decided that the negotiations would, as far as possible, be conducted on Chapter-wise, Sectoral and Across-the-Board basis. While the first round initiated in December 1995, saw 226 products being put on the table, this number further increased to 1868 and 3456 in the

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next two rounds. Consequently, by the end of October 1999, close to 5500 products under the HS-6 classification, were liberalized by the Members. As of now, over 5100 products stand liberalized under SAPTA, as can be seen from Figure 3 below. However, the distribution of these concessions is lop-sided, with 50% of the coverage being on account of concessions made by India alone and that too, predominantly in favour of LDCs in the South Asian region.

**Figure 3: Tariff concessions under SAPTA**

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of Products</th>
<th>Percentage of total products</th>
<th>No. of Products</th>
<th>Depth of Tariff Concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>572</td>
<td>11.2</td>
<td>116</td>
<td>10% and 15%</td>
</tr>
<tr>
<td>Bhutan</td>
<td>266</td>
<td>5.2</td>
<td>159</td>
<td>10%, 13%, 15%, 18% and 20%</td>
</tr>
<tr>
<td>India</td>
<td>2565</td>
<td>50.3</td>
<td>2025</td>
<td>50%, 60%, 100%</td>
</tr>
<tr>
<td>Maldives</td>
<td>390</td>
<td>7.6</td>
<td>3</td>
<td>15%</td>
</tr>
<tr>
<td>Nepal</td>
<td>426</td>
<td>8.4</td>
<td>164</td>
<td>10% and 15%</td>
</tr>
<tr>
<td>Pakistan</td>
<td>685</td>
<td>13.4</td>
<td>397</td>
<td>10%, 15% and 30%</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>197</td>
<td>3.9</td>
<td>53</td>
<td>10%, 15%, 20%, 30%, 35%, 50%, 60% and 75%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>5101</td>
<td>100</td>
<td>2917</td>
<td></td>
</tr>
</tbody>
</table>

**SOURCE:** SAPTA Merged Consolidated National Schedule of Concessions

Unfortunately, most of the products that were put on the concessions’ list are either not relevant from the perspective of their importance in the trade composition of SAPTA.
Members or have low trade intensities.\textsuperscript{16} As can be seen from the table above, the margins of preference vary widely from 10\% to 100\% but broadly range from 10\% to 20\% for most products on which concessions have been offered to non-LDC SAPTA Members. Moreover, as is indicated in the chart below (first panel), 60\% of all products on which concessions have been offered pertain only to products of trade interest to LDC SAPTA Members.\textsuperscript{17} This, therefore, does not accommodate the export interests of India, Pakistan and Sri Lanka. Further, there exist wide disparities in the coverage of products of export interest to non-LDC SAPTA Members, ranging from about 20\% for India to close to 95\% for Maldives. Finally, looking at the ratio of concessional tariff lines to the 5300 total HS-6 tariff lines on which each country can potentially trade\textsuperscript{18} (second panel), one finds that all SAPTA Members, with the exception of India, have put less than 13\% of their total tariff lines on the negotiating table. While the number for India is close to 50\%, as also mentioned above, more than 80\% of this is concessions offered to LDC SAPTA Members. The third panel therefore attempts to provide some estimates of the effective MFN product coverage\textsuperscript{19} provided under SAPTA by its Members as a percentage of all possible HS-6 tariff lines and once again, these turn out to be extremely low numbers, less than 10\% for all SAPTA Members. For all of these reasons, the product coverage under SAPTA does not meet the “substantially all trade” requirement in Article XXIV: 8 of the GATT\textsuperscript{20}.


\textsuperscript{17} On the important institutional reforms lead in Europe, see Julien Chaisse, Adapting the European Community Legal Structure to the International Trade, 17 EUR.Bus. L REV. 1615 (2006).

\textsuperscript{18} This again provides an estimate of the likely upper bound as LDC SAPTA Members import a far smaller range of commodities than the 5300 total tariff lines at the HS-6 level recognized by the World Customs Organization.

\textsuperscript{19} This is obtained by multiplying the proportions in the first and second panels, as the former is a measure of MFN product coverage under SAPTA and the latter, a measure of actual to potential trade.

\textsuperscript{20} Pursell and Sattar (2003) reach a similar conclusion in ‘Trade Policies in South Asia: An Overview.’ They point out that for all the seven Members of the SAPTA, only 8.4\% of the 5300 HS-6 tariff lines for imports from India, Pakistan and Sri Lanka, and 6.2\% for imports from LDC SAPTA Members, are actually covered by regional tariff concessions. In fact, the conclusion remains unchanged if the concessions are evaluated in terms of import value in lieu of number of product lines. As an illustration, in 1998, only 15\% (US $ 480 mn) of total
discussed in the next section, further limit SAPTA’s potential for increasing trade in the region.

**Figure 4: Product coverage under SAPTA**

<table>
<thead>
<tr>
<th>Product coverage percentages (non-LDC to total)</th>
<th>Product coverage percentages (total to all possible HS-6 tariff lines)</th>
<th>Estimates of the effective MFN product coverage provided under SAPTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maldives</td>
<td>94.4%</td>
<td>India 9.4%</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>79.9%</td>
<td>Bangladesh 8.6%</td>
</tr>
<tr>
<td>Nepal</td>
<td>53.3%</td>
<td>Maldives 6.9%</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>46.7%</td>
<td>Nepal 4.3%</td>
</tr>
<tr>
<td>Bhutan</td>
<td>40.2%</td>
<td>Pakistan 5.3%</td>
</tr>
<tr>
<td>Pakistan</td>
<td>40.0%</td>
<td>Maldives 3.0%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>39.7%</td>
<td>Bhutan 3.0%</td>
</tr>
<tr>
<td>India</td>
<td>19.5%</td>
<td>Sri Lanka 1.7%</td>
</tr>
</tbody>
</table>

**SOURCE:** SAPTA Merged Consolidated National Schedule of Concessions

**c) Trade Liberalization under SAPTA: Stringent rules of origin requirements**

The rules of origin for goods not wholly produced or obtained in the region and those for “cumulative” origin further restrict the scope of SAPTA for liberalizing trade in the region. SAPTA provides that the total value of the materials, parts or produce originating from non-contracting states\(^{21}\) (or of undetermined origin) and used in the production of the exported item, should not exceed 50% of the FOB value (limit raised to 60% after amendment to SAPTA at the Twenty-first Session of the SAARC Council of Ministers) and that the final process of manufacture be performed within the territory of the exporting Member.\(^{22}\) This is

\(^{21}\) The value of the non-originating items is taken either as the CIF value where proven or as the earliest ascertainable price of these items in the territory of the Contracting State where processing occurs.

equivalent to a local content requirement of 50\% \ (40\% \ post-amendment) \ of \ FOB \ price. \ The
provisions \ for \ cumulative \ rules \ of \ origin \ require \ that \ goods \ processed \ in \ more \ than \ one
SAPTA \ Member \ state \ have \ at \ least \ 60\% \ of \ FOB \ value \ (reduced \ to \ 50\% \ after \ the \ amendment)
as \ value \ added \ in \ SAPTA \ countries \ to \ qualify \ for \ preferential \ treatment. \ Given \ that \ value
addition \ in \ most \ SAPTA \ Members \ is \ low \ in \ many \ of \ their \ most \ competitive \ exports, \ these
requirements \ further \ limit \ the \ effectiveness \ of \ the \ agreement \ by \ acting \ as \ a \ credible \ non-tariff
barrier \ to \ trade.

Figure 5: Rules of origin requirements under SAPTA

<table>
<thead>
<tr>
<th>SAPTA Provisions for Rules of Origin (maximum permissible percentages of FOB value of imports)</th>
<th>Before Amendment</th>
<th>After Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For Non-LDCs</td>
<td>For LDCs</td>
</tr>
</tbody>
</table>

**Rule 3 (a): Not wholly produced or obtained**

- Domestic Value Addition in an Exporting Country
  - 50\% \ (40\% \ post-amendment) \ for \ Non-LDCs
  - 40\% \ for \ LDCs
  - 40\% \ (30\% \ post-amendment) \ for \ Non-LDCs
  - 30\% \ for \ LDCs

- Maximum Input permitted from Non-Contracting States
  - 50\% \ (60\% \ post-amendment) \ for \ Non-LDCs
  - 60\% \ (70\% \ post-amendment) \ for \ LDCs

**Rule 4: Cumulative Rules of Origin**

- Aggregate Domestic Value Addition in an Exporting Country including inputs sourced from within the SAARC region
  - 60\% \ (50\% \ post-amendment) \ for \ Non-LDCs
  - 50\% \ (40\% \ post-amendment) \ for \ LDCs

- Maximum Input permitted from Non-Contracting States
  - 40\% \ (50\% \ post-amendment) \ for \ Non-LDCs
  - 50\% \ (60\% \ post-amendment) \ for \ LDCs

d) Results

Not surprisingly, the results have not been satisfactory: the share of intra regional trade in the
total trade of SAARC countries is very insignificant. This has not increased even after the
formation of the SAPTA.

Today, SAARC countries’ share in total world trade is not even one per cent, and their trade
among themselves lingers below 3 per cent of their total foreign trade. This compares poorly
with more than 60 per cent for intra-EU trade of their global trade and nearly 40 per cent for North America, and East Asia.

Although some liberalization measures have been taken following the establishment of SAPTA, some of them are regarded as flawed or inadequate. It is even suspected that the concession exercise is just so much playing to the gallery. Consider, for example the fact that the majority of the products offered concessions by members are not being imported by them at all. It is, therefore, not surprising that preferential imports cover only a very small percentage of the total intra-regional trade.23

2. From SAPTA to SAFTA and a regional free-trade area (non-notified)

The SAPTA was always envisaged as a stepping-stone to a South Asian Free-Trade Area, which would essentially involve abolishing intra-regional trade restrictions and tariffs. The mandate for this would be WTO-plus especially with respect to provisions for trade facilitation and would cover both tariff and non-tariff barriers including tariff eliminations without any import restrictions; removal of “structural impediments” to regional trade; harmonization of customs procedures and documentation; banking facilitation; port and transport facilitation; and facilitation of trade-related services.24 While there was no two-opinion that such measures would significantly increase trading opportunities in this region, what remained to be seen was whether the countries could muster the required consensus to formalize such an arrangement.25

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25 While the SAFTA was supposed to be formalized by 2001 (and in any case, no later than 2005), the deadline was further extended to 2008 for India, Pakistan and Sri Lanka and to 2010 for the four LDCs in the region.
a) SAFTA’s Objectives

This has now finally happened. The SAARC Members signed the Agreement on the South Asian Free Trade Area, the SAFTA, on the 6th of January 2004, at the 12th SAARC Summit in Islamabad.26 The SAFTA is slated to enter into effect on January 1, 2006 and in the interim the tariff concessions granted under SAPTA would continue to hold sway. As expected, the SAFTA Agreement aims to eliminate tariffs, para tariffs and non-tariff restrictions on the movement of goods in the region through a well-laid out ‘Trade Liberalization Programme’ (Article 7).

It also has an elaborate set of additional measures, detailed in Article 8, including adoption of trade facilitation measures and progressive harmonization of legislations by Contracting States in relevant areas. Like the SAPTA, special and differential treatment is accorded to LDC Contracting States, which finds a place in Article 11, in the ‘Trade Liberalization Programme,’ and under the application of Safeguard Measures in Article 16(8) of the SAFTA Agreement. Both these legal texts have similar provisions with respect to the coverage of goods, MFN treatment, suspension of concessions for BOP reasons, non-application, reservations, amendments, withdrawal from Agreement and notification of a Depository, who is the Secretary General of the SAARC in both cases. The main differences in the two Agreements are presented in Table #3 below.

b) Trade liberalization Programme under the Agreement on SAFTA

The most significant aspect of the SAFTA Agreement is the trade liberalization envisaged under Article 7. This requires non-LDC Contracting States to reduce tariffs to 20% (30% for LDCs) within two years from the coming into effect of this Agreement i.e. up to January 1, 2008.27 If the actual tariff rates at that time are below 20% (30% for LDCs), the Agreement requires an annual reduction on the basis of margin of preference of 10% (5% for LDCs) on

actual tariff rates for each of the two years. This means that a basic tariff rate of 10% would be reduced to 8.1% for non-LDCs and to 9% for LDCs over the first two years under the SAFTA Agreement. Further, both LDC and non-LDC Contracting States are required to bring their tariff rates to 0-5% within a second time frame of eight and five years, respectively, beginning from January 1, 2008. The Contracting States are encouraged to adopt these reductions in equal annual installments of at least 15% for non-LDCs and 10% for LDCs. However, for products of export interest to LDCs, non-LDC Contracting States are required to bring down tariffs to 0-5% within three years of coming into effect of the Agreement i.e. by January 1, 2009.

Figure 6: A tale of two Agreements – SAPTA and SAFTA

<table>
<thead>
<tr>
<th>Subject</th>
<th>Treatment under SAPTA</th>
<th>Treatment under SAFTA</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade liberalization</td>
<td>Provides for arrangements relating to tariff, para-tariff, non-tariff and direct trade measures</td>
<td>Provides for an elaborate ‘trade liberalization programme’ under Article 7</td>
<td>SAPTA plus</td>
</tr>
<tr>
<td>Additional measures</td>
<td>These relate to trade facilitation and communication provisions</td>
<td>SAPTA plus harmonization of standards, mutual recognition of tests and accreditation of testing labs, simplification of banking procedures for import financing, removal of barriers to intra-SAARC investments, rules for fair competition and promotion of venture capital and simplification of procedures for business visas (Article 8)</td>
<td>WTO plus</td>
</tr>
<tr>
<td>Special and differential treatment to LDCs</td>
<td>Provisions for deeper and wider tariff preferences, removal of non-tariff and para-tariff barriers, special consideration in the application of safeguards, flexibility in use of quantitative restrictions and</td>
<td>Longer time frames for tariff reduction and flexibility in derogation for products of export interest (Article 7); consider acceptance of price undertakings in the application of trade remedies, list of possible areas for</td>
<td>WTO plus</td>
</tr>
</tbody>
</table>


29 Sri Lanka has been given a second time frame of six years.

30 However all these reductions in tariff are not applicable to tariff lines included in ‘Sensitive Lists,’ which would have an upper ceiling, would be mutually agreed and negotiated by the Contracting States and made an integral part of the text of this Agreement. These would be subject to a periodic four-year review (or even earlier) by the SAFTA Ministerial Council, with a view to reducing the number of items.

31 These require transport and transit Contracting States to improve the communication system, transport infrastructure and transit facilities for accelerating the growth of trade within the region.

32 The SAFTA Agreement accords very special status to Maldives under Article 12 as despite its potential or actual graduation from being an LDC, it would continue to receive special and differential treatment accorded to LDCs in this Agreement.
| Proposed methodology for negotiations | Product – by – product, sectorally or across the board | Implicitly “across the board” |
| National treatment | No provision | Provision under Article 5 a la Article III of the GATT |
| Safeguard measures | Aggrieved Contracting State(s) have the right to withdraw equivalent concessions in the event of non-resolution | Provisions in details for investigation procedures; upper time limit for suspension of concessions at 3 years; provision for emergency safeguards in “critical circumstances;” S&D for LDCs |
| Rules of origin | Detailed in Annex 3 | To be negotiated and incorporated into the text of the Agreement |
| Modification or withdrawal of concessions | Provided for in Article 17 | No provisions |
| Dispute settlement | Committee has 120 days to resolve the dispute | Detailed provisions in Article 20. The Committee of Experts and SAFTA Ministerial Council perform the functions of the Panel and the Appellate Body, respectively. Dispute resolution may take from 30 days (min) to 240 days (max) |
| General exceptions | Not provided for | Provided under Article 14 a la Articles XX, XX(a), XX(c) and XX(f) of the GATT |

D. **General System of Trade Preferences among Developing Countries (GSTP)**

“Indian products receive preferential treatment under the Generalized System of Preferences (GSP) schemes of Australia, Bulgaria, Canada, Czech Republic, the European Union, Hungary, Japan, New Zealand, Norway, Republic of Belarus, Republic of Poland, Russian

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33 Algeria Argentina Bangladesh Benin Bolivia Brazil Cameroon Chile Colombia Cuba Democratic People's Republic of Korea Ecuador Egypt Ghana Guinea Guyana India Indonesia Islamic Republic of Iran Iraq Libya Malaysia Mexico Morocco Mozambique Myanmar Nicaragua Nigeria Pakistan Peru Philippines Republic of Korea Romania Singapore Sri Lanka Sudan Thailand Trinidad and Tobago Tunisia United Republic of Tanzania Venezuela Vietnam Yugoslavia Zimbabwe
India participates in the Global System of Trade Preferences among Developing Countries. India offers tariff concessions ranging from 10% to 50% on 53 tariff lines at the HS six-digit level. The rules of origin for the GSTP have not changed since the previous Review of India. With more than Euro 5 billion of preferential imports to the EU, India has been ranking 2nd among the users of the EU's GSP Since 1990.

**E. Bangkok Agreement**

India continues to be a party to the Bangkok Agreement signed in 1975. The agreement provides for liberalization of both tariff and non-tariff barriers; at present it is limited to tariff concessions. India provides concessional entry on 188 tariff lines (at the HS six-digit level),

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34 Information compiled by the WTO Secretariat (Statistics Division). Recently, the United States announced that it would enhance preferential trade access under the GSP for 42 Indian products: jewellery, leather goods, and carpets. (Reuters, 8 August 2001, and Financial Times, 9 August 2001).


36 Tariff concessions of 50% apply to specific tariff lines (HS 4104.21, 4104.22 and 4104.29) and are available only to Bangladesh, United Republic of Tanzania, Benin, Guinea, Haiti, Mozambique, and Sudan (Government of India, 2001).


38 Bangladesh, China, India, Republic of Korea, Laos, Sri Lanka.

39 The members of the agreement are: Bangladesh, Republic of Korea, Sri Lanka, India, Lao People's Democratic Republic, and China.
the duty rates are generally 5 percentage points below the standard rate. The third round of negotiations is expected to be launched shortly.

G. **India-Thailand FTA**

The FTA, which went into effect September 1, 2004 for certain products, is expected to increase investment between the two nations. The first phase of the FTA between the two countries from September is concerning with tariff reduction on 82 agreed items (gearboxes, television picture tubes, wrist watches, parts of seats, compressor type refrigerators, textile spindles, spinning rings, flyers, machinery for moulding, pipes, boiler shells, ball bearings, flywheels, pulleys, signalling equipment and printed circuits) in three years. The agreement will cut import duties from each country 50% in the first year, another 25% the following year, and eliminate them altogether by 2006. The second phase of the Free Trade Agreement would begin from then onwards and the two countries would have free trade regime by 2010.

H. **India-ASEAN CECA**

A trade agreement exists between ASEAN nations and India with the objective to establish a Regional Trade and Investment Area which includes a Free Trade Area in goods services and Investment. The ASEAN nations include: Brunei, Laos, Malaysia, Philippines, Thailand, Cambodia, Indonesia, Myanmar, Singapore and Vietnam. India will reduce its tariff for Brunei, Cambodia, Laos, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam

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40 India also provides concessional entry to ten additional products imported from Bangladesh: dried fish, leather of bovine or equine animals, goat or kid-skin leather, composition leather, timber, jute or bamboo pulp, newsprint, printing paper, hand-woven Jamdani sarees, and carpets wholly made of jute (Goyal, 2000; and Notification No. 26/95-Cus, 16 March 1995. Available online at: http://www.cbec.gov.in/cae/customs [23 July 2001]).


42 To see the consult the text of the agreement, see: [http://commerce.nic.in/india_thailand_fta.htm](http://commerce.nic.in/india_thailand_fta.htm)


44 To see the consult the text of the agreement, see: [http://commerce.nic.in/agree_asean.htm](http://commerce.nic.in/agree_asean.htm)
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in 2011. Correspondingly while Brunei, Indonesia, Malaysia, Singapore and Thailand will reduce their tariff for India in 2001, the new ASEAN members like Cambodia, Laos, Myanmar and Vietnam (CLMV) will do so in 2016. Phillipines which has expressed its reservations to the FTA has agreed to eliminate its tariff on reciprocal basis for India by 2016. India will unilaterally extend concessions on 11 tariff lines to CLMV.\footnote{Julien Chaisse (2012) The Regulation of Sovereign Wealth Funds in the European Union, in: Karl P. Sauvant and Lisa Sachs, Sovereign Investment: Concerns and Policy Reactions, Oxford University Press, pp. 462-495.}

Other regional agreements do exist between India and some partners but there are of less importance and they have not been notified to WTO. We can however mention: the free trade agreement concluded with Bhutan, Afghanistan and Nepal.

\textbf{Figure 7: Overview on RTAs signed by India}

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Date of entry into force</th>
<th>Date</th>
<th>Related provisions</th>
<th>Type of agreement</th>
<th>Document series</th>
<th>Status</th>
<th>Ref.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAPTA</td>
<td>7-Dec-95</td>
<td>22-Sep-93</td>
<td>Enabling Clause</td>
<td>Preferential arrangement</td>
<td>WT/COMTD/10</td>
<td>Examination not requested</td>
<td>...</td>
</tr>
<tr>
<td>TRIPARTITE</td>
<td>1-Apr-68</td>
<td>23-Feb-68</td>
<td>Enabling Clause</td>
<td>Preferential arrangement</td>
<td>L/2980 L/2980/Add.1</td>
<td>Report adopted</td>
<td>16S/83 14.11.68</td>
</tr>
<tr>
<td>GSTP</td>
<td>19-Apr-89</td>
<td>25-Sep-89</td>
<td>Enabling Clause</td>
<td>Preferential arrangement</td>
<td>L/6564/Add.1</td>
<td>Examination not requested</td>
<td>...</td>
</tr>
</tbody>
</table>

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