

Legal and Non-Legal Barriers to South Asian Free Trade

By

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Legal and Non-Legal Barriers to South Asian Free Trade

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Dedication

To

My Mother

Hasina Ahmed (Passed on August 01, 2014)

&

Mother in Law, Mahmudha Rahman (Passed on December 12, 2013)

My Father Syed Ahmed

My Brothers and Sisters

My wife Moni

And

My Sons 'Jim' & 'Sean'

Abstract

The concept of commitment has emerged in international business literature especially in explaining importer behavior as a counterpart to the internationalization process. Importer commitment often plays a dominant role influencing relationships in the exporter-importer dyad and facilitating the internationalization process by imparting access to the international market. This dissertation's primary data is a sample of 51 persons directly connected with various aspects of South Asian Free Trade.

Asia is economically important as the forefront of global free trade agreement (FTA) activity. This spark concerns about the negative effects of Asian FTAs, including the “noodle bowl” problem. Asian regionalism is here to stay despite the World Trade Organization's (WTO) Doha negotiations slow progress and the global financial crisis. The focus for policy makers should be how to minimize FTAs costs while maximizing benefits. Adopting a pragmatic perspective, this paper examines key trends and challenges to Asian FTAs. It provides new evidence from firm surveys, analysis on specific agreements, and computable general equilibrium estimates. This paper offers the following recommendations: strengthen the support system for using FTAs; rationalize and upgrade the administration of the rules of origin; ensure better agricultural trade coverage; forge comprehensive “WTO-plus” agreements; and encourage a region-wide FTA. Political economy considerations suggest Asia FTA consolidation by creating a People's Republic of China–Japan–Republic of Korea FTA, combining it with ASEAN+1 FTAs, and then involving Australia, India, and New Zealand— followed by connections with North America and Europe. In conclusion, the analysis suggests adopting a bottom-up approach to a Doha Round Agreement.

Geographically, the South Asian countries are close to each other. The positive things are uppermost growth in this region. This is mostly for of the inward-looking policies of the

government, political strife, conflict, and ideological difference between members countries. South Asian economic growth rose to 6.9% in 2015 from 6.7 % in 2014. The prediction is it will accelerate to 6.8% in 2017 and to 7.1% in 2018. India is the leading and largest emerging market economy in South Asia.

South Asia attracts global attention because it has experienced rapid GDP growth since 1980, averaging nearly 6% per annum. Yet, it faces many challenges. First, South Asia is dynamic, growing rapidly, highly urbanized, and is advancing from global integration. The second South Asia is largely agricultural, land-locked, exhibits high poverty, suffers from many conflicts, and lags. The divergence between the two faces of South Asia is on the rise. Many policy and institutional constraints contribute to this dichotomy. One important constraint is regional conflict that has made South Asia one of the least integrated regions of the world. Despite progress in reducing trade barriers with the rest of the world, intraregional trade is 5 % of total trade compared with over 50 % in East Asia.

The unique geography of South Asia, distance, and density, has the potential grow through increased trade. South Asia has the highest population density in the world. The distances between the cities and the border is low. These features naturally propel trade between countries but presently policy barriers hinder this. For example, Indian and Pakistan trade is currently US\$ 1 Billion, removing trade restrictions could jump their trade to US\$ 9 Billion. Similarly, estimates suggest that South Asia intraregional trade could increase from US\$ 5 Billion to US \$20 Billion if they remove restrictions on trading.

The benefits of regional cooperation for South Asia are obvious. Yet a range of political constraints prevent cooperation from happening. The political dynamics needs to change as the opportunity cost of non-cooperation for South Asia's poor is large. A part of this change will come

from leadership from civil society in terms of much more informed knowledge and debate of the underlying opportunities, issues, and constraints. In developing and elaborating on that core thesis, this dissertation has six chapters, following an introduction that summarizes the significance, structure, approach, and terminology of the dissertation.

Chapter one is the introductory chapter and presents the major issues for consideration for moving toward SAFTA. This chapter also provides an overview of the literature on South Asia regional integration. This chapter presents an overview of the approach for SAARC and SAFTA. The main part of this chapter offers relevant literature findings. These findings serve as the foundation and as starting point for further research as reflected in this dissertation. These literature findings helped formulate the two hypotheses proposed in this dissertation. The WTO legal regimen insufficiencies provide the possibility and necessity for WTO Members to indigenize WTO law by resorting to their own legal traditions and cultures. The second hypothesis is that the WTO Members' practices in dealing with the WTO have demonstrated their willingness and efforts to indigenize WTO law.

Chapter two, this chapter starts by reviewing legal fragmentation in international trade law. It also provides an analysis of GATT Article XXIV and other FTA legal areas. These include topics like the general character and structure of the WTO regime, specific trade mechanisms, the relationship between WTO law and domestic law, the relationship between WTO law and general international law, principles and interpretation of WTO agreements, the position of developing countries in the multilateral trading system, strategies pursued in international trade negotiations, domestic trade legislation, FTAs, dispute settlement mechanism, and domestic adjudication of trade issues.

Chapter three provides an overview of SAARC and SAFTA main features including major articles of both agreement. This chapter includes sensitive lists, rules of origin, treatment of non-tariff barriers, and compensation and dispute resolution mechanisms. This chapter discusses South Asia overall trade performance and potential, including indicators related to overall economic conditions, the sectoral composition and direction of trade, and tariff and non-tariff protection.

Chapter four examines how trade in services contributes to connectivity. It discusses the role of policies in services trade, looking at how these promote integration into the international trading system. This chapter outlines the key features and modalities of negotiations under SAARC Agreement on Trade in Services (SATIS), together with the opportunities and challenges of trade liberalization for a representative set of services (energy, telecommunications, tourism, and health). It also analyzes pattern of intra-regional trade and comparisons made with other regions and bilateral trade agreements in South Asia and investigates how these agreements could harmonize with SAFTA. This chapter details the importance of transit trade in South Asia and differentiates characteristics between formal and informal traders. Additionally, this chapter focuses on facilitating professionals and skilled workers movement to ease, reduce, or remove barriers and under trade agreements.

Chapter five discusses the methodology of the research data collection and analysis. The first part surveys the key academic, professional, and official literature regarding a range of issues that are pertinent to this dissertation. This chapter examines the primary data compared with different secondary data. Most data collected is from different sources like ADB, WB, UNCOM Trade, SAARC, and SAARC member countries and provides a review on SAARC's perspective on investment cooperation. This chapter includes a theoretical and empirical analysis of the interrelationship between regional integration and poverty reduction.

Chapter six quantitatively assesses the implications of SAFTA full implementation, with and without sensitive lists, and the impact of deeper degrees of South Asia regional integration. This chapter addresses trade facilitation measures consistent with SAEU creation, reviews SAARC member countries performance in promoting trade facilitation, and examines the South Asia regional trades untapped potential.

Chapter seven concludes this dissertation by summarizing the main findings of all the above chapters.

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"পরম করুণাময় আল্লাহ তা'য়লার নামে শুরু করছি"

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Main Abbreviations

ACP African, Caribbean and Pacific Group of States

ADA Anti-Dumping Agreement

ASCM Agreement on Subsidy and Countervailing Measures

ASEAN Association of South-East Asian Nations

AFTA ASEAN Free Trade Area

BOP Balance of Payments

BPM Balance of Payments Manual, sixth edition

CACM Central American Common Market

CARICOM Caribbean Common Market

CBP Customs and Border Protection

CEMAC Economic and Monetary Community of Central Africa

CIT Court of International Trade

CIS Commonwealth of Independent States, including associate and former member States

COMESA Common Market for Eastern and Southern Africa

CTD Committee on Trade and Development

DDA Doha Development Agenda

DOC Department of Commerce

DSB Dispute Settlement Body

DSU Dispute Settlement Understanding

ECCAS Economic Community of Central African States

ECOWAS Economic Community of West African States

EFTA European Free Trade Association

EC European Communities

ECJ European Court of Justice

EUROSTAT Statistical Office of the European Communities

FAO Food and Agriculture Organization of the United Nations

FATS Foreign Affiliates Statistics

FDI Foreign Direct Investment

FTA Free Trade Agreement

G20 The Group of Twenty Finance Ministers and Central Bank Governors

GATS General Agreement on Trade in Services

GATT General Agreement on Tariffs and Trade

GCC Gulf Co-operation Council

GDP Gross Domestic Product

GNP Gross National Product

GSP Generalized System of Preference

HS Harmonized Commodity Description and Coding System

IPR Intellectual Property Right

ITC International Trade Committee

IEA International Energy Agency

IMF International Monetary Fund

ITC International Trade Center

ISIC International Standard Industrial Classification

LDCs Least-developed countries

MERCOSUR Southern Common Market

MFN Most-Favored-Nation

NBR National Board of Revenue

NAFTA North American Free Trade Agreement

OECD Organization for Economic Co-operation and Development PA Pacific Alliance

SAARC South Asian Association for Regional Co-operation

SADC South African Development Community

SAFTA South Asian Free Trade Arrangement

S&D treatment Special and Differential Treatment

SDS Sustainable Development Strategy

STO Special Trade Obligation

SITC Standard International Trade Classification

TEU Treaty on European Union

TRIPs Agreement on Trade- Related Aspects of Intellectual Property Rights

UNECE United Nations Economic Commission for Europe

UNECLAC United Nations Economic Commission for Latin America and the Caribbean

UNCTAD United Nations Conference on Trade and Development

UNIDO United Nations Industrial Development Organization

UNSD United Nations Statistics Division

URAA Uruguay Round Agreements Act

USTR The Office of United States Trade Representative

WAEMU West African Economic and Monetary Union

WTO World Trade Organization

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Introductory Chapter

1.1. Introduction

Both Addis Agenda of Action (para 82) and the 2030 Agenda (para 68) identify trade as a vehicle of inclusive economic growth and poverty reduction mechanism contributing to sustainable economic growth.¹ To expedite regional trade in 1993 the South Asian Preferential Trading Agreement (SAPTA) formed and was subsequently renamed as South Asian Free Trade Agreement (SAFTA). SAFTA Article 3(1) denotes:

“The trade relationship between South Asian countries is currently of special interest for a number of reason including eliminating barriers to trade and facilitating the cross-border movement of goods between the territories of the contracting States, promoting conditions of fair competition in the free trade area, and ensuring equitable benefits to all contracting countries, taking into account their respective levels and patterns of economic development.”

SAFTA’s concern is free movement of goods through; inter alia, elimination of tariffs, para-tariffs, non-tariff restrictions on the movement of goods, and other equivalent measures. The elimination of tariff and non-tariff barriers should significantly boost trade amongst the member countries and thus furnish sustainable economic development. As a result, many countries are signing Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs). In recent times, South Asian counties entered FTAs with promising economic rationales. It has been over a decade since the signing of SAFTA. Despite this, SAARC countries lag in effectively implementing the General Agreements of Tariffs and Trade (GATT) and SAFTA agreements.

¹ Inter-Agency Task Force On Financing For Development: Trade as an engine for development. (July 2016).

RTAs are a popular method of increasing trade in the present era of trade liberalization. For example, from 1948 – 2017, GATT received around 445 RTA notifications. Since the World Trade Organization (WTO) formed, 225 arrangements initiated covering trade in goods or services. These arrangements notified² (Appendix 2 enclosed) to the GATT or the WTO, were mostly concluded in the past 20 years.³ Additionally, there is a noticeable increase in plurilateral agreements under negotiation. All WTO members have RTAs in force.⁴ Two of the WTO leaders are the United States of America (U.S.)⁵ and the European Union (EU).⁶ These leaders play a vital role in developing the existing and new frameworks. The rise of RTAs is an accurate indicator of global economic efficiency and welfare. Moreover, the rise of RTAs boosts regionalism into multilateralism.

² Facts and figures of RTAs and see https://www.wto.org/english/tratop_e/region_e/regfac_e.htm

³ See Committee on Regional Trade Agreements, Basic Information on Regional Trade Agreements, WTO Doc. available at <http://rtais.wto.org/UI/PublicAllRTAList.aspx>

⁴ See Trade topic discussion on RTAs and visit, https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁵ The United States has recently concluded FTAs with Chile and Singapore. It is also actively negotiating FTAs with 33 other governments to form Free Trade Area of Americas (FTAA), with Central American Common market (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), with southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), with Australia and Morocco. See 2003 Trade Policy Agenda and 2002 Annual Report of the President of the United States on the Trade Agreements, available at <http://www.ustr.gov/reports/2003.html>. See Press Release, Policies in Focus, Enterprise for ASEAN Initiative (announcing White House initiative to ultimately form an FTA with the ASEAN) available at <http://www.whitehouse.gov/infocus/internationaltrade/aseaninitiative> (last visited Jan. 17, 2004); see also Edward Alden, Countries Line up to Sign US Trade Deals, FIN. TIMES, Nov. 1, 2002, at 10.

⁶ The EC, of course, has untiring enthusiasm for RTAs. The EC has some form of RTA relationships with almost all members of the WTO. In fact, there are only few countries, including Australia, Canada, China, Japan, New Zealand, Taiwan, and the United States, with which the EC trades on most-favored-nation basis. The EC now negotiating RTAs with MERCOSUR, Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE), and Chile. See <http://www.europa.eu.int/comm/trade/bilateral/euta.htm> (listing the complete list of EC regional trade agreements).

South Asia has very low level of regional integration amongst member states. High trade barriers are one main reasons. GATT Articles V and XXIV call for freedom of transit and free trade through the most convenient route. They ban discrimination based on the vessel's flag, place of origin, departure, entry, exit, or destination. However, GATT Article V requires WTO members to operate national transit schemes instead of transit at regional levels. Members observed that the regional cooperation can occur following the footsteps of developed systems like the EU and the Association of South East Asian Nations (ASEAN).

This issue lacks thorough research in the South Asian region. As a result, this research attempts to fill the gaps in the literature by conducting the proposed research project. Meticulous and objective analysis is essential to successful SAFTA implementation. This work delves into the legal issues and determines what factors hinder FTA implementation. Then this research will suggest member country policy makers adopt policies to achieve regional integration envisaged by SAFTA.

1.2.Study Rationale

On January 22, 2017 the Trade Facilitation Agreement (TFA) came into effect. The TFA's design is to simplify, streamline, and facilitate the flow of goods at borders. The full implementation of TFA of the WTO should reduce trade costs up to 14.3%. On the other hand, the SAARC's dedication is to facilitate South Asian region people together with the spirit of friendship, trust, and understanding. However, SAFTA fails to achieve this purpose.

Nonetheless, SAFTA has made strong theoretical impacts on Member States trade. However, that is far from reality. This dissertation seeks to make a critical and comprehensive analysis of progress towards SAFTA. South Asia is an adverse business region. This region remains a state of peace but is not free from authoritarian regimes, terrorism, and different

international strategic outlooks. Proper implementation of SAFTA can neutralize this hostile situation. An economically integrated and prosperous SAFTA will promote peacemaking and peacekeeping in South Asia. Currently, SAFTA has a rudimentary effect on this region's business.

This study takes an intra-disciplinary approach in some caveats. However, this study does provide a full and comprehensive account of RTAs legal, political, and economic aspects. This premise of this work is the border policies and other associated RTA aspects. Further, the study does not make a comprehensive comparative analysis of all RTAs. However, it delves into various comparative analyses from the EU and NAFTA.

1.3.Study Background

SAARC design is to accelerate Member States economic processes and social developments. In the consumer market, SAARC is the largest regional organization. SAARC formed on December 08, 1985 by Bangladesh, Bhutan, Maldives, Nepal, Pakistan, India, and Sri Lanka. On April 03, 2007 Afghanistan became a Member State following India's recommendation. SAARC has nine observer members including EU, China, Japan, and the U.S. South Asia covers around 5,221,133 square kilometers i.e. 11.51% of the Asian continent and 3.4% of the world's land surface.⁷ It has 39.49% of the total Asian population and 24% of the world's population.⁸ In 2010, South Asia had the largest population of Hindus, Jains, Sheikhs,

⁷ Arnall, A (24 September 2010). "Adaptive Social Protection: Mapping the Evidence and Policy Context in the Agriculture Sector in South Asia". Institute of Development Studies (345).

⁸ South Asia Regional Overview". South Asian Regional Development Gateway. Archived from the original on 21 November 2008.

Christians, Buddhist, and Muslims. There are around 600 million of Muslims, 35 million of Christians, and 25 million of Buddhist in this region (Annexure: 01).

Over the years, intra-regional trade has taken a down step in this region. In 1948 intra-regional trade amongst the South Asian countries was at 19% and decreased to 5% over the years.

SAARC performance in intra-regional trade is very poor in comparison to other trade blocs around the world.⁹ The cultural, political, and religious differences between countries in this region attributed to the poor performance. Therefore, individually countries are doing excellent in exporting to other parts of the world but perform miserably in intra-regional trade. As a region, South Asia is thriving towards a leadership position but is severely constrained because of deeply rooted belief system.

The purpose of this dissertation is to provide clear and comprehensive reasoning of SAARC and SAFTA fundamental principles and to focus on ways to improve this region by adopting policy development and increasing trade. The premise of this study is the success rates of other trade blocs in achieving sustainable developments. However, this study also considers the regional limitation that arises due to cultural and socio-economic differences and inter-country relationship. The dissertation will make a substantial contribution in the field of research related to SAARC and SAFTA. A meticulous analysis of the data reveals that the harmonization of the trade laws and policies of this region are heavily constrained due to the cultural, political, and socio-economic differences. As a result, this study's design is to provide contextual explanations and understandings of this region's trade laws and policies. Researchers and academicians may refer to this study for a deeper understanding of the history of SAARC

⁹ FICCI, The South Asian Century: Progressing Towards Regional Integration - A Study January (2014), available at <http://ficci.com/spdocument/20354/SBCL-Background-Paper.pdf>.

regional trading and the factors playing a key role in this region's growth. This study provides authentic and relevant information and makes recommendations through which Member States may improve intra-regional trade.

In the past decade the trade in the South Asia almost doubled. From 2010 to 2014 this region's overall GDP increased to 18 %. Moreover, with 6.8% of annual rate this region, after East Asia, has achieved the most economic growth since 2000. In 2014, trade accounted for a smaller share of GDP in South Asia at 47% than in East Asia at 55%. South Asia's economic competitiveness continued to lag other regions. The Global Competitiveness Report identified shortcomings in institutional, business, investment environments, and a lack of infrastructure as the main problems of this region.¹⁰

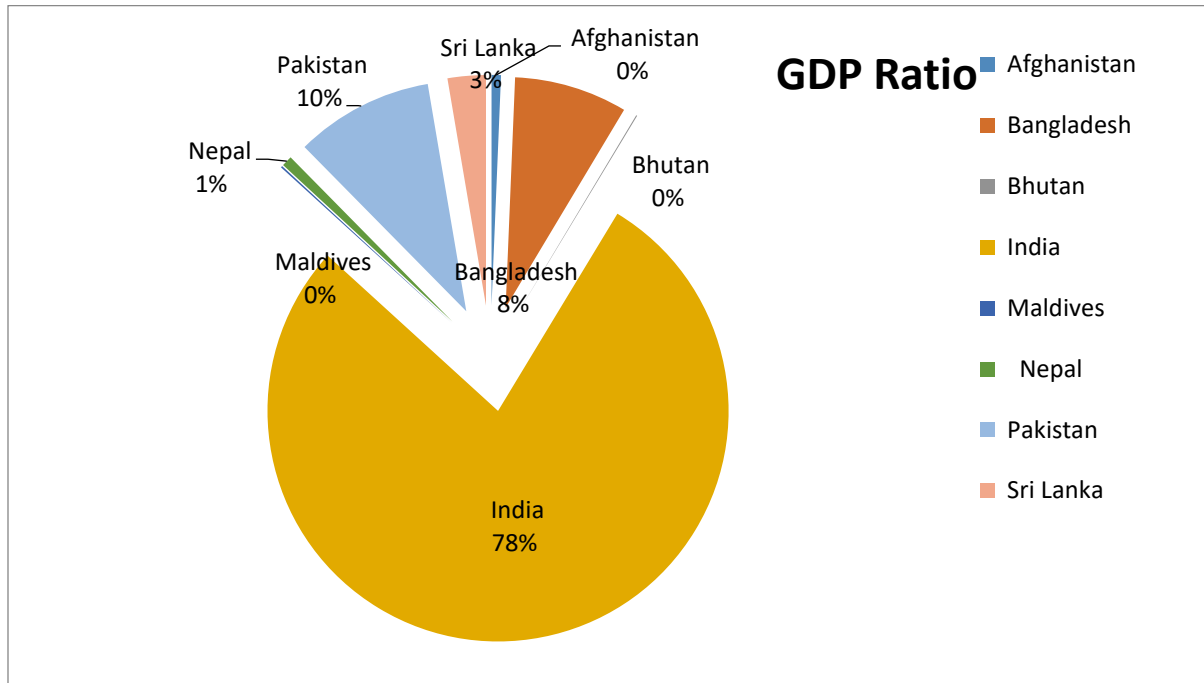
India is the largest GDP growth provider in South Asia providing 78% of GDP, followed by 9.7 % from Pakistan, 7.9 % from Bangladesh and 4.5 % from Sri Lanka.¹¹ Other countries have insignificant GDP contributions. India must take the leading role towards regional integration of this region.¹²

¹⁰ "Herrera Dappe, Matías; Suárez-Alemán, Anchor. 2016. Competitiveness of South Asia's Container Ports: A Comprehensive Assessment of Performance, Drivers, and Costs. Directions in Development-Infrastructure; Washington, DC: World Bank. <https://openknowledge.worldbank.org/handle/10986/24333> License: CC BY 3.0 IGO."

¹¹ See the figure 1.1 for details of contribution of individual countries GDP in total South Asian GDP

¹² World Bank (2012). World Development Indicators Database. Available: <http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2012> access date August 10.

FIGURE 1: 1 CONTRIBUTION OF INDIVIDUAL COUNTRIES GDP IN TOTAL SOUTH ASIAN NOMINAL GDP, 2017



Despite Member State’s inward-looking policies, internal strife and conflict due to political and ideological reasons, the South Asian countries achieved uneven growth.¹³ In 2015, economic growth rose to 6.9 % from 6.7% in 2014, and should cross 6.9% in 2017 and 7.1% in 2018.¹⁴ India had the strongest growth rate.¹⁵

This study, relying on nominal GDP volume, tries to explore the market at the ground level and seeks to examine trade realities. It also examines the SAFTA potentiality and identifies areas for further modification. A wide range of secondary sources was relied upon to ascertain

¹³ Ershad Ali1 & Dayal Talukder2, Political Economy Of The Preferential Trade Liberalizations And Regionalism In South Asia: Opportunities And Challenges, THE CANADIAN SOCIAL SCIENCE (2010).

¹⁴ See more at <http://www.worldbank.org/en/news/press-release/2017/04/16/south-asia-could-potentially-benefit-from-globalization-backlash>

¹⁵ World bank group analysis; see more at <http://www.worldbank.org/en/region/sar/overview>

the trends of the regional trade. Statistics reveal that this region's intra-regional trade is slowly progressing but has great prospects for regional trade integration. Therefore, this paper explores SATFA benefits. The current SAFTA literature is dearth and this paper shall effectively contribute to this field and provide useful guidelines to this region's policy makers.¹⁶

There are many problems in this region such as dependence on other countries, low value agriculture, weak export performance, poor infrastructure, unregulated investments, low paying jobs, and unemployment. Sustainable growth can diminish these problems and contribute to human development. In 2012, around 18.8 % of this region's population were living on less than \$1.90 a day. Further, more than 200 million people were living in slums and more than 500 million cannot access electricity.¹⁷ Moreover, this region also witnesses extreme infrastructure gaps, social exclusions, and extreme level of inequality. To achieve global poverty and prosperity goals regional development is necessary.¹⁸ World Bank's South Asia Region Chief Economist, Martin Rama, suggested that "To make the most of this export opportunity, countries in the region should continue to focus on policies that promote economic growth."

Implementation of some elements of SAFTA is necessary to fully benefit. These elements include trade liberalization scheme, rule of origin, dispute settlement mechanism, list of sensitive items, technical assistance, compensation to revenue loss, trade facilitation, institutional arrangements. This dissertation highlights these aspects.¹⁹ The features are vital to SAFTA success follow:

¹⁶ Hoi-Yong*. Dhruva Kumar Gautam**. Lee Chong, Hak-Chun, South Asian Free Trade Area (SAFTA) and Regional Integration: Revisit the Existing Reality, (2014).

¹⁷ See more at. <http://www.worldbank.org/en/topic/poverty/overview>

¹⁸ Id at.

¹⁹ Chong, Hoi-Yong, Dhruva Kumar Gautam, Lee, Hak-Chun: South Asian Free Trade Area (SAFTA) and Regional Integration p.379

1.3.1. Trade Liberalization

GATT Article XXIV paragraph 8 section (b) states that: “A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories.” Similarly, GATS Article V calls for agreement on liberalizing trade in services between member parties. SAFTA Article 7 emphasizes trade liberalization programs. Full trade would improve 95% of trade and tariff lines. However, to achieve this goal a planned approach with appropriate steps is necessary.

1.3.2. Appropriate Rules of Origin

Rules of Origin (ROOs) establish the goods “nationality” and determine eligibility for the preferential treatment. Establishing a free trade area without ROOs would result non-member countries with the lowest tariff entering their goods and making a FTA a customs union (CU) with the common external tariff that of the member with the lowest tariff.

1.3.3. Dispute Settlement Mechanism

To ensure fair and speedy resolution of the dispute among the contracting parties, SAARC established two forums. The committee of the experts and the SAFTA Ministerial Council (SMC).²⁰ Member States can exhaust these forums whenever other Member State violate SAFTA provisions. SAFTA Article 10 (7) denotes that “The COE will also act as Dispute Settlement Body under this Agreement”. According to the provisions of SAFTA, before recommending their dispute to the settlement body the Member States should try to resolve the dispute through mutual conciliation.”²¹

1.3.4. Sensitive List:

²⁰ Moinuddin, M. (2013). Fulfilling the Promises of South Asian Integration: a Gravity Estimation, ADBI Working Paper, Asian Development Bank Institute

²¹ Chong, (2014).

Every country has a sensitive list containing a list of the goods excluded from tariff requirements. However, Member States are obligated to constantly revise the sensitive list to reduce the number of items. Sensitive list is defined by SAFTA Article 7 (3B) as: “The Sensitive List shall be reviewed after every four years or earlier as may be decided by the SAFTA Ministerial Council (SMC), established under Article 10, with a view to reducing the number of items in the Sensitive List.”²²

1.3.5. Technical Assistance to Least Developed Countries (LDCs)

Technical assistance and cooperation arrangements are vital factors to fully benefiting from SAFTA. SAFTA Article 11(D) provides technical assistance and cooperation to LCDs. LCDs should be designed and addressed on a priority basis, but they do not have binding commitments. The assistance areas include developing training and skills, product certificate, improving national capacity on legislation on anti-dumping, export, and investment promotion measures, developing and improving tax policies and instruments, trade policy reforms, reducing technical barriers to trade measures, improving sanitary and phytosanitary measures, legislative and policy related measures, safeguards and compensation, etc.

1.3.6. Revenue Loss Mechanism Compensation

To promote and facilitate LCDs trade SAFTA requires non-LDCs compensate LDCs for the loss of customs and revenues for undertaking tariff reduction. SAFTA Article 10(E) states, “... Until alternative domestic arrangements are formulated to address this situation, the Contracting States agree to establish an appropriate mechanism to compensate the Least Developed Contracting States for their loss of customs revenue. This mechanism and its rules

²² SAFTA Agreement. See more at: http://saarc-sec.org/digital_library/detail_menu/agreement-on-south-asian-free-trade-area-safta

and regulations shall be established prior to the commencement of the Trade Liberalization Programme (TLP).”²³

1.3.7. Institutional Agreements:

SAFTA Article 10(6) denotes that the COE shall monitor, review, and facilitate SAFTA provisions every six months assigned by the SMC. SAFTA Article 7(4) highlights the barrier to trade issues. Under this Article, the contracting states must annually notify the SAARC Secretariat of all non-tariff and para-tariff measures to their trade. The COE shall examine their compatibility with relevant WTO provisions in their regular meetings. After that, the COE shall either eliminate or implement measures to facilitate the intra-SAARC trade. In South Asian countries, the intra-regional trade is below 5%.²⁴ SAFTA features lack practical implication. As a result, this research deliberately investigates the reasons and identifies blockage for policy adaptation for improvement.

1.4. Literature Review

There is a considerable amount of SAFTA literature. However, the literature is not concise or precise and does not mention all aspects of South Asian. Some western literatures exist in this area, but they only deal with basic aspects like business or trade and political aspects of this region. Meticulous SAFTA study is not available. Specifically, there is no research on SAARC and SAFTA legal aspects and their shortcomings. This dissertation will fill the gap in this area. There have been many studies delving into South Asian regional economic integration, but few dedicated to SAFTA and SAARC legal matters.

²³ Id. At. SAFTA Agreement.

²⁴ FICCI, The South Asian Century: Progressing Towards Regional Integration - A Study (January 2014).

In 2006, a study conducted by Nag and Nandi revealed that in today's multilateral trade RTAs have become a common phenomenon.²⁵ India is one prominent SAARC member. According to Mehta and Kumar (2004), since its inception in 1985, SAFTA has become a prominent feature of SAARC.²⁶ SAARC countries can benefit more from SAFTA if they come out of the formal trade shell. Dhungel (2004) observed that SAARC agendas mark actual progress and achievements. Jhamb (2006) supports Dhungel's view and observed that it was primarily due to tenuous political relations between India and Pakistan and a general environment of mistrust among Member Countries.²⁷

Rehman et al (2006) observed that a gravity model can eliminate trade barriers and structural rigidities originating from adverse political relationship and thus could substantially increase intra-SAARC trade.²⁸ Modern South Asia's comprehensive history explores the historical Michael Mann charts and the role of emerging states within the Mughal South Asia's Modern History: Thematic Perspectives and over one million.²⁹ Further, Pitigala³⁰ observed that due to weak trading relations and trade structures between SAARC countries the South Asian

²⁵ Nag, B. and Nandi, A. (2006). 'Analyzing India's trade dynamics vis-a-vis SAARC members using the gravity model', South Asia Economic Journal, Vol. 7(1):83-98.

²⁶ Mehtha, S.P. and Kumar, P. (2004), 'RTAs and South Asia: option in the wake of Cancun fiasco', ASARC, working paper 2004-11, The Australian National University, Canberra.

²⁷ Dhungel, D. (2004). 'South Asian Association for Regional Cooperation (SAARC): Prospect for development', The Pakistan Development Review, Vol. 43 (4) Part II, pp.933-941.

²⁸ Rahman, M., Shadat, W.B. and Das, N.C. (2006). Trade Potential in SAFTA: An Application of Augmented Gravity Model. Dhaka: Centre for Policy Dialogue

²⁹ MICHAEL MANN, SOUTH ASIA'S MODERN HISTORY: THEMATIC PERSPECTIVES (Routledge. 2014).

³⁰ Pitigala, N., 'What does regional trade in South Asia reveal about future trade integration? Some empirical evidence', World Bank Policy Research Working Paper 3497, World Bank, Washington, DC, 2005

countries could not have the fruits of the intra-regional trade.³¹ Baysan et al (2006) supports this view.³² They observe that SAFTA's economic framework is relatively weak. From the economic perspective there is neither qualitative arguments nor quantitative assessments available to give a reason to feel enthusiastic about the arrangement.

Further, this region is small in terms of economic size as measured by GDP (and per capita income) and its world trade share. Consequently, the regional partners trade preference is likely leading to trade diversion rather than trade creation. Das (2007) observes that preferential initiative in this region is based on a weak proposition.³³ Moreover, Sadiq et al (2010) describes, the Promoting Regional Economic Cooperation in South Asia as having the potential and hopes of fresh and insightful offerings that can be used as inputs in formulating credible policy measures to achieve sustainable economic cooperation of this region.³⁴ The study highlights the 'dichotomy' in South Asia and describes its 'two faces' one that is 'highly urbanized and well linked to global markets' and the other 'rural, isolated from the global economy and growing very slowly.'³⁵

There is a vast amount of literature on the intra-SAFTA trade. This study incorporates the most relevant considering the title and broader research question of the essay. R.K. Pruthi, in his book titled "The South Asian Free Trade Area: Problem & Perspective" observed that regional

³¹ Ershad Ali1 Dayal K. Talukder2, Preferential Trade among the SAARC Countries: Prospects and Challenges of Regional Integration in South Asia, JOAAG, VOL. 4. NO. 1 (2009).

³² Baysan, T., A. Panagariya and N. Pitigala, 'Preferential trading in South Asia', World Bank Policy Research Working Paper 3813, World Bank, Washington, DC, 2006.

³³ Hafiz Wasim Akram, et all, India's trade relationship with SAFTA countries: A review, Journal of Indian research (ISSN:2320-7000), Vol.2, No.1, January-March, 2014, 46-58

³⁴ Sadiq Ahmed, et al., Promoting Economic Cooperation in SA, beyond SAFTA, SAGE, THE WORLD BANK.

³⁵ SADIQ AHMED; SAMAN KELEGAMA; EJAZ GHANI, PROMOTING ECONOMIC COOPERATION IN SA, BEYOND SAFTA BY WB (2010).

cooperation has the impetus of healthy and sustainable development of the people living in that region.³⁶ He further observes that due to the strategic location the South Asian region attracted adventures through ages. He makes a critical evaluation of SAFTA considering each of the eight-member's perspective.³⁷ Another celebrated western writer Lawrence Saez (2011) portrayed a fresh and accessible account of SAARC. He emphasized that this region provides a unique security complex that can facilitate regional cooperation.³⁸ He further stressed the bars of cooperation on areas like historical developments. He focused on the inner framework of the Regional Centers, and their realities in implementing the decisions reached at SAARC summits on areas like security challenges such as health pandemics, terrorism, and energy security of this region.³⁹

Ji Xia and Mathias Vahullebusch (2013) concentrated their research on the Regional Cooperation and Free Trade Agreements in Asia and focused on the dynamics of Asian economic development and its effect on both global and regional trade cooperation.⁴⁰ The WTO has taken a significant step to integrate national economies into global trade regulations and liberalized the trade relationship between developed, developing, and emerging economies. Further, proliferation of FTAs in Asia raised growing concerns about fragmentation of the world trade orders.⁴¹ Jayatilleke S Bandara and Wusheng Yu (2003) are of the view that RTAs have

³⁶ R. K. PRUTHI, THE SOUTH ASIAN FREE TRADE AREA: PROBLEMS & PERSPECTIVE (Sumit Enterprises ed. First published 2006).

³⁷ Id. at.

³⁸ LAWRENCE SAEZ, THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC): AN EMERGING COLLABORATION ARCHITECTURE (Routledge. 2011).

³⁹ Id. at.

⁴⁰ Ji Xia Hu and Mathias Vanhullebusch, Regional Cooperation And Free Trade Agreements in Asia (Brill's Asian Law Series ed., 2013).

⁴¹ Id. at.

begun making an impact in the last two decades. Based on the trade data and global computable general equilibrium (CGE) model they observed that the small countries would gain very little or even lose under the preferential liberalization schemes.⁴²

Jagdish Bhagwati (1995) opined that RTAs are the stumbling blocks of multilateral trade liberalization.⁴³ He referred the overlapping RTAs as the ‘spaghetti bowl’ and is of the view that regional trade is an unfortunate development.⁴⁴ Further, Panagariya (1999) observed that RTAs tend to have drastic effect on the multilateral trade liberalization because of its high visibility and resultant possibility to energize and unify protectionist lobbies as well as drain the negotiating capital, particularly in poorly endowed countries.⁴⁵

Similarly, two other studies use the gravity model. Those studies analyzed the impact of SAFTA in the regional trade flows and found that it had either no or asymmetric impact on this region’s trade. The first study used the augmented gravity model. It depicted that countries such as India, Pakistan and Bangladesh are likely to benefit from SAFTA, but Maldives, Nepal and Sri Lanka are likely to lose out.⁴⁶ The second study conducted by Rodriguez and Daniel (2007) mentioned that SAFTA shall have little practical effect on regional trade flows. This study reveals that Bangladesh shall sufferer the most welfare loss while India, Sri Lanka and other

⁴² Jayatilleke S. Bandara and Wusheng Yu, *How Desirable is the South Asian Free Trade Area? A Quantitative Economic Assessment*, BLACKWELL PUBLISHING LTD 2003 (2003).

⁴³ Bhagwati, Jagdish, ‘U.S. trade policy: The infatuation with free trade areas’, in Bhagwati, Jagdish and Anne O. Krueger, *The Dangerous Drift to Preferential Trade Agreements*, The AEI Press, Washington, DC, 1995: 1–18.

⁴⁴ Id. At.

⁴⁵ Panagariya, Arvind, ‘The regionalism debate: An overview’, *The World Economy*, vol. 22, No. 4, 1999.

⁴⁶ Rahman, M., W. B. Shadat and N.C. Das, ‘Trade potential in SAFTA: An application of the augmented gravity model’, Paper 16, Center for Policy Dialogue, Dhaka, 2006

South Asian countries are likely to have a welfare gain. Bangladesh is likely to suffer because of the negative trade diversion effect.⁴⁷

Razzaque (2008)⁴⁸ conducted a study based on a qualitative analysis and three types of quantitative analysis (gravity model, CGE model, and GTAP) that are like the research conducted by Bandra and Yu (2003).⁴⁹ The study revealed that weaker economies shall suffer the most because of SAFTA. They will mainly suffer because of the increased import from the neighboring countries and nominal increase in exports to the region and significant loss of tariff revenue.⁵⁰

Ahmed (2015) makes a critical analysis and evaluates SAARC's progress, economic cooperation, environmental security, human welfare, and cooperation in security matters. According to him, SAARC identified the key issues on its agenda. Over the years SAARC has been more active in less controversial areas of human security like the poverty alleviation, health and safety, human resource development, and higher education. The study also revealed that greater cooperation in human security can pave the way for some more 'contentious' issues like terrorism.⁵¹

Mahendra (2010) commented on the creation of SAARC Integrated Programme of Action (SIPA), including Agriculture and Rural Development; Communications and Transport;

⁴⁷ UNDP, Integration of Least Developed Countries into South Asian Free Trade Agreement: A Human Development Perspective, (December 2011 © UNDP

⁴⁸ Razzaque, Mohammad A., 'Weaker economies in SAFTA: Issues and concerns', Paper presented at the First South Asian Economic Summit, Colombo, 28-30 August 2008a.

⁴⁹ Bandara, Jayatilleke S. and Wusheng Yu, 'How desirable is the South Asian free trade area? A quantitative economic assessment', World Economy, vol. 26, No. 9, 2003: 1293–1323.

⁵⁰ Razzaque (2008)

⁵¹ Zahid Shahab Ahmed, International Political Economy of New Regionalisms Regionalism and Regional Security in South Asia The Role of SAARC, (26 March 2015).

Social Development; Environment, Meteorology, and Forestry; Science and technology; Human Resources Development; regional Convention on Suppression of Terrorism; regional Convention on Narcotic Drugs and Psychotropic Substances; SAARC Convention on Preventing and Combating Trafficking in Women.⁵² Further, Pierola (2007) observes that for reservations and special arrangement for selected products, product exemptions and restrictive rules for point of origin constrains the effective flourish of SAFTA.⁵³

In his book titled ‘the Geopolitics of South Asia (2009)’ Professor Chapman referred how the organization of the territory played an important role in the historic, cultural, linguistic, and economic development of this region.⁵⁴ For the North-West frontier Afghanistan and Kashmir became included in second edition and the North-Eastern borders are considered for the third and revised edition of the book. The present geographic condition of this region has is enhanced and updated. Chapman not only provides a useful insight of the historical political geography but also a critical account of the forces underpinning changing region.⁵⁵

Hafiz et al (2012) focused on SAARC. The study provides insights regarding the interrelation with the civil society in the process of South Asian regional cooperation and integration. Moreover, it stresses the urgency of regional public goods. Further, it recommends that critical engagement of civil society can have beneficial effect on future integration and cooperation between Member States. The study specifically highlights certain factors like industry and trade sectors when the cross-border activities established within SAFTA

⁵² Mahendra P. Lama, SAARC Programs and Activities Assessment, Monitoring, and Evaluation, (2010).

⁵³ Newfarmer, R. and Pierola, M.D. (2007). ‘SAFTA: promise and pitfalls of preferential trade agreements’, in Z.F. Naqvi and P. Schuler (Eds.), The Challenges and Potential of Pakistan–India Trade. Washington, DC: World Bank.

⁵⁴ GRAHAM P. CHAPMAN, THE GEOPOLITICS OF SOUTH ASIA: FROM EARLY EMPIRES TO THE NUCLEAR AGE (Ashgate 3rd ed. 2009).

⁵⁵ Id. at.

framework.⁵⁶ This book interrelates between policy reforms and poverty reduction outcomes in South Asia. Given its significant inter-country differences in terms of timing and comprehensiveness of reforms this region is a place for significant comparative analysis.⁵⁷

Jayatilleke S. Bandara (2011) concentrate on scholarship from several South Asian countries that focus on this region's conflict resolution and cooperation building. The center of the essay is the inter related issues like security, political economy-domestic politics, and the construction of identities, and normative frameworks. Further the study makes a comprehensive analysis of the international frameworks and figure out the possible outcomes to solve this region's disputes. The study focuses on the bilateral trade conflict between India and Pakistan along with other multilateral problems of this region.⁵⁸

Rahman (2008) dedicates his studies to the SAFTA countries' macroeconomic structure, namely Bangladesh, India, Nepal, Pakistan, and Sri Lanka and explores the possibility of trade expansion within these countries based on regional link models on time series data of 28 years.⁵⁹ The study reveals the inter-country differences in SAARC countries' production and consumption, investment behavior, tax and non-tax structures. There is huge potential for trade expansion in SAFTA countries. Further the study reveals that unlike the EU, NAFTA,

⁵⁶ ADB, REGIONAL INTEGRATION AND ECONOMIC DEVELOPMENT IN SOUTH ASIA (Sultan Hafeez Rahman, et al. eds., A JOINT PUBLICATION OF THE ASIAN DEVELOPMENT BANK AND EDWARD ELGAR PUBLISHING 2012).

⁵⁷ Jayatilleke S. Bandara; Prema-chandra Athukorala; Saman Kelegama, Trade Liberalization and poverty in South Asia (Routledge Studies in the Growth economy 2011).

⁵⁸ E. Sridharan, International Relations theory and South Asia (Oxford University Press 2011).

⁵⁹ Rahman, M., Shadat, W.B. and Das, N.C. (2006). Trade Potential in SAFTA: An Application of Augmented Gravity Model. Dhaka: Centre for Policy Dialogue.

MERCOSUR, ASEAN, and APEC SAFTA never played an important role in the international market. This is mainly because of its policy of inward orientation.⁶⁰

Kaur and Nanda (2010) calculated India's potential export to other SAARC Member States by using the gravity model of export. He deployed the panel data methodology (i.e. the fixed effect model, pooled model, and random effect model) within 1985-2005. The study revealed that India has great export potential with Bhutan, Pakistan, Maldives, and Nepal. India is in a suitable geographic condition sharing land border with 4 SAARC members and sea border with 2 countries. Apart from India, no other country in this region shares common borders. India has enormous potential for investment and can further bloom as a major market for products from all SAARC countries. As a result, business integration with India has a major role in the overall business integration within SAARC.⁶¹

1.5.Objectives of the study

To achieve the broader goal of liberalization South Asian countries should upgrade inefficient borders customs station by implementing either GATT Article XXIV or SAFTA. This is the primary focus of this study. In a official capacity, the researcher had the opportunity to attend Border, Trade and Customs related meetings within UNESCAP and SAARC and participated in border and free trade related issues. This research highlights the free movement of goods and services and other associated issues. This dissertation aims to figure out how these South Asian countries can evolve, grow, and compete with another economic zone like the EU, NAFTA, or ASEAN.

⁶⁰ Id. At.

⁶¹ Kaur and Nanda 2010, "India's Export Potential to Other SAARC Countries: A Gravity Model Analysis", Journal of Global Economy, Vol.6, issue 3, pp.167- 184.

The goal of this study is to figure out the shortcomings and challenges FTAs among SAARC Member Countries. This study examines the individual economic conditions of each SAARC member state and determines to what extent their policies and framework commensurate with SAARC and SAFTA. Free trade region will not become a reality unless member states do not facilitate free movement of labors across borders. Therefore, transit issues are an important factor in cross border trade. This study highlights on the intra-country relations related to transit and other co-related issues. This study provides a thorough analysis as to why SAARC and SAFTA frameworks have failed to achieve effective regulatory status. Further, this work discusses how business relations in this region can improve to bring a sustainable and beneficial change to the SAARC region.

The major objective of this study is to explore the vital features of SAFTA and to identify the factors that are hindering its proper implementation. The study shall also discuss about the SAFTA's shortcomings. SAFTA shall ensure free trade between Member States which may not be beneficial for all the members. The concern is that free trade will allow India to consume the economies of the smaller countries like Bhutan, Maldives, and Nepal etc. This research shall also focus on such contentions in socio-cultural, political, and economic aspects.⁶²

This research relied on both primary interviews and secondary literature reviews to collect the data for the research. This dissertation is limited to the data collected. The research focuses on the historical background of SAARC, the gradual development of its framework and policies through summits, the role of member countries during and after SAARC and SAFTA, and how their attitude affected SAARC and SAFTA growth and progress. SAARC's formation

⁶² Abdul Aziz Taga2 Tariq Hameed Bhatti1, South Asian Free Trade Agreement (SAFTA): Its Prospects and SocioCultural Impacts on Pakistan>, ACADEMIC RESEARCH INTERNATIONAL VOL. 5(2) MARCH 2014 (2014).

was to promote free trade amongst Member Countries and focus on important issues such as religion, counter terrorism, poverty alleviation, health benefits, and other issues. Trade facilitation and free movement of the labors are some salient SAFTA features. This research focuses on the past data that available in this regard and on business trends between Member States after SAFTA. The study focuses on how SAARC stimulates free trade and propels countries towards greater economic integration and sustainable prosperity.

The outcome of the study depicts that creation of greater trade facilities among Member Countries coupled with streamlined regulatory schemes can result in sustainable and positive societal change. The present world requires understanding the role of connectivity. Policy makers should take a pro-active approach to ensure elimination of cooperation obstacles. They can seek assistance from the legal and judicial bodies. Their expertise in this field may enable the government to find out the legal limitations of the instruments and can also recommend on the areas that need further amendments and modifications. The instant research explores various crucial factors not previously examined in detail by any other authors.

1.6.Study Limitations

This dissertation focuses on various key aspects and could have been broader. While conducting the essay various related topics and interesting perspectives became known. However, due to time constraints this work is only able to explore the most relevant ones. If this work included all the relevant data the research would have been richer, but this could not be accomplished within a reasonable timeframe.⁶³

⁶³ Lijuan Xing, *Legal Indigenization and the WTO in Comparative Perspective* (2012) University of Kansas).

The primary data collection limit is 51 numbers of the most relevant persons. These persons are categorized and prioritized depending on their relevancy and position considering the research topic. Some of the interviews were from the members of the parliament and the minister of commerce. It was very difficult to collect feedback from them. Collection of the data was mostly through email or online. Moreover, there were situations where the interviewers became busy after filing in few questions. In those circumstances, the system automatically submitted the result after 7 days. This dissertation contains data obtain from people directly involved with the South Asian trade. Further, the secondary data was revised continuously to ensure that the most up to dated and the relevant materials are incorporated in the research essay. Due to time constraint this work could not explore some factors of regional trade.

It is difficult to assess issues like unilateral liberalization and accessibility, quality of service, variety of services, and how the unilateral liberalization made an impact on GATT commitments by asking qualitative questions. This is because these factors are dependent on the perception of general people rather than empirical facts. To overcome this, the work derives first-hand perceptions from policy makers, government officials, regulators, and other stakeholders. This helps to enhance the richness of interpretation. The research is based on the qualitative research model. This facilitates analytic generalization and was not dependent on inferences about the chosen sample population. As a result, there was no need for a statistical generalization in this study.

Although there are various advantages of data collection such as the opportunity of immediate feedback and clarification of confusion as noted by Zikmund,⁶⁴ they are subject to limitations of distorted responses resulting from personal biasness and recall error. To minimize

⁶⁴ Zikmund, W.G. (2003) Business research methods. 7th edn. Mason, OH: Thomson Learning.

this effect this work applies the data triangulation method. Further, access to three key informants (policy makers, Member of Parliament, and people from trade body) was very limited.

Likelihood of biasness because of conflict of interest was one of the major limitations the faced in the data collection process. The patriotism desirability bias may have compromised the quality of the data in some instances. To minimize the social desirability bias, assurance was given to the interviewees both verbally and in the written form that their identity would remain anonymous.

1.7. Conclusion

According to intra-SAARC Trade, SAFTA has not been successful in achieving the goal of trade liberalization. SAFTA is a pretty flower vase made by various economic and trade agreements. However, the vase has many cracks and the water (trade transactions) is leaking out which is preventing liberation and wealth generation through SAFTA. The central objective of SAFTA is to ensure an effective competition in free trade regimes by reducing the tariff and non-tariff barriers by promoting the least development countries and applying transparency and integrity among the member states. The next chapter concentrates on FTA legal issues along with SAARC, SAFTA and other associated legal instruments.

**Chapter Two: South Asian Free Trade Agreement
(SAFTA) and Its Compatibility with World Trade
Organization (WTO) Rules on Free Trade
Agreements**

2.1. Introduction

Since 2004, Under the framework of the Doha Development Agenda, the WTO members are engaging in negotiations of multilateral trade facilitation rules which would clarify and improve the General Agreement on Tariffs and Trade (GATT) 1994 Articles V, VIII, X and XXIV.⁶⁵ Four years after 2004, at the 10th SAARC summit, held in Colombo, Sri Lanka from, 29th to July 31st, 1998, the SAARC leaders agreed to set up a Committee of Experts (COE). The COE consisted of a nominee from each member state with the primary purpose of drafting a comprehensive treaty framework-on which a free trade agreement could be initiated among the SAARC member nations. The COE, mandated by the Member States, was forged by the regional integration guidelines of WTO.⁶⁶ The agreement, named SAFTA, was signed on 6th January 2004 and implemented on the 1st January 2006.

The number of provisions relating to customs and trade facilitation included in RTAs has increased over time.⁶⁷ At present, most of RTAs that have been notified to the WTO comprise commitments in such matters, reflecting the growing importance of trade facilitation at the regional level. At the same time, trade facilitation is also being negotiated at the WTO, which suggests the need to examine linkages between future provisions of the agreement currently being negotiated at WTO and trade facilitation commitments in RTAs. The current chapter presents and discusses issues WTO rules and regulations, which is important to know the RTAs states to find

⁶⁵ Trade Facilitation in Regional Trade Agreements. (2011).

⁶⁶ Md. Rizwanul Islam, An Appraisal of the South Asian Free Trade Agreement and Its Consistency with the WTO Rules on Preferential Trade Agreements, THE JOURNAL OF WORLD TRADE (2010).

⁶⁷ Nations. 2011.

discrimination and discrepancies between trade facilitation commitments at the regional and multilateral levels.⁶⁸

2.2. Explanation of Terminologies in Relation to Free Trade.

2.2.1. “RTA”, “PTA”, “FTA”, and “CU”

The arrangements between states regarding trade associations are included in a RTA. These arrangements are also known as Preferential Trading Agreements (PTAs), FTAs, and Custom Unions (CUs). There are differences between the terms CU, RTA, and FTA. To better understand these, it is necessary to note the technical differences in the terminology. In relation to each other, RTAs are at the top, an umbrella housing CUs and FTAs. However, the term is misleading in that RTAs indicate that FTAs and CUs can only occur between countries within the same geographical region. These RTA are not the case, for example the U.S. and Bahrain are in different regions but have entered into a FTA with each other. Professor Raj Bhala differentiates the terms FTAs and CUs in two ways:

“A CU is 1 step deeper than an FTA in terms of economic integration. The members of a CU – which may be bilateral or plurilateral – agree to delete all, or substantially all, barriers to internal trade between or among them. In that sense of internally free movement of goods, and an attendant set of rules to determine origin within the grouping, a CU is like an FTA. However, the CU parties also agree to a CET, which means they establish the same trade barriers on the same categories of products in

⁶⁸ This dissertation rests on standard free trade theory, as its focus is on liberalizing trade across South Asia. Thus, it does not incorporate or evaluate conceptual frameworks that are against free trade generally, or FTAs in particular. For those frameworks, a variety of sources exist. And see also Raj Bhala, et al., *International Trade Law, Volume 1: Chapter 4 Institutional Foundations of Free Trade; An Interdisciplinary, Non-Western Textbook Fourth Edition*, (2015).

the HS – a unified set of customs laws and procedures. In brief, a CU is a single market both as among the members and vis-à-vis the rest of the world.”⁶⁹

Under GATT Article XXIV:8(a), FTA involves two or more countries agreeing to potentially remove all barriers to trade between or among them. The FTA may be bilateral or multilateral. Bilateral is between two countries e.g. the agreement between the U.S. and Bahrain or the agreement between the U.S. and Israel. Whereas, multilateral is among a group of countries e.g. NAFTA. In bilateral or multilateral FTAs all nations maintain independence in setting their import barriers to non-FTA member products.⁷⁰ A CU is one step ahead of an FTA in terms of economic integration. In a bilateral or multilateral CU all members agree to delete all trade barriers, i.e. EU.

For example, In the U.S., PTAs and FTAs account for approximately 30% of all imports.⁷¹ Among these arrangements, KORUS and NAFTA are statistically the strongest. However, RTAs are not analyzed from an institutional point. The WTO analyses the impact of RTAs through an economic point.⁷² These critiques, focusing specifically on the Most Favoured Nation (MFN)

⁶⁹ Raj Bhala, et al., RATIONALES FOR FTAs: Economic Aspects of FTAs, in INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK (2015). Page 4

⁷⁰ Id. At. Page 3

⁷¹ RAJ BHALA, et al., INTERNATIONAL TRADE LAW: ECONOMIC ASPECTS OF FTAs (LexisNexis th ed. 2015).

⁷² See General Agreement on Tariffs and Trade, Oct. 30, 1947, art. 1, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT] (“[Any advantage favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”). The Most Favoured Nation (“MFN”) principle sets up one of the greatest conflicts in international trade -the conflict between the desire of a state to decide for itself with whom and on what terms it will trade (and its patterns of trade), versus the multilateral system's attempt to apply a rule of non-discrimination for the benefit of all.

confronted by RTAs and their patterns and efficiencies, do not analyses movements of trade liberalization of world trade.⁷³

2.2.2. Regional Trade Agreements: Some Mythologies

FTAs change extensively under the influence of a surfeit of issues. A country may elect a new government with different political ideology, its economic strategies might change, and it might consider newer avenues of imports and exports in its annual budget. Though, a country's nationalistic views along with its cultural, social context, and security issues may affect a FTA. Three key factors guide the formation of a FTA: breadth, depth, and timing. "Breadth" alludes to the scope of the FTA, or how extensive it is. Does the FTA cover a wide range of sectors, products, economies, and countries? Does it cover all areas and items in the nations' economies? "Depth" refers to the extent of the reduction of tariffs and NTBs. Does the FTA slash all tariffs to zero, eradicate all quantitative restrictions, and move aggressively against abuse of SPS and TBT measures? Finally, "timing" concerns the speed with which a FTA liberalizes trade. Does the FTA forget a couple of delicate provisions or items recording for a vast volume or estimation of exchange? The finished scope of all products and services is an extraordinary unhindered commerce probability. In reality, complete coverage is not immediately possible. However, FTAs

⁷³ For the most part, discussion of RTAs and the General Agreement on Tariffs and Trade ("GATT") Article XXIV ("Article XXIV") focuses on economic, foreign policy and political themes, and rarely on the institutional issues presented in this Article. But see JEFFREY A. FRANKEL, REGIONAL TRADING BLOCS IN THE WORLD ECONOMIC System 214 (1997) (discussing, albeit briefly, some of the institutional issues); WORLD BANK, GLOBAL ECONOMIC Perspectives', supra note 4, at 38-39 (While the World Bank Report touches on some institutional issues, it primarily focuses on development policy and the economic harms of RTAs, though it does discuss some of the institutional issues covered in this Article).

can become complete. For example, the 1st January 1983, CER between New Zealand and Australia, and 1994 NAFTA, are complete FTAs. Another example of a complete FTA are the May and June 2003, U.S. - Singapore and U.S. Chile FTAs, which contain a significantly more components than NAFTA. (In like manner, the EU is an exhaustive CU). The U.S. requires far reaching FTAs, i.e., bargain covering merchandise, administrations, and IP.

2.2.3. "Timing" Questions Speed of Exchange of FTAs– Quick or Moderate?

Hypothetically, a 100% pure free trade FTA would be one without any kind of imposition of duty or tax on the export and import of goods among the relevant parties. However, it is impossible to create a 100% FTA, as various factors influence a country's attitude towards certain goods. As implied, the three variables – breadth, depth, and timing⁷⁴ – fall into 3 classes:

- (1) Goods termed “delicate” are excluded from concessions. The concession can exist for an unspecific or specific period of time, depending upon the country.
- (2) Goods with phased tariffs are not considered for concession. The tariff is reduced in phases, and depending on the merchandise in question, the duration of the contract is set.
- (3) Tariff Contingencies: Regardless of the nature of the product, there are impositions of certain alternative tax programs according to the needs of the country. The U.S. demands the installation of such programs in its FTAs, for example the TRQ. Additional protections that may be imposed are special safeguards. This allows MFN obligations to be re-enforced on categories which do not fall under the price and volume threshold set by the trading countries, i.e. if it

⁷⁴ Raj Bhala, et al., *International Trade Law: Economic Aspects of FTAs* (LexisNexis th ed. 2015).

imports in a category is below a threshold price or above the cited volume from an FTA partner, the safeguard can be imposed.

These three variables decide the financial advantages an FTA creates. An FTA is less financially important when it is limited in scope, shallow in barrier reductions, and moderate in eliminating boundaries.⁷⁵ Thus, a FTA is not sustainable if is not economically important enough to be able to generate short and long-term benefits and will fail to generate monetary surpluses. The fact remains, even though a FTA is commended by national and political security elements, to the degree that these elements rely on monetary increases, they will be unfulfilled.⁷⁶

When an FTA needs financial aspiration, it demonstrates faltering political conduct. Such an FTA proposes member nations are making troublesome domestic political choices. These legislatures are not seeking full monetary change, but instead excluding certain favoured constituencies. An FTA failing in aspiration, soon after the commencement date, may not be a persisting model of accord utilized for "standard content." Rather, with new monetary improvements, there are requests for new and distinctive arrangements, adapted to fit characteristics of an ever-changing business atmosphere.

2.3. Purposes of FTA

The focus of international trade is on the stipulations of “comparative advantage” (i.e., promoting individual cross-border exchanges, specialization, and global welfare).⁷⁷ David Ricardo augmented the revolutionary views of free trade activist Adam Smith. Ricardo proclaimed, “comparative advantage” as the way ahead and an as alternative to “mercantilism” and “absolute

⁷⁵ Id. at.

⁷⁶ Bhala, et al., GATT-WTO Disciplines on FTAs. 2015.

⁷⁷ Id. at.

advantage.”⁷⁸ Comparative advantage and free trade’s promotion of society’s net welfare, the allocation of resources, specialization of production, and division of labor coalesce to boost production, efficiency, and consumption.⁷⁹

Substantially, all restrictive regulations and duties should be removed only for those individual or group customs territory which are to be replaced by CUs. Trade should be consistent between the territories or unions regarding all products or items of trade, and where groups of two or more customs territories have eliminated duties and other prohibiting regulations, it shall be labelled as a free trade area. A free trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, as permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories. This FTA is applicable to substantially all products coming from these regions.⁸⁰

2.4. A Brief Negotiating History and Flexibility with GATT Article XXIV

⁷⁸ See RAJ BHALA, *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NONWESTERN TEXTBOOK* 71-77 (vol. I, 4th ed. 2015). In the “economic orthodoxy” of the sixteenth to eighteenth centuries, mercantilism is “an anti-free trade doctrine that calls for government intervention to generate a trade surplus.” *Id.* at 71. Accordingly, mercantilists seek to maximize wealth by maximizing exports and minimizing imports, and thereby maximize the net outflow of goods, i.e., a positive balance of trade, and the net inflow of payments. Mercantilist trade policy calls for restrictions, such as high tariffs, on imports, and support, such as subsidies, for exports. *Id.* at 71-72. David Ricardo argued, in regards to the law of “comparative advantage” in contrast to “absolute advantage,” that international trade is mutually beneficial for countries, even if one has an absolute advantage in the production of goods under the following terms: (1) For the country with an absolute advantage in both goods, Ricardo advised specializing in the production of, and exporting, the good in which it has the greatest absolute advantage[;] (2) For the country with an absolute disadvantage in both goods, Ricardo suggested specializing in the production of, and exporting, the good in which it has the least absolute disadvantage.

⁷⁹ *Id.* At.

⁸⁰ Bhala, et al., *GATT-WTO Disciplines on FTAs*. 2015.

In 1947, after World War II, with some exceptions few countries had entered into RTAs within GATT Article XXIV. In this manner, GATT Article XXIV missed the mark in trying to dispose of prejudicial inclinations through controlling oppressive preferences. A RTA makes a broader trading range, clears contention blocks, makes more monetary benefits possible, and subsequently attempts to increase productivity and raise standards of living. A specific structure, on the other hand, holds internal deterrents, debilitates economic progress, and controls the advancement of pay and demand. A RTA is helpful for extending exchange on the premise of multilateralism and non-discrimination. The orchestrating parties swap necessity for affirmations, because individuals in RTAs could not be depended upon to move immediately to shared unhindered business and customary trade systems. This arrangement is acknowledged amid preliminary transactions under GATT Article XXIV. This proposition was limited to the trading of inclinations among topographically proximate nations, nations with close authentic or monetary ties, and creating nations to advance development.

2.4.1. Substantive Provisions of GATT Article XXIV

The plan behind the arrangements in GATT Article XXIV is that when in doubt, the GATT will permit PTAs either a CU or a FTA among the constituent members as a reward for an undeniable advancement. Consequently, the earliest reference point takes note that GATT Article XXIV does not present any extraordinary difference for PTAs coming up short concerning an unquestionable FTA or CU past a sensible period, as found in GATT Article XXIV: 5 (c). To consent to the plan of GATT Article XXIV a PTA needs to show up on a FTA or CU implementation timeline.

The central substantive courses of action are contained in GATT Article XXIV:4, Article XXIV:5 (a), (b) and (c), Article XXIV:6, and Article XXIV:8 (a) (i), (ii) and (b), Article XXIV: 4 communicates a general decision that the inspiration driving a CU or a FTA

should be to support trade between the constituent spaces and not to raise deterrents to the trading of other contracting parties within such areas. The CU or FTA needs to guarantee that PTAs would change trade among constituent people and would not raise trade impediments to people not engage with social affairs to the PTA.

The scope of an RTA is crucial because it needs to consider all substantial trade among member countries.⁸¹ The importance is paramount because overpaid industry lawyers lobby for the release of industries from RTA negotiations. For example, in the U.S. Panama FTA the U.S. sugar industry lawyers lobbied for repeated tariffs against Panama.⁸²

Difficulty arises in understanding the Interpretation of Article XXIV. This WTO Article was written/drafted during the Uruguay Round negotiation. The difficulty is that it is unclear what the term “substantial” entails because exactly what percentage of trade constitutes a substantial amount is undefined. Three possible responses are:⁸³

- (a) Substantial is less than all, as indicated by the work of the Preparatory Conferences.⁸⁴
- (b) Substantial is more than zero.
- (c) Substantial is closer to all than it is to zero, e.g., in 1957 a delegate from the EEC suggested that internal tariffs must be eliminated 80% of all trade.⁸⁵

2.4.2. “Higher or More Restrictive” Test in GATT Article XXIV

⁸¹ This rule is set out in Article XXIV: 8.

⁸²RAJ BHALA, et al., INTERNATIONAL TRADE LAW:AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK: GATT-WTO DISCIPLINES ON FTAS (LexisNexis. 2015).

⁸³ Id. at.

⁸⁴ See JACKSON 1969, § 24.7 at 608.

⁸⁵ See The European Economic Community, Reports Adopted on 29 November 1957, B.I.S.D. (6th Supp.) 70, 98-99 at 30 (1958) and Bhala, et al., GATT-WTO Disciplines on FTAs. 2015. And DAM, 280. Professor Dam opines the latter possibility would derogate from the general-purpose test of GATT.

FTA Member States recognize the desirability of increasing freedom of trade by development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. Under this rule, trade barriers should be greater after the formation of a RTA. According to GATT Article XXIV: 5, this rule applies to interim agreements (particularly Sub-Paragraphs (a) and (b)), FTAs, and CUs. Article XXIV: 11 and its Interpretative Note barred India and Pakistan from using the formation of a FTA as an excuse to increase their individually-set barriers applicable to a third country. India could not impose a tariff on third country cotton of 11% and Pakistan could not raise its barrier to 21%.⁸⁶

GATT Article XXIV: 7 is complemented by the WTO Understanding on the Interpretation of Article XXIV. This Understanding assists WTO Members within the RTA to get involved with the related Working Party. The Working Party passes the information to the Council on Goods Trades and the Council can recommend the RTA for WTO membership.⁸⁷

2.4.3. The External Liberalisation Requirements under GATT Article XXIV

If two or more WTO Members enter into a RTA, and the WTO Membership finds the initiative date establishing the FTA or CU implausible (that is, unworkable), then the RTA Members will not be allowed to set up the RTA. The Members within the interim agreement wishing to form the RTA must be put off. The contracting parties recognize that the purpose of a CU or a FTA is to facilitate trade between the constituent territories and not to raise barriers to the

⁸⁶ BHALA, et al., *International Trade Law: An Interdisciplinary, Non-Western Textbook: GATT-WTO Disciplines on FTAs*. 2015.

⁸⁷ See Understanding on the Interpretation of Article XXIV at page 7-11. See also BHALA & KENNEDY, § 2-2(d)(1) at 169-170 (discussing the WTO Committee on Regional Trade Agreements).

trade of other contracting parties with such territories.⁸⁸ Generally, 5(a) requires the CU to supply import measurements for a past agent period and forces an obligation on the WTO Secretariat to figure the weighted normal tax rates and traditions obligations collected. GATT Article XXIV: 4 manages the indistinguishable part of the financial model by stipulating that the reason for PTAs ought to be to encourage exchange amongst gatherings and 'not to raise obstructions to the exchange of other contracting parties.

However, GATT Article XXIV: 5 forces all of the more straight and substantive lawful commitments on gatherings to a PTA.⁸⁹ According to GATT Article XXIV: 5 gatherings should not keep the arrangement of a traditions union or of a facilitated commerce region.' This provision occurs when party states utilize a particular defence measure to make crisis moves in reaction to specific market circumstances on a transitory premise. For example, the U.S. and South Korea's embraced this type of a defence measure on a pipeline by agreeing to the avoidance of imports from their NAFTA accomplices, Canada and Mexico. In utilizing this defence measure, the U.S. and South Korea were disregarding a few arrangements of GATT and the Agreement on Safe Guards.⁹⁰

2.4.4. Preferential Rules of Origins (ROOs) under GATT Article XXIV

Appearing in the context of CU or PTA being established under GATT Article XXIV: 5 (a) is applicable duties ones in the constituent territories of the RTA commitments and

⁸⁸ See more at https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV

⁸⁹ Dukgeun Ahn, 'Foe or Friend of GATT Article XXIV: Diversity in Trade Remedy Rules' (2008) and *Journal of International Economic Law* 107, 122

⁹⁰ Panel Report, Argentina-Safeguard measures on Imports of Footwear, WTO Doc WT/DS121/R (25 June 1999, as modified by the appellate body report 12 January 2000) (Panel report, Argentina-Footwear Safeguards)

distinctive controls of businesses be no higher than in the pre-PTA period.⁹¹ PTAs conventionally arrange ROOs. These arrangements group things that should be met for all requirements for extraordinary treatment. The Agreement on Rules of Origin characterizes particular ROOs as those laws, directions, and authoritative conclusions of general application connected by any Member to figure out if merchandise fit the bill for particular treatment under legally binding or self-governing exchange administrations prompting to the giving of duty inclinations going past the use of GATT Article I Section 1.

2.4.5. Dispute Settlement Process under GATT Article XXIV

The Dispute Settlement Panel determined that GATT Article XXIV:7(b) appoints an obligation on the contracting gatherings to make proposals on PTAs if they consider that such a PTA would not bring about a CU or FTA, as required by GATT Article XXIV.⁹² However, the Panel did not make a decision because the absence of accord among contracting parties, with respect to the similarity of the PTAs being referred to, proposes the view that their lawful status stayed open. The Panel felt that a board could be established to issue a counselling supposition on the congruity of a PTA or a translation of particular criteria under Article XXIV to help the contracting parties check on a PTA under Article XXIV: 7(b). 2.4.6 the Coverage of GATT Article XXIV Exception. With respect to the extent of the Article, a prohibitive view subscribed to by a

⁹¹ Professor Raj Bhala, *Modern GATT Law: A Treaties on the Law and Political of the general Agreement on Tariffs and Trade and Other world Trade Organization Agreements*, chapter 55, *Disciplines on Regional Trade Agreements (GATT Article XXIV:4-7, 10-11)*, page 408, Second Edition, Volume II (2013)

⁹² Rizwanul Islam, *International Trade law series Volume 10 Economic Integration in South Asia Charting a Legal Roadmap* (2012)

few individuals from the WTO is that Article XXIV permits parties to a PTA disparagement from Article I of the GATT and they are bound by all other WTO activities. The inverse view is that Article XXIV approves disparagement from all GATT arrangements. A Brief Note on the Negotiations for the SAFTA: Compliance with WTO Rules. The WTO demands prompt notification of all PTAs entered into by WTO Members. The WTO Transparency Mechanism for Regional Trade Agreements (Transparency Mechanism), as adopted by the WTO General Council, deems it necessary for each WTO member to provide a timely notification of the clause. It categorically requires the prompt notification of any PTA to the WTO following the parties' ratification of the treaty and before the commencement of its preferential treatment.⁹³ The SAFTA was signed in 2004 and entered into force before this Mechanism was adopted in 2006. Nonetheless, this Agreement falls within the purview of this Mechanism as it applies to all PTAs and exempts from its application only those PTAs notified before its adoption.⁹⁴ The SAFTA informed the WTO more than two years after its ratification by its signatories and then two years later the preferential treatment begun. Therefore, SAFTA violated the notification requirement of the Transparency Mechanism.⁹⁵

2.4.6. Legitimate Changes among WTO Member and Non-Members States

It is important to note that all eight parties of SAFTA are either less developed or developing WTO Member States. However, the WTO does not have any definition for “developing countries.” The absence of a definition makes the status of developing countries a self-declaratory

⁹³ WTO, Transparency Mechanism for Regional Trade Agreements, Decision of 14 Dec. 2006, WT/L/671, 18 Dec. 2006 (Decision on Transparency Mechanism), para. 3.

⁹⁴ Ibid. para. 22.

⁹⁵ Md. Rizwanul Islam, An Appraisal of the South Asian Free Trade Agreement and Its Consistency with the WTO Rules on Preferential Trade Agreements, *THE JOURNAL OF WORLD TRADE* (2010)

nature. One SAFTA signatory, Bhutan is not yet a WTO Member.⁹⁶ Hence, the question was raised whether the rest of the PTA parties have violated their WTO obligation by entering into a PTA with a non-WTO Member State without any waiver from the WTO membership. The Enabling Clause does not provide an explicit answer. However, a textual interpretation implies that it arguably allows the conclusion of PTAs among developing countries or LDCs without the need of obtaining a waiver from the WTO's broader membership, provided that all non-WTO members in the PTA are LDCs.⁹⁷ The SAFTA fulfils this criterion as both Afghanistan and Bhutan are LDCs. Therefore, the legality of SAFTA's notification the Enabling Clause is in conforms to the WTO rules.⁹⁸

2.4.7. Compliance with Applicable Requirements of the Enabling Clause

Enabling clause is an exception to GATT Article I of MFN rule only. Enable clause provides no legal basis for justification of preferential non-tariff measures among members of a trade arrangement.⁹⁹ Paragraph 2(c) of the enabling clause allows MFN-inconsistency of regional arrangements entered into amongst less developed contracting parties for the mutual reduction or elimination of tariffs.¹⁰⁰ Under the Enabling Clause, this notification of SAFTA signifies that the state parties recognize the shallow scope of its liberalization scheme. The WTO discipline on

⁹⁶ Please visit: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

⁹⁷ Md. Rizwanul Islam & Shawkat Alam, 'Preferential Trade Agreements and the Scope of GATT Art. XXIV, GATS Art. V and the Enabling Clause: An Appraisal of GATT/WTO Jurisprudence', *Netherlands International Law Review* 56 (2009): 1, 32, referring to Won-Mog Choi, 'Legal Problems of Making Regional Trade Agreements with Non WTO-Member States', *Journal of International Economic Law* 8 (2005): 825, 852–856.

⁹⁸ Islam, *THE JOURNAL OF WORLD TRADE* (2010).

⁹⁹ See more at. [EC, WT/COMTD/66/Add.2](#)

¹⁰⁰ <http://worldtradelaw.typepad.com/ielpblog/2009/01/article-xxiv-vs-enabling-clause.html>

PTAs, as enshrined in this clause, takes a very discreet and simple approach towards PTAs notified under the Enabling Clause.¹⁰¹ Any PTA duly notified to the WTO under this clause is not subject to examination by the WTO Committee on Regional Trade Agreements (CRTA). It is to be notified to a separate committee called the CTD. The relevant provisions of the Enabling Clause for PTAs among developing countries and LDCs are contained in paragraphs 2(c), 3, and 4.

Paragraph 2(c) does not require the implementation of a CU or a full-fledged PTA. It provides for an exception from the MFN rule in GATT Article I for concluding any regional trade arrangements among less-developed WTO Member States, to reduce or eliminate tariffs and non-tariff measures on products imported from each other.¹⁰² Unlike GATT Article XXIV, paragraph 2(c) does not require the removal of all trade barriers to substantially all trade. Therefore, few PTAs can comply with the superficial internal trade liberalization requirement of the Enabling Clause and SAFTA is no exception. The Enabling Clause does not impose any real requirement of extensive internal trade liberalization, rather, it provides an exception for shallow exchange of tariff and non-tariff preferences among developing and/or LDC states falling short of Article XXIV. The most significant requirement this clause imposes on the parties' concerns third parties, which are handled with leniency.

2.4.8. Applying Article XXIV to Indo-Pakistani Trade

In order to enter into a FTA or CU, neither Pakistan nor India require a commitment to GATT Article XXIV. Pakistan and India have a way of backing out from FTAs because there is no time limit or expiration date for Article XXIV: 11 and its Interpretative Note. Pakistan and India

¹⁰¹ Id. at.

¹⁰² WTO Trade and Development Committee, 'Work on Special and Differential Provisions', <www.wto.org/english/tratop_E/devel_e/dev_special_differential_provisions_e.htm>, 8 Jan. 2010.

receive special allotments from Article XXIV because of these observations. The Article on RTAs states: all trade will be covered among RTA members, trade barriers are to be reduced among RTA members, and increase in barriers should be avoided. The WTO should be notified of any change in information. Pakistan and India can remove the trade barriers specifically under GATT Article V, as well as other RTA arrangements. The general MFN rule of GATT Article I:1 is excused by GATT Article XXIV: 11. That excuse neither exists in General Agreement of Trade in Service (GATS), nor is necessary in it. Whereas GATT applies to cross-border the exchange of goods, GATS applies to trade in services.

2.5. An Institutional Critique of “RTAs-Conflict Creation,” “Resource Diversion,” and “Diminishing State” WTO Enthusiasm:

GATT Article XXIV remains weak and redundant as controlling component to RTAs. To some degree, that is due to Article XXIV focusing only on monetary aspects of RTAs.¹⁰³ Typically the investigation into RTAs focuses on the monetary effect on the world exchange system.¹⁰⁴ Over

¹⁰³ For the requirements of Article XXIV are at first definitional, and then are focused on the trade distorting effects -too great a trade distorting effect and the RTA could, theoretically, be denied the exception. GAIT, art. XXIV. As noted earlier, this Article will not retreat the economic critique, the most common critique of Article XXIV and of RTAs in general, though it has been suggested that an economic critique of RTAs will, however, at the end of the day be inconclusive. See Bhala, *supra* note 11, at 305 (noting that "it depends" is probably the truest answer as to whether RTAs are beneficial); see also JACKSON (1969), *supra* note 47, at 621 (stating that economists are uncertain about regional arrangements such as GATT); FRANKEL, *supra* note 6, at 208 ("[From the standpoint of static economic welfare, trade economists are in fact ambivalent about the desirability of FTAs...")

¹⁰⁴ The many sources cited in this Article are a testament to this proposition for only in small part, if at all, do they discuss noneconomic critiques of RTAs, and rarely, if ever, the institutional aspects of the relationship between RTAs and the multilateral system. Other noneconomic, yet not institutional criticisms of RTAs, include the idea that preferential systems like RTAs are just disguised imperialism- the idea being that RTAs tie smaller or weaker countries to bigger or more powerful ones, forcing the weaker or smaller state to orient its trade to the other even as the other state is free to do what it wants. The bigger or more powerful state can do this because its trade with the smaller is really of no great impact on its trade flows and structures. See LAWRENCE, *supra* note 37, at 3 ("Major

several decades, GATT Article XXIVs as mechanism to control RTAs has proven to be weak and irrelevant.¹⁰⁵

Almost all the literature critiquing RTAs' relationships with the world trade system focuses on economic issues, despite the fact that the economic impact of RTAs on the multilateral trade system is unclear.¹⁰⁶ In response to this problem efforts are taken to control RTA formation to minimize economic harm while maximizing economic benefit.¹⁰⁷ There remains a potential conflict between the WTO and RTAs because they are different frameworks and divisions.¹⁰⁸ The

regional arrangements could be dominated by considerations of market power..."); MATHIS, *supra* note 10, at 20 (describing international trade preferences as an expression of modern imperialism). Another noneconomic critique of RTAs is that engagement in an RTA shows favoritism-that it shows "who your friends are" -to the detriment of cordial relations with other non-RTA countries. See Charles Roh, *Regional Trade Organizations: Strengthening or Weakening Global Trade*, Remarks Before the American Society of International Law (Apr. 7, 1994), in 88 AM. SOC'Y INT'L L. PROC. 309, 309 (1994) (stating that one of the reasons the United States has over the years refrained from free trade agreements was to avoid having to "look as though we were choosing from among our best friends"). Indeed, it was suggested that this reason, avoidance of a "slap in the face" to non-RTA allies, was one of the reasons the United States avoided RTAs until relatively recently. For other critiques of RTAs, see Cho, *Breaking the Barrier*, *supra* note 73, at 430.

¹⁰⁵ Perhaps it was because prior to the creation of an international trade organization with real power, as opposed to GATT's diplomacy-oriented approach to international trade, there was not the same conflict we see today. Similarly, prior to NAFTA and the strengthening of the EU in the first half of the 1990s, RTAs were simply not the force they are today. See Sungjoon Cho, *Breaking the Barrier between Regionalism and Multilateralism*, 42 HARV INT'L L.J. 419, 428 (2001) ("[A] strong economic, rather than political, motivation for the formation of an RTA is key to its success.").

¹⁰⁶ See discussion *supra* note 75; see also Cottier, *supra* note 14, at 154 (discussing the little impact of RTAs on trade flows due to the already low tariff levels in existence, the fact that agriculture is rarely covered, and the significant issue of NTBs and other trade distorting government actions (and that these issues are not covered well in RTAs, but rather at the multilateral level, and that absent a move to federalism there is a limit on what regional arrangements can accomplish)).

¹⁰⁷ See, e.g., WORLD BANK, *global economic perspectives*, *supra* note 4, at 111115 (presenting a collection of suggested reforms to Article XXIV that are all economic-based proposals).

¹⁰⁸ Of course, RTAs may also contribute to conflict elimination -many believe that countries that trade with each other do not fight with each other-but the benefit of the bilateral trade relationship should exist as easily within a

conflicts between the WTO and RTAs appear in different situations: through the use of the RTA's substantive plans; in the midst of creating a RTA; resulting from progression of RTA statutes; in the midst of RTA organizing; and during negotiating the RTA settlement systems. The usage of RTAs is a different struggle. Conflicts are dangerous as the statute may produce harsh outcomes inside each of the strategies. Additionally, RTAs divert resources from the multilateral trade system to the negotiation, development, and nurturing of RTAs. This diversion of resources creates conflict and erosion of states' enthusiasm for the multilateral trade systems. To the extent states, with their concomitant expenditure of scarce energies and resources, engage in RTA negotiation and development, these resources are denied to WTO development.¹⁰⁹

2.6. Diversity in Purpose of FTAs

From the multilateralism viewpoint, MFN treatment should exempt the control of RTAs. It is tempting to derive an answer from the expansive and expanding number of RTAs.¹¹⁰ The scope, coverage, and number of RTAs within the multilateral trade system are growing at an incredible percentage. Globalization is pushing for the development of regional enhancements.¹¹¹ While there is involvement in other time frames in this sector, aside from geopolitics, there are a

multilateral as a bilateral context. But see Colin B. Picker, *International Trade as a Tool for Peace: Empiricism, Change, Passion, and the Israeli-Palestinian Conflict* (forthcoming) (arguing that international trade is largely irrelevant to armed conflict reduction).

¹⁰⁹ This concept, of RTA resource diversion, is not new-it has been discussed before, albeit briefly-too briefly, often receiving no more than a sentence or paragraph. See, e.g., WORLD BANK, *GLOBAL ECONOMIC PERSPECTIVES*, supra note 4, at 133 ("proliferating regional agreements absorb scarce negotiating resources").

¹¹⁰ BHALA, et al., *International Trade Law: Economic Aspects of FTAs*. 2015.

¹¹¹ Carlos Alberto Primo Braga, *Regional Trade Organizations: Strengthening or Weakening Global Trade?* Remarks before the American Society of International Law (Apr. 7, 1994), in 88 AM. SOC'Y INT'L L. PROC. 309, 310 (1994).

myriad of reasons for countries to enter into RTAs.¹¹² These reasons include outside approach objectives, security, and monetary benefits. States join RTAs to secure welfare increase from sectors where access is normally restricted, financial securities, or to guarantee access to a secured market by RTAs. For example, Canada, used a past RTA in the Canada- U.S. FTA (CUSFTA) to guarantee its entrance into the U.S. market and hence contributed to the North American Free Trade Association (NAFTA).

No country wants to remain alone when other nations are entering into such agreements. The concept is best described as "domino regionalism" and it ensures multilateralism. Domino regionalism will not exploit a nation included in a RTA. Regionalism and its associated exchange preoccupation might support multilateral agreements. As a result of globalization, united with the opening of economies in the post-charge period, and the late addition in regionalism, the money related on-screen characters, have started keeping track of and managing Non-Tariff Barriers (NTBs). Provincial assertions may secure financial changes both externally and internally and offer validity to those changes.¹¹³ A few reviews propose that those welfare, monetary, and exchange increases are a long way from being guaranteed, with the fact that they might not exist.¹¹⁴ An essential method of reasoning for RTAs is also the non-financial advantages that many may

¹¹² See BHAGWATI, WRITINGS, supra note 10, at 167-172 (discussing the regionalisms of the 1960s and 1980s).

¹¹³ See WORLD BANK, TRADE BLOCS, supra note 14, at 22-26 (examining RTAs as lock-in mechanisms). It has also been noted that regional arrangements are unnecessary for this goal in light of the existence of the WTO.

¹¹⁴ See, e.g., WORLD BANK, GLOBAL ECONOMIC PERSPECTIVES, supra note 4, at Chapter 3 (examining such ideas); ROBERT Z. LAWRENCE, REGIONALISM, MULTILATERALISM, AND DEEPER INTEGRATION 95 (1996) (discussing implications of regionalism); BHAGWATI, WRITINGS, supra note 10, at 182 (questioning popular assertions about regionalism). There has also been criticism of the assertions that RTAs provide quicker results, that they are more efficient, and that their results are more certain.

consider.¹¹⁵ Specifically, major reasons for entering into RTAs are national security and foreign policy. A mix of many reasons: political, security, and budgetary, are all extensively comparative reasons to enter a RTA.¹¹⁶

The force of Article XXIV broke down immediately in the after effect of one of the central inadequacies of the primary GATT. This inadequacy is in the first stage of moving against violators. Thus, while there were numerous GATT work gatherings considering the different RTAs, only one RTA was ever ready to be affirmed by GATT consistent with the functional groups.¹¹⁷ The Understanding states that the survey procedure of Article XXIV does not protect RTAs from the WTO's Dispute Settlement Understanding (DSU). It incorporates particular subtle elements of how RTAs must gauge exchange in order to be consistent with Article XXIV. Additionally, the understanding gives a timetable on which to stage new rising RTAs into operation and creates a Committee on Regional Trade Agreements (CRTA) to take part in

¹¹⁵ See, e.g., WORLD BANK, TRADE BLOCS, supra note 14, at Ch. 2 (examining the non-economic political benefits of RTAs); MATHIS, supra note 10, at 127 (focusing on the concept of regional spheres of influence).

¹¹⁶ See WORLD BANK, TRADE BLOCS, supra note 14, at 12-17 (noting that sometimes regional agreements may increase tension between parties).

¹¹⁷ See WORLD BANK, GLOBAL ECONOMIC PERSPECIVES, supra note 4, at 140 (noting that only the Czech-Slovak Customs Union RTA has been certified).

oversight of RTAs and their association with the WTO.¹¹⁸ The Understanding and the CRTA examination report demonstrate that Article XXIV is not able to guarantee RTA consistency.¹¹⁹

2.7. The South Asian FTA in the Framework of International Trade Law

A large scale of trade, between and among FTA partner countries, takes place through an ever-increasing number of FTAs. This continuous increase poses a threat to the multilateral trade reign of the WTO (as mentioned by the Sutherland Report), because only FTAs allow exchange of preferences between contracting parties.¹²⁰ The six members of SAARC who are simultaneously members of WTO must follow all WTO rules. The WTO is the result of concurrent creations of international trade rules. Thus, studying these trade rules and the background of WTO is important

¹¹⁸ See Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A [hereinafter Understanding on Art. XXIV], 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) THE LEGAL Texts: THE Results OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 31 (implementing changes to Article XXIV of GAT 1994); see also WTO, WORK OF THE COMMERCE ON REGIONAL TRADE AGREEMENTS ("CRTA") [hereinafter CRTA WEBSITE], ("[CRTAs] two principal duties are to examine individual regional agreements; and to con- sider [their] systemic implications.) At <http://www.wto.org/english/tratop.e/region-e/regcom...e.htm> (last visited Apr. 3, 2005).

¹¹⁹ See WORLD BANK, GLOBAL ECONOMIC PERSPECTIVES, supra note 4, at 141 (discussing the difficulty of RTA examination). For a discussion of the operation of the CRTA in general, see MATHLs, supra note 10, at 227-258. It should be noted, however, that Article XXIV compliance may improve slightly, though not sufficiently, as a result of the Understanding's specific discussion of RTAs' relationship to the WTO's Dispute Settlement Understanding. The Dispute Settlement Body ("DSB") is starting to have an impact on Article XXIV jurisprudence. See, e.g., WTO Appellate Body, Report on Turkey-Restrictions on Imports of Textile and Clothing Products, 58, WT/DS34/AB/R (Oct. 22, 1999) [hereinafter Turkey Case] (appealing panel finding disallowing restrictions inconsistent with GATT1994), available at [http://www.worldtradelaw.net/reports/wtoab/turkey-textiles\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/turkey-textiles(ab).pdf). Perhaps of significance is that the DSB can address issues unresolved by the WTO members. An example is that it was long considered an issue as to whether Article XXIV merely provided an exception to Article I (MFN)- the DSB has suggested that is not the case. Id.

¹²⁰

as each Member belongs to at least one RTA. The number of RTAs is more than the number of WTO members or even the number of countries that exist.

Additionally, Article XXIV is looked down upon due the lacking relationship between (1) Paragraph 4 and 2, and Paragraphs 5 through 9. Paragraph 4 notes:

“The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. 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. The most important way comes from the 1999 WTO Appellate Body Report on Turkey Textiles. In its Report, the Appellate Body clarified the “purpose” test suggested by Paragraph 4 is relevant to interpret the rules of Article XXIV.”¹²¹

2.8. Choosing FTA Partners

In the 1950s, during the early history of GATT, CUs and FTAs did not have much importance in the international trade arena. In the age of trade liberalization RTAs continue to boom rapidly. As of June 2016, upon the notification of the RTA between Mongolia and Japan, all WTO

¹²¹ See Appellate Body Report, Turkey – Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R (adopted 19 November 1999). [Hereinafter, Turkey Textiles Appellate Body Report.] Critics of the Appellate Body may cite to this decision, in the annals of WTO jurisprudence, as an illustration of “judicial activism.” The Appellate Body held Turkey failed to show it was necessary for Turkey to violate Article XI in order to form a CU with the EU. So, the Appellate Body reasoned, Turkey could not defend the violation of the rule against QRs (Article XI:1) by referring to Article XXIV. The problem with this reasoning is Article XXIV does not contain a “necessity” test, at least not in express terms. The Appellate Body imported into Article XXIV some of its jurisprudence from Article XX. See Joel P. Trachtman, Current Developments: Decisions of the Appellate Body of the World Trade Organization, 12 EUROPEAN JOURNAL OF INTERNATIONAL LAW 793-98 (2001), posted at www.ejil.org.

members have an RTA in force.¹²² The two main leaders of the WTO, the U.S.¹²³ and the European Communities (EC),¹²⁴ are increasing their existing networks of RTAs and forming new ones. The continued rise of RTAs is not an accurate indicator of global economic efficiency and welfare. This rise does not make regionalism a necessary stepping stone to multilateralism. If the rise of RTA accomplished these goals, the world would take positive notice. As of August 29, 2017, 445 notified RTAs are in force mentioning date to GATT or the WTO, most of which occurred in the past twenty years (Annexure 2:1 enclosed).¹²⁵ There are some essential factors to consider in a FTA, such as economics, politics, national security, cultural voice, and strategy. National security for example, is the basis of the U.S. FTA with Peru and Columbia. This FTA protects against narcotics traffickers, counters narcotics terrorism, spreads democracy to those countries, and offers

¹²² See Trade topic discussion on RTAs and visit, https://www.wto.org/english/tratop_e/region_e/region_e.htm

¹²³ The United States has recently concluded FTAs with Chile and Singapore. It is also actively negotiating FTAs with 33 other governments to form Free Trade Area of Americas (FTAA), with Central American Common market (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), with southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), with Australia and Morocco. See 2003 Trade Policy Agenda and 2002 Annual Report of the President of the United States on the Trade Agreements, available at

<http://www.ustr.gov/reports/2003.html>. See Press Release, Policies in Focus, Enterprise for ASEAN Initiative (announcing White House initiative to ultimately form an FTA with the ASEAN) available at <http://www.whitehouse.gov/infocus/internationaltrade/aseaninitiative> (last visited Jan. 17, 2004); see also Edward Alden, Countries Line up to Sign US Trade Deals, FIN. TIMES, Nov. 1, 2002, at 10.

¹²⁴ The EC, of course, has untiring enthusiasm for RTAs. The EC has some form of RTA relationships with almost all members of the WTO. In fact, there are only few countries, including Australia, Canada, China, Japan, New Zealand, Taiwan, and the United States, with which the EC trades on most-favored-nation basis. The EC now negotiating RTAs with MERCOSUR, Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE), and Chile. See <http://www.europa.eu.int/comm/trade/bilateral/euta.htm> (listing the complete list of EC regional trade agreements). <http://rtais.wto.org/UI/PublicAllRTAList.aspx>

¹²⁵ Evolution of Regional Trade Agreements. See more at: https://www.wto.org/english/tratop_e/region_e/regfac_e.htm

no preferential access for Canada. The formation of some FTAs is due to political criteria for example, the FTA between Taiwan and Panama.¹²⁶

KORUS is one of the most successful FTAs in the world, and links Korea and the U.S. KORUS illustrates the importance of political and financial factors in forging an FTA relationship. In June 2006, KORUS formal arrangements began, it was approved by the U.S. Congress in October 2011, and commenced operations in March 2012. Korea had to make 22 legal changes in its system. This arrangement shows how obtrusive an FTA can be regarding the breadth of its scope, and how it influences change in the domestic countries of one or more of the member nations. Both parties influenced the accompanying Korean guidelines: Copyright Act; Patent Act; Design Protection Act; Trademark Act; Enforcement Regulation on Electrical Appliances Safety Control Act; Individual Consumption Tax Act; Regulation on Health Care Insurance Benefit; Pharmaceutical Affairs Act; Local Tax Act; Enforcement Regulation on Clean Air Act; Notice on the Recognition Criteria for Equivalence for Motor Vehicle Standards; and Utility Model Act. For Korea, KORUS implied Korea developed scope through its system of FTAs to 44 nations, 27 of which were EU states.

Since NAFTA, KORUS is the most vital FTA actualized by the U.S. Korea is the sixth major administrations merchant, seventh biggest products exporter and shipper, tenth biggest administrations exporter, eleventh biggest market, and thirteenth biggest economy. Korea became U.S.'s seventh biggest exchanging accomplice in 2005 (the trade extends up to \$72 billion in two-way exports of goods, and \$14 billion in two-way service exchange). It is also the sixth biggest

¹²⁶ Ibid

market for U.S. farming products. The U.S. is Korea's third biggest market by bringing in 17% of Korea's worldwide exports. In sum, trade exchange represents about 2/3 of Korea's GDP.

2.9. Trade Facilitation in Regional Trade Agreements

All WTO members has experienced RTAs contain obligations reflecting the creation of essential trade help at the regional level.¹²⁷ The counselling of trade help at the WTO, prescribes the need to examine the link between the trade help duties in RTAs and the future course of action of WTO counselling. The issues WTO people stand up to, regarding differences between trades help duties at the commonplace and multilateral levels, is discussed in the present audit review. The report similarly analyses steps to take to minimize negative effects.

GATT Article XXIV is an exception to the MFN principle of GATT Article I. According Article I "any advantage, favor, privilege or immunity" granted by any contracting party to any product originating from other contracting parties shall be extended to like products originating from other contracting parties. The MFN principle is the ambit of the GATT/WTO system leading to the multilateralisation of preferences accorded bilaterally. GATT Article XXIV prevents this multilateralisation from operating in a circumscribed setting.

2.10. FTAs in the Multilateral Trade Regime

Competitive liberalization means improving universal aggressiveness as the basis of a domestic economy. Three levels of trade liberalization are needed to achieve this objective-

¹²⁷ See more at: https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm

regional, bilateral, and multilateral. Liberalization can also occur through the WTO on a multilateral level by creating FTAs and trade unions, on a local or two-sided premise.¹²⁸

In summary, competitive liberalization could be achieved by pursuing trade liberalization on the three levels of trade and simultaneously moving with reasonable force towards the objective of worldwide unhindered commerce. The policy for competitive liberalization presumes shared interests in the three levels of trade between and among countries. It assumes that domestic policies and country roles determine shared or correlative forms of interests of each nation in the trading framework. Competitive liberalization suffers from conceptual and practical problems.

In contemporary times methodology makers, trade strategists, and scholastics on the whole agree that the scourge of fabricated trade obstructions for shielding protectionism twists overall trade among sovereign substances and opposes trade affecting overall moneys related welfare. Taxes are a weight on the private customers because they pay a higher amount of money for imported items and endeavors.

The obliging government does not have a pay yield from the NTBs. In case duties and NTBs cannot buy imported stock or organizations in perspective of prohibitive limits to cross-edge trade, both may follow up on determinations of buyers. Clearing blocks to unhindered business is thought to be the best decision to open up overall welfare through all-inclusive trade plainly due to each one of these reasons. However, from time to time, restrictions on imports may have non-money thinking mannerisms. Imports may be kept for catering to any common, natural prosperity, national or social security interests, etc. On the positive side, less restrictive national controls passage are attractive because they make payments for the creators of the conveying

¹²⁸ RAJ BHALA, et al., INTERNATIONAL TRADE LAW: POLITICAL AND SECURITY ASPECTS OF FTAS (LexisNexis. 2015).

country while creating cross-edge trade. Notwithstanding, in specific enterprises, arms, atomic innovation, natural gear, etc. account for key reasons why governments ordinarily force export limitations.¹²⁹ Diplomats and officials usually boast about business appearances after a trade settlement is complete. While worldwide trade can be a fundamental instrument in progressing money related headway, it is only a slight of the huge scale fiscal parts of broader budgetary change.

2.11. Motivations for FTAs in South Asia

An FTA may ensure new market entry and, by lifting an administrative impediment blocking endeavors, can open entryways for new a hypothesis. Apart from the impact of regionalism on the WTO's multilateralism and their position on this issue, given the nonattendance of monetary, political, and key clout of South Asian countries, the WTO is not in a position to oversee overall trade exchanges. Thus, South Asian countries should fall behind in building sub-neighborhood cooperation among themselves, when so many other countries outside South Asia are eagerly establishing new, and broadening and deepening, existing FTAs. Thus, SAARC has not finished to the extent ensuring fiscal joint exertion among party countries. The execution of SAFTA could not return much in financial terms, and it unclear how much SAFTA could return. In the Declaration of the eleventh SAARC Summit, SAARC party countries mooted the likelihood of moving towards a plan for a South Asian Economic Union.¹³⁰ The same has been underlined in the subsequent summit declarations.

¹²⁹ Mitchel B. Wallerstein 'Losing Controls--How U.S. Export Restrictions Jeopardize National Security and Harm Competitiveness' (2009) 88(6) Foreign Affairs u, 12.

¹³⁰ Rizwanul Islam, International Trade Law Series Volume 10 Economic Integration in South Asia Charting A Legal Roadmap (2012).

Special game plan, including incomplete inter-member taxes, are totally prohibited by the General Agreement aside from seeing that the granddad statements of Article I absolved particular assertions already in existence. As a result, GATT Article XXIV states that isolation is prohibited unless it is 100% effective.¹³¹

2.12. Conclusion

GATT Article XXIV mentions also so-called "interim agreements," which are nothing more than agreements which do not fulfill all the requisites for a fully-fledged FTA or CU but which should, in the end, lead to a RTA. A CU represents a more developed FTA where the member countries apply a common external tariff. In principle, GATT law does not know further forms of regional integration. The extreme free-trade possibility is immediate elimination of all tariff and non-tariff barriers on all goods and services. Static gains, profiled in neo-classical economic analysis of RTAs, emphasize increased imports and exports. Additionally, dynamic gains may be achieved. For example, if a FTA creates a better business climate and stimulates foreign and domestic investment, then capital formation and productivity may increase.¹³² Under SAFTA the elaborate list of contracting parties reduces the intricacy of tariff liberalization. Members of WTO that have forgone their responsibilities of reporting to the WTO regarding the ending decision of SAFTA are part of the individual contracting parties. The incorporation of the condition of having to inform the WTO as soon as possible was to improve transparency. Under the GATT/WTO rules and regulations the South Asian countries signed SAARC Agreement in 1983 and SAFTA Agreement in 2004, Enforced in 2006 for increasing volume of intra and

¹³¹ Kenneth W. Dam, 'Regional Economic Arrangements and the GATT: The Legacy of a Misconception' (1963) 30 University of Chicago Law Review 615, 632–33.

¹³² BHALA, et al., International Trade Law: Economic Aspects of FTAs. 2015.

building good relationship with member states. The following chapters will discuss about both the Agreement and their effectiveness.

Chapter Three

**Chapter 3.1: SAARC: Its agenda, expansion and impending challenges
in promoting regional cooperation**

3.1.1. Introduction

South Asia is a densely populated and highly heterogeneous region. Across the core group of countries typically designated as South Asia, more than 30 official languages are spoken. The region is also diverse in terms of religion, culture and ethnicity.¹³³

All South Asian countries share their domestic attributes and characteristics. However, SAARC member countries' per capita income is very low.¹³⁴ It is debated that in the late 1940s the U.S. State Department coined the name South Asia as a distinctive geopolitical concept following the independence of countries in the Indian subcontinent.¹³⁵ After 1947, South Asia began to be viewed as an entity that was distinct from the geographic unit under British colonial power. As such, early academic usage of the term South Asia (or Southern Asia) highlighted a sense of disconnection between a new conception of the region and its previous configuration. Writing in 1950, one author argued, "South Asia of today is the child of revolution, of destructive energy, in contradistinction to the South Asia of yesterday, the child of the Suez Canal and the outcome of constructive effort."¹³⁶

3.1.2. Beginning of SAARC

Considerable scholarly disagreement exists as to the origins of the idea of establishing a framework for regional cooperation in South Asia. Some authors have suggested that the idea for the creation of an institution for regional cooperation was mulled over, prior to India

¹³³LAWRENCE SAEZ, *THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC): AN EMERGING COLLABORATION ARCHITECTURE* (Routledge, 2011); id. at; id. at.

¹³⁴Lok Raj Baral, SAARC, but No "Shark": South Asian Regional Cooperation in Perspective, 58 *PAC. AFFAIRS* 411, (1985) (providing an excellent overview of the apparent difficulties that would hinder SAARC from achieving regional cooperation).

¹³⁵ Sinderpal Singh, Framing "South Asia": Whose Imagined Region? (Inst. of Def. and Strategic Studies, Working Paper No. 9, 2001).

¹³⁶J.S. Furnivall, South Asia in the World Today, in *SOUTH ASIA IN THE WORLD TODAY*, 3 (Phillips Talbot et al. eds., Univ. of Chicago Press, 1950).

and Pakistan's independence, at the March-April 1947 Inter-Asian Relations conference in New Delhi, India.¹³⁷ During the post-colonial realignment phase, one of the most concrete proposals for multilateral regional cooperation in Asia was the presentation of the Colombo Plan for Cooperative and Social Development. Due to the inclusion of many South Asian countries in its inception, the Colombo Plan provided a model for the possibilities offered by multilateral engagement.¹³⁸ The Colombo Plan, however, was subsumed under the aegis of a larger institutional project, namely the Commonwealth.¹³⁹ As the nations of South Asia began to assert a more distinctive foreign policy different from their colonial masters, Commonwealth-inspired institutions began to lose their appeal.

The third phase in the creation of a South Asia regional cooperation organization took place in the late 1970s. At the time, emphasis was placed on the creation of a regional organization with a distinctive South Asian character and without direct links to all-encompassing institutions like the Commonwealth. Between 1977 and 1980, Bangladesh's president Ziaur Rahman took several trips to India, Bangladesh, Nepal, Pakistan, and Sri Lanka to discuss creating a South Asian regional cooperation. In December 1977, while visiting Nepal, India, and Pakistan, President Zia presented a proposal for regional cooperation between Bangladesh and its neighbors, including an overland trade link between

¹³⁷See Sumit Ganguly, *The Prospects for SAARC*, in *DILEMMAS OF NATIONAL SECURITY AND COOPERATION IN INDIA AND PAKISTAN* [page article starts], 276 (Hafeez Malik ed., St. Martin's Press, 1993); Muhammad Jamshed Iqbal, *SAARC: Origin, Growth, Potential and Achievements*, 27 *PAKISTAN JOURNAL OF HISTORY & CULTURE* [page article starts], 131 (2006); SISIR GUPTA, *INDIA AND REGIONAL INTEGRATION IN ASIA* 36, 47 (Asia Pub. House, 1964); and MICHAEL HAAS, *THE ASIAN WAY TO PEACE* 276(1989).

¹³⁸The original members of the Colombo Plan included Australia, Britain, Canada, Ceylon, India, New Zealand, and Pakistan. <http://www.colombo-plan.org/index.php/about-cps/member-countries/>

¹³⁹See TIMOTHY M. SHAW, *COMMONWEALTH: INTER- AND NON-STATE CONTRIBUTIONS TO GLOBAL GOVERNANCE* (Routledge, 2008).

Bangladesh and Pakistan.¹⁴⁰ The Bangladeshi press observed that President Zia built strong affinity with King Birendra of Nepal. For instance, an editorial in the Bangladesh Times commented that President Zia “viewed the evolution of an environment of peace as a necessary precondition to welfare in the region.”¹⁴¹

During his December 1977 visit to India, President Zia substantively discussed the idea with India's Prime Minister Morarji Desai and foreign minister Atal Behari Vajpayee. The Indian government had been quite receptive to President Zia's call for greater regional integration, mainly because Prime Minister Desai had been elected to head a loose coalition government in India. To cement the legitimacy of this coalition government in the region, the Indian government launched a diplomatic offensive to improve India's relations with her neighbors. At the conclusion of the visit, a joint communiqué stressed the prospect for wider cooperation between the two countries.¹⁴² In the midst of a proposal to declare the Indian Ocean a “peace zone,” President Zia instead urged that the entire South Asian region be declared a “peace zone.”¹⁴³

During a period of martial law and consistent press censorship in Bangladesh, President Zia's proposal for greater regional integration was widely praised in the leading Bangladeshi press. Bangladeshi newspapers uncritically labelled the visit a great success because it had opened up the possibility of wider regional cooperation. For instance, the Bangladesh Times commented that President Zia's visit to India “... had given new opportunities to work concertedly for peace and the reduction of armaments.”¹⁴⁴ A few days later, another editorial in the same newspaper claimed that President Zia “...has proven

¹⁴⁰History: The Colombo Plan; SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

¹⁴¹Ties with Nepal, BANGLADESH TIMES, Dec. 21, 1977.

¹⁴²India and Bangladesh Want Ties Developed Further, THE STATESMAN (India), Dec. 24, 1977, at opinion page.

¹⁴³Non-interference Has Guided Delhi, Dacca Ties, HINDUSTAN TIMES (India), Dec. 20, 1977, at opinion page.

¹⁴⁴Basis of Understanding, BANGLADESH TIMES, Dec. 23 1977, at opinion page.

himself a successful advocate of regional peace and stability, good neighbor lines and unhindered national development following his visit to India, Pakistan and Nepal."¹⁴⁵ The Bangladesh Observer, another of Bangladesh's leading daily Newspapers, also lavished praise on President Zia's accomplishments.

The Indian press, however, questioned the true motives for President Zia's tour of the South Asian countries in December 1977. President Zia rose to power in April 1977, following a series of abortive military coups d'état in Bangladesh.¹⁴⁶ What President Zia seemed to be seeking was more than formal acceptance of his position as Head of State; presumably, he wanted to be recognized as a South Asian leader with as much credibility as anyone else.¹⁴⁷ President Zia, however, was not alone in voicing the need for closer regional cooperation in South Asia. Likewise, King Birendra of Nepal echoed this theme in numerous public appearances, including in an inaugural speech to the Colombo Plan Consultative Committee, of a new regional institution. The subject was later mentioned during King Birendra's visit to Bangladesh in January 1978.

In 1979, President Zia also discussed the idea of creating a South Asian regional cooperation organization during the Commonwealth summit in Lusaka, Zambia, and at the Non-Aligned Movement summit in Havana, Cuba.¹⁴⁸ It is clear that the heads of state of

¹⁴⁵Mission of Peace, BANGLADESH TIMES, Dec.23, 1977, at opinion page.

¹⁴⁶Major General Zia became president of Bangladesh on April 21, 1977, just a few months before his historic December 1977 tour of South Asian countries. After his accession to power, though, President Zia's government was challenged by a number of military mutinies. Eventually, he was able to consolidate his hold on power and founded a new political party, the Bangladesh Nationalist Party, which has become one of the two major political parties in the country. Nevertheless, the cycle of political instability in Bangladesh was not complete as President Zia was himself killed in a failed coup d'état on May 30, 1981. https://en.wikipedia.org/wiki/History_of_Bangladesh_after_independence#Ziaur_Rahman_administration.2C_1975-81

¹⁴⁷Quest for Credibility, THE STATESMAN (India), Dec. 17, 1977, at Opinion page.

¹⁴⁸Kishore C. Dash, *The Political Economy of Regional Cooperation in South Asia*, 69 PAC. AFFAIRS 185, 186 (1996).

several South Asian Countries, notably Nepal and Bangladesh, believed a regional cooperation organization for South Asia was a desirable option. Ultimately, though, the proposal for the creation of a South Asian regional forum was partially motivated by a number of internal considerations in Bangladesh. In an effort to reorient Bangladesh's foreign policy from an overt reliance on India, President Zia wished to diversify and increase the country's allies and strategic partners. To that effect, he was drawn to the idea of Bangladesh joining ASEAN, and he took steps to make that possible. Intellectually, the seminal proposal for the creation of SAARC on the basis of economic integration, as formulated by President Zia, was also influenced by an initiative from Shah A.M.S. Kibria, Bangladesh's Foreign Secretary from 1978 to 1981. Having served as a founding director of the Regional Cooperation for Development (RCD), a regional developmental agency established between Iran, Turkey, and Pakistan in July 1964, Kibria wanted to replicate this organization in South Asia.¹⁴⁹ According to Syed Moazzem Ali, Bangladesh's foreign secretary from 1999 to 2001, Kibria drafted the initial proposal outlining the justification for the launching of a South Asian regional association.¹⁵⁰ President Zia dispatched special envoys to all the heads of state and governments in South Asia in a letter dated May 2, 1980.¹⁵¹ In this letter, he urged them to strongly consider the idea of creating a regional institution akin to ASEAN serving as an economic cooperation zone for the region.¹ South Asia's regional leaders provided detailed responses to President Zia's proposals, which were in turn evaluated by Bangladesh's Ministry of Foreign Affairs. By November 1980, a document that was entitled "Paper on the

¹⁴⁹The RCD was the precursor to the Economic Cooperation Organization (ECO). See Becet Kemal Yesilbursa, *The Formation of RCD: Regional Cooperation for Development*, 45 *BRIT. J. OF MIDDLEE. STUD.* 637 (2009).

¹⁵⁰Syed Muazzam Ali, *Remembering Kibria: A Legend of Our Time*, *DHAKA COURIER* (Bangla.), Feb. 2, 2010, at article page. Kibria was killed in 2005 in a grenade attack that took place on the occasion of the 13th SAARC summit held in Dhaka, Bangladesh.

¹⁵¹SAEZ, *The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture*. 2011.

Proposal for Regional Cooperation in South Asia” had been prepared and circulated. In response to this, the Sri Lankan government agreed to convene a meeting of all the South Asian foreign secretaries, which duly took place on February 13, 1981.

At the first SAARC summit in 1985, Bangladesh's Foreign Secretary Faruq Choudhury looked back at the evolution of the association and noted that "the first indication of the encouraging response of the six governments was available at an informal meeting of the Foreign Ministers of the seven countries during the non-aligned foreign ministers' meeting in New Delhi in 1981."¹⁵² Two months later, the foreign secretaries of all seven countries in South Asia met again in Colombo, Sri Lanka from April 21-23, 1981, just a month before President Zia's assassination. India's foreign secretary, R.D. Sathe, was reported to have suggested that India "approached the proposal for a summit rather cautiously voicing the opinion that considerable side work would have to be done before this by identifying areas of co-operation." Contrary to expectations, the meeting turned out to be one of the most important to take place prior to the creation of SAARC. A joint announcement issued at the end of the meeting set out concrete areas of cooperation that were mutually acceptable to all parties.

One commentator at the meeting observed that "despite the constraints of different kinds besetting the foreign secretaries it needs to be noted that the proceedings of the conference were marked by an extraordinary degree of mutual accommodation and appreciation of each other's point of view."¹⁵³ The foreign secretaries' meeting led to a foreign ministers' meeting in New Delhi from August 1-2, 1983. According to one observer, the 1983 South Asian foreign minister' meeting—the “first of its kind in the region”—was “remarkable

¹⁵² Faruq Choudhury, Evolution of SAARC, BANGLADESH OBSERVER, Dec. 7, 1985, at article page.

¹⁵³ Umashanker Phadnis, Colombo Marks a Modest Start, HINDUSTAN TIMES (India), Apr. 25, 1981.

for the atmosphere of cordiality and comradeship that pervaded it.”¹⁵⁴ The 1983 Declaration on South Asian Regional Cooperation outlined seven objectives, three principles, and two general provisions.¹⁵⁵ As other authors have noted, the 1983 foreign ministers' meeting is significant because it was in this setting that the aims and objectives of that which evolved into SAARC were framed.¹⁵⁶ For instance, many sections of the 1983 Declaration were eventually replicated verbatim in the SAARC Charter.

3.1.2.1 Responses of South Asian States:

Initially, the idea of a regional forum in South Asia seemed to present more threats and concerns than opportunities to India. The basic fear was that neighboring countries would become a united front against India to resolve their bilateral issues. In this era, the key challenge for India and Pakistan was to maintain their relations with their extra-regional partners, namely the Soviet Union and the U.S. during the war in Afghanistan.

3.1.3. Launch of SAARC

Following the 1983 foreign ministers' meeting in New Delhi, leaders from South Asia committed themselves to forming a regional institution. Consequently, the first SAARC summit was held from December 7-8, 1985.¹⁵⁷ The Annexure 3:1 Map shows the member of SAARC Countries at present. SAARC provides a stage where South Asian people may work together in a spirit of friendship, trust and understanding. SAARC aims to promote the

¹⁵⁴ Imtiaz H. Bokhari, *South Asian Regional Cooperation: Progress, Problems, Potential and Prospects*, 25 *ASIAN SURVEY* 371, 379 (1985).

¹⁵⁵ Seven Asian Nations Resolve to Step Up Co-Operation, *HINDUSTAN TIMES* (India), Aug. 3, 1983 and at <http://saarc-sec.org/Charter>; the full text of the declaration can be found here. See also, Foreign Ministers Sign Joint Plan of Action, *THE STATESMAN*, Aug. 3, 1983, at Opinion.

¹⁵⁶ EMANUAL NAHAR, *SAARC: PROBLEMS AND PROSPECTS* 21 (Sehgal Pub. Serv., 1991).

¹⁵⁷ PRAMOD KUMAR MISHRA, *DHAKA SUMMIT AND SAARC: A BROAD OVERVIEW* (Netaji Inst. for Asian Stud., 1986) See also, <http://www.saarc-sec.org/userfiles/01-Dhaka-1stSummit1985.pdf>

welfare of the inhabitants of South Asia and to improve their quality of life through faster economic growth, social development, and cultural improvement in the area.¹⁵⁸

3.1.4. SAARC Charter:

The first SAARC summit included the heads of state from seven South Asian countries: Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka. The Charter's fundamental principle can be summed up by the following statement that explains that SAARC: "...will create an atmosphere which will reverse the process injected into South Asia by colonial powers and intensified by the countries themselves after those powers had left."¹⁵⁹ For instance, Prime Minister Rajiv Gandhi read verses (in Bengali) from Kazi Nazrul Ialam's poem, "Chalo re chalo re chalo" ("Let's go, let's go, let's go"). According to press reports, Rajiv Gandhi's reading of the poem drew "heavy applause from those assembled."¹⁶⁰ Not to be outdone, President Ershad released a poem entitled "Seven Perfumed Prospects."¹⁶¹ An editorial in the Hindustan Times argued: "Pakistan leaders have hardly ever missed an opportunity to raise the question of Kashmir whenever they can."¹⁶² The delegates at the first SAARC summit formally adopted the SAARC Charter, the association's principal governing document. The SAARC Charter is divided into 10 articles and includes a preamble. In the preamble, the signatories to the Charter pledged to promote ". . . peace, stability, amity and

¹⁵⁸See also at, http://www.saarc-sec.org/uploads/publications/file/Brief%20on%20SAARC%202009%20brochure_20100508123840.pdf

¹⁵⁹ Ahmed Fazl, SAARC Will Reverse Colonial Process, BANGLADESH TIMES, Dec. 4, 1985, at Opinion page.

¹⁶⁰Sudhin Day, Dhaka Summit Sets up S. Asian Panel, THE STATESMAN (India), Dec. 9, 1985, at [page number].

¹⁶¹Hussain Muhammed Ershad, Seven Perfumed Prospects, BANGLADESH OBSERVER, Dec. 7, 1985, at Article

¹⁶²SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

progress in the region through strict adherence to the principles of the United Nations Charter and Non-Alignment.”¹⁶³

The preamble to the SAARC Charter also embraced general principles of “... sovereign equality, territorial integrity, national independence, non-use of force and non-interference in the internal affairs of other States and peaceful settlement of all disputes.”¹⁶⁴

3.1.5. Agenda and Areas of Cooperation:

The Association works in the following areas: agriculture and rural development; health and population activities; women, youth and children; environment and forestry; science and technology; transport and human resource development; biotechnology; and tourism and energy. The leaders of the member countries stated in the SAARC Charter that they were:

“Desirous of promoting peace, stability, amity and progress in the region through strict adherence to the principles of the United Nations Charter and Non-Alignment, particularly respect for the principles of sovereign equality, territorial integrity, national independence, non-use of force and non-interference in the internal affairs of other states and peaceful settlement of all disputes.”¹⁶⁵

As soon as SAARC was established, the U.N., and the European Economic Community (E.E.C.) were eager to promote regional cooperation in South Asia, and their interest was welcomed by the SAARC member states. External sources of funding, as per the Charter, are considered a last resort to support SAARC programs. There has been a strong

¹⁶³SAEZ, *The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture*. 2011.

¹⁶⁴ South Asian Association for Regional Cooperation Charter, preamble 1, Dec. 8, 1985, <http://saarc-sec.org/SAARC-Charter/5>

¹⁶⁵*Id.* At.

commitment of the political leadership of the member states on this matter, as was reflected in the declaration of the Sixth SAARC Summit (Colombo, 1991). The heads of state or government resolved to encourage consultations among delegations of SAARC countries at all international fora and to promote articulation of joint positions where such action would be in the interest of all. They felt that the development of a collective position in international fora would accord them greater credibility and enhance the international profile of South Asia.¹⁶⁶

The SAARC Charter was designed with the existing symmetry among the member states in mind in terms of size, population, economic status and military strength, especially with reference to India and the rest of the region. This was not only reflected in the key principles of the organization, but also in the central objectives focusing on the Association contributing to “mutual trust, understanding and appreciation of one another's problems.”¹⁶⁷By recognizing the significance of cooperation at all levels, the SAARC Charter encourages all other mechanisms of regionalism. There is a provision in the SAARC Charter for sub-regionalism, as mentioned by a divisional head.

The charter reflects the functionalist approach to regionalism. The limitations of the SAARC Charter are a reflection of the nature of bilateral relations among the SAARC members and this fact is reflected somewhat in the area of cooperation among the members. However, the process has been flexible enough for cooperation beyond the charter, especially through working together in sensitive areas, such as terrorism and transnational crime.

3.1.6. SAARC Concurrence:

¹⁶⁶Id. at art. 1.

¹⁶⁷Id. at § (c).

SAARC has maintained some of its key features since its commencement, but over time it has been modified, and changed as well. The fundamental purposes and principles are as follows:

3.1.6.1. Purposes

- Promotion of peace, stability and amity within the region
- Advancement of social welfare and improvement of quality of life
- National and collective self-reliance
- Acceleration of economic growth, social progress and cultural development
- Mutual assistance in economic, social, cultural, technical and scientific fields
- Cooperation with other developing countries
- Cooperation between member states in international forums on matters of common interest
- Cooperation to bilateral and multilateral cooperation in the region

3.1.6.2. Principles

- Respect for the principles of sovereign equality, territorial integrity, political independence
- Renunciation of the use or threat of force
- Non-interference in the internal affairs of other member states
- Peaceful settlement of all disputes
- Complement to bilateral and multilateral cooperation in the region¹⁶⁸

3.1.7. Structure of SAARC and institutional cost sharing for regional centers:

¹⁶⁸See SAARC Charter, <http://saarc-sec.org/SAARC-Charter/5/>

SAARC covers almost all crucial areas that are of relevance to its members, except for conflict resolution. With certain developments in the region and beyond, SAARC's structure has experienced transformation. Every two years, the head of SAARC countries sit together and discuss main issues of the organization. The SAARC summit is usually held in a nation determined by alphabetical order and program costs are shared as follows.¹⁶⁹

TABLE 3: 1 PROGRAMING COST SHARING (EFFECTIVE SINCE DECEMBER 2006)

Country	Equal Share of 24%	Assessed Share of 76%	Total Share %
1	2	3	4=2+3
Afghanistan	3%	2%	5
Bangladesh	3%	7.72%	10.72
Bhutan	3%	2%	5
India	3%	27.32%	30.32
Maldives	3%	2%	5
Nepal	3%	7.72%	10.72
Pakistan	3%	19.52%	22.52
Sri Lanka	3%	7.72%	10.72

Every Member is equally obliged to bear 3% of total program expenses first and then the remainder of the 76% expenses are divided as per the figures in column 3, above. Finally, Afghanistan, Bhutan and Maldives bear only 5% of the expenses each; Bangladesh, Sri Lanka and Nepal bear only 10.72% each; Pakistan 22.52 and rest 30.32% of expenses bear by India.

¹⁶⁹SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

The SAARC Secretariat has established some regional centers for promoting member states' regional cooperation. Regional Centers are governed and run by Governing Boards comprising of representatives from all the Member States, the SAARC Secretary-General, and the Ministry of Foreign/External Affairs of the Host Government. Respective directors of the Centre act as Member Secretary to the Governing Board, which reports to the Programming Committee of the SAARC Secretariat.¹⁷⁰The main objective of the SAARC organization is the lasting peace and prosperity of its member nations.¹⁷¹These Regional Centers are as follows:

TABLE 3: 2 REGIONAL CENTERS OF SAARC

Serial	Name of Regional Centre	Location	Established	Goal	Remarks
1	SAARC Agricultural Centre (SAC)	Dhaka, Bangladesh	2007	Promotion of agricultural Research & Development (R&D) as well as technology dissemination initiatives for sustainable agricultural development and poverty alleviation in the region.	
2	SAARC Environment and Disaster Management Centre (SEDMC)	Delhi, India	2015	SEDMC main mission is providing policy advice and facilitating capacity building services including strategic learning, research, training, system development, expertise promotion and exchange of information for effective disaster risk reduction and for planning and coordinating a rapid regional response	Merge with the SAARC Coastal Zone Management Centre (SCZMC) in the Maldives, the SAARC Meteorological Research Centre (SMRC) in Bangladesh, SAARC Forestry Centre (SFC) in Bhutan, and the SAARC Disaster

¹⁷⁰See more at: <http://www.saarc-sec.org/press-releases/18th-SAARC-Summit-Declaration/121/>

¹⁷¹See more at: <http://www.saarc.com/the-south-asian-association-for-regional-corporation-saarc/#sthash.0M2iAoju.dpuf>

				mechanism to disasters within the region.	Management Centre (SDMC) in India.
3	SAARC Tuberculosis Centre (STC)	Kathmandu, Nepal	1992	Goal of SAARC TB and HIV/AIDS Centre is to minimize the mortality and morbidity due to TB and HIV/AIDS in the Region and to minimize the transmission of both infections until TB and HIV/AIDS cease to be major public health problems in the SAARC Region.	
4	SAARC Documentation Centre (SDC)	New Delhi	1994	It acts as depository of information including regional and international databases on various disciplines as well as development matters. The Centre conducts training courses in the area of Information Technology for Information Management.	
5	SAARC Human Resources Development Centre (SHRDC)	Islamabad, Pakistan	1999	Research, impart training, disseminate information on HRD related issues, and advise the Member states on HRD related policies and strategies	
6	SAARC Coastal Zone Management Centre (SCZMC),	Maldives			Merge with SEDMC
7	SAARC Information Centre (SIC)	Nepal		SAARC Information Centre (SIC) is making concerted efforts to take the activities and achievements of	

				SAARC to the wider audience within and outside region. For this the SIC is working towards creating a strong network of communication both inside the SAARC region and beyond.	
8	SAARC Energy Centre (SEC)	Pakistan	2006	Centre will provide technical inputs to the SAARC working group meetings on Energy.	
9	SAARC Forestry Centre (SFC)	Bhutan			Merge with SEDMC
10	SAARC Cultural Centre (SCC)	Sri Lanka		Centre intended to cater to all forms of art such as performing arts (e.g. dance, music, drama, theatre, puppetry and folk culture), visual art (e.g. painting, sculpture, film making, photography) and literature as per the provisions made in the SAARC Agenda for Culture.	
11	SAARC Meteorological Research Centre (SMRC)	Dhaka			Abolished in December 31, 2015

The SAARC Member States agreed to a set of rules for how the organization shall work. Through an agreed SAARC schema, it is clear that a country hosting a center is responsible for 40 percent of the institutional cost and another 60 percent of the share is

divided according to the following ratios. For instance, Pakistan is hosting an institution then the cost divided by the following share percentag

TABLE 3: 3 INSTITUTIONAL COST SHARING (EFFECTIVE SINCE DECEMBER 2006)

Country	Equal share of 14.40%	Assessed share of 45.60%	Total share%¹⁷²
1	2	3	4 = (2+3)
Afghanistan	1.80%	1.20	3
Bangladesh	1.80%	4.63	6.43
Bhutan	1.80%	1.20	3
India	1.80%	16.40	18.20
Maldives	1.80%	1.20	3
Nepal	1.80%	4.63	6.43
Pakistan (40%)	1.80%	11.71	53.51
Sri Lanka	1.80%	4.63	6.43

¹⁷²SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

FIGURE 3: 1 SECRETARY GENERAL / SAARC SECRETARIAT

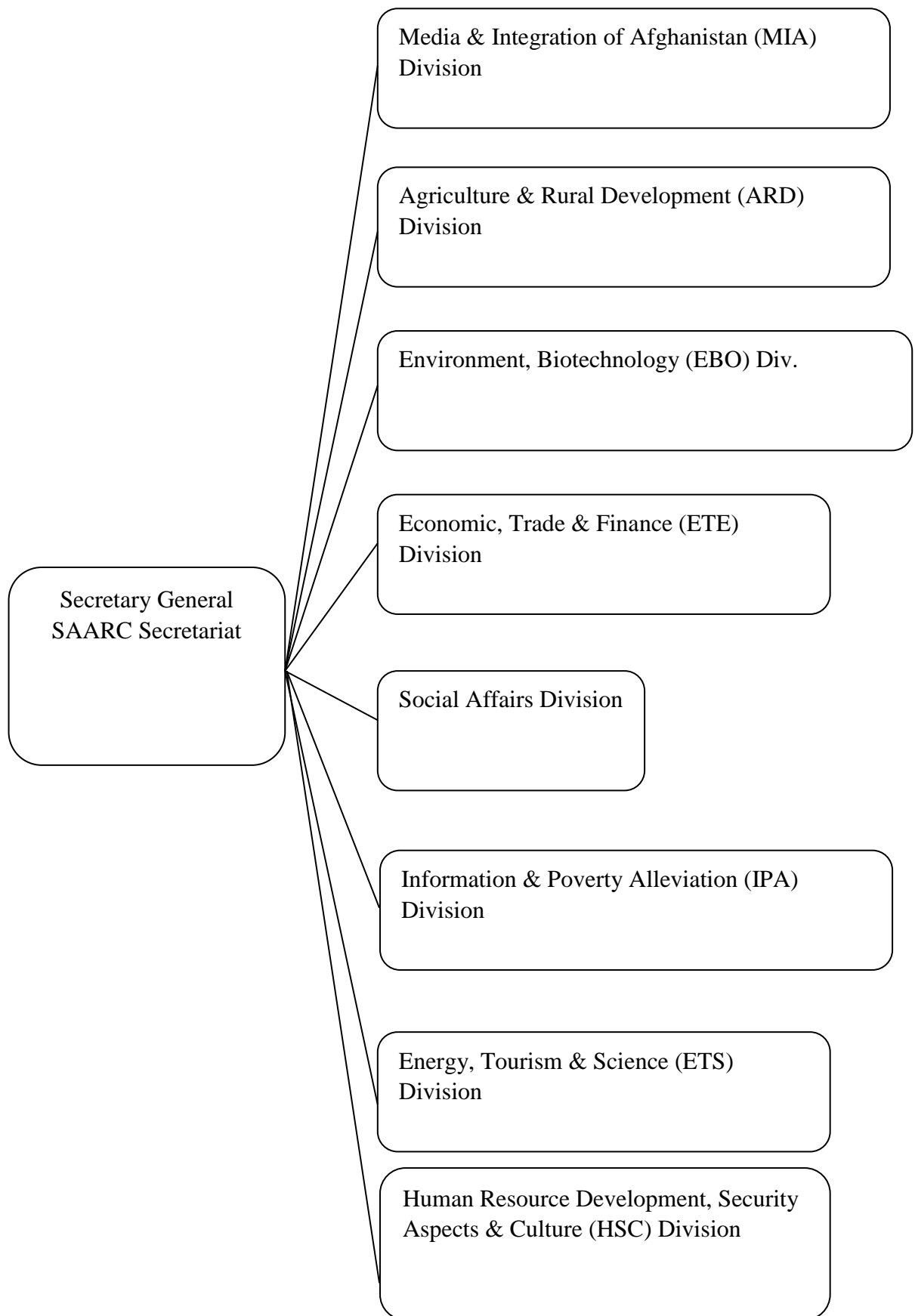
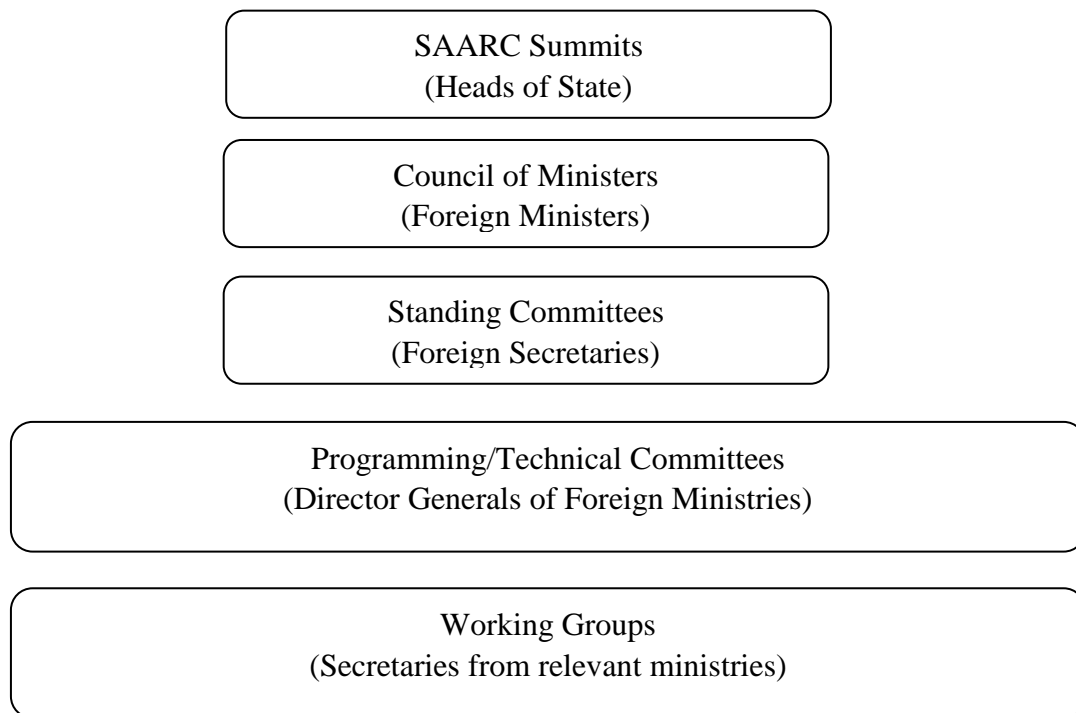


FIGURE 3: 2 HIERARCHY OF SAARC



Decision-Making

- Decisions at all levels based on unanimity
- Bilateral and contentious issues are excluded from deliberations
- Meeting of the Heads of States or Government (summits) as highest level of decision-making.¹⁷³

3.1.8. Discussion of Specific Articles: SAARC Organization

Article X of the SAARC Charter delineates only two general provisions. The first provision is that “decisions at all levels shall be taken on the basis of unanimity.”¹⁷⁴ In a region where sharp disagreements on a wide number of issues are prevalent, the SAARC Charter provides that “bilateral and contentious issues shall be excluded from the deliberations.”¹⁷⁵ Article III of the SAARC Charter specifies that the heads of state or

¹⁷³See id.

¹⁷⁴Id. at art. 10, § 1.

¹⁷⁵Id. at § 2.

government of the entire SAARC member states must meet at least once a year or more as deemed necessary by the member states.¹⁷⁶ Article IV provides that this Council be composed of the foreign ministers of all the member states. The SAARC Charter also specifies that this body is responsible for formulating policies, reviewing progress, deciding on new areas of cooperation, establishing additional mechanisms as deemed necessary, and deciding on other matters of general interest to the association.¹⁷⁷ At the secondary level, a Standing Committee assists the Council of Ministers in executing the Council's duties.¹⁷⁸ According to Article V, membership in the Standing Committee is to be provided to all the foreign secretaries of the SAARC member states. Article V also requires that the Standing Committee have the following functions:

- Overall monitoring and coordination of programs of cooperation;
- Approval of projects and programs, and the modalities of their financing;
- Determination of inter-sectoral priorities;
- Mobilization of regional and external resources; and
- Identification of new areas of cooperation based on appropriate studies¹⁷⁹

Article V also states that the Standing Committee “shall meet as often as deemed necessary.”¹⁸⁰ Moreover, it specifies that the remit of the Standing Committee shall be to “submit periodic reports to the Council of Ministers and make reference to it as and when necessary for decision on policy matters.”¹⁸¹ Article VI provides that the Technical

¹⁷⁶Id. at art. 3.

¹⁷⁷Id. at art. 4, § 1.

¹⁷⁸SAARC-Charter;SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011;id. at;id. at.

¹⁷⁹ SAARC Charter, art. 5, § 1.

¹⁸⁰Id. at § 2.

¹⁸¹Id. at § 3.

Committees “shall be responsible for the implementation, cooperation and monitoring of the programs in their respective areas of cooperation.”¹⁸²

The terms of reference of the Technical Committees is outlined in Article VI of the SAARC Charter. These include:

- Determination of the potential and the scope of regional cooperation in agreed areas;
- Formulation of programs and preparation of projects;
- Determination of financial implications of sectoral programs;
- Formulation of recommendations regarding apportionment of costs;
- Implementation and cooperation of sectoral programs; and
- Monitoring of progress in implementation¹⁸³

The SAARC Charter mandates that the Technical Committees submit periodic reports to the Standing Committee.¹⁸⁴To fulfill its mandate, the SAARC Charter enables the Technical Committees to use a wide range of mechanisms and modalities, including:

- Meetings of heads of national technical agencies;
- Meeting of experts in specific fields; and
- Contact among recognized centers of excellence in the region.

Moreover, the SAARC Charter enables the Technical Committees to set up ad hoc Action Committees “comprising Member States concerned with implementation of projects involving more than two but not all Member States.”¹⁸⁵ The Technical Committees formulate programs and prepare projects in their respective fields of expertise.

¹⁸²Id. at art. 6, § 1.

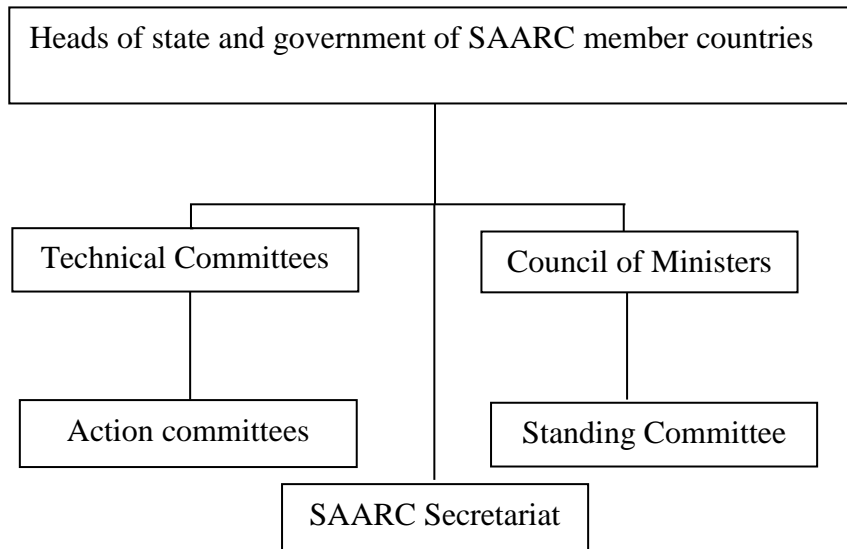
¹⁸³Id. at § 3.

¹⁸⁴Id.

¹⁸⁵Id. at art. 7.

On a day-to-day basis, much of the actual work involving SAARC is directed from its Secretariat.¹⁸⁶

FIGURE 3: 1 FLOWCHART OF GENERAL SAARC STRUCTURE



Article VIII of the SAARC Charter merely states, rather parsimoniously, that “there shall be a Secretariat of the Association.”¹⁸⁷ The Standing Committee of Foreign Secretaries informally mulled over the idea of establishing a permanent secretariat in Nepal or Bangladesh.

Based on the provisions of the 1986 Memorandum of Understanding, a permanent SAARC Secretariat was to be established in Kathmandu, Nepal. A few months after the signing of the 1986 MoU, the SAARC Secretariat was inaugurated on January 16, 1987 by King Birendra of Nepal and was attended by all the foreign ministers of the SAARC Member States.¹⁸⁸

¹⁸⁶SAEZ, *The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture*. 2011.

¹⁸⁷*Id.* at art. 8.

¹⁸⁸ <http://www.saarc-sec.org/userfiles/02-Bangalore-2ndSummit1986.pdf>

Article VIII of the 1986 MoU on the Establishment of the Secretariat outlines the functions and powers of the SAARC Secretary General and provides a more precise structural framework for the composition and aims of the SAARC Secretariat. Broadly, the secretary general's powers are circumscribed by the Standing Committee and by the Council of Ministers. For instance, the secretary general is expected to report regularly to the Standing Committee for approval by the Council of Ministers.¹⁸⁹

One of the striking structural features of the association is its financing mechanism. Article IX of the SAARC Charter provides for the financial arrangements of the association. In this financial set-up, “the contribution of each Member State towards financing of the activities of the Association shall be voluntary.”¹⁹⁰ The SAARC Charter entrusts each Technical Committee to “make recommendations for the apportionment of costs of implementing the programs proposed by it.”¹⁹¹ In the operational functioning of the association, the SAARC Secretary General plays an important role.

However, as Article VIII specifies, the Secretary General “shall be guided by the decision of the Council of Ministers that initiatives for collaboration with external agencies should stem from SAARC itself based on its own determination of priorities and keeping in mind the relevant provisions of the SAARC Charter.”¹⁹²

3.1.9. SAARC Summits

Between the inaugural SAARC 1985 summit and the 2014 summit, a total of 18 summits¹⁹³ have been held (see annexure 3.2) in different member countries. Both the

¹⁸⁹ <http://www.saarc-sec.org/Standing-Committee/54/>

¹⁹⁰ *Id.* at art. 9, § 1.

¹⁹¹ *Id.* at §.2.

¹⁹² Memorandum of Understanding on the Establishment of the Secretariat in the Article 8.3 of SAARC.

¹⁹³ *See* at: http://www.saarc-sec.org/uploads/publications/file/Brief%20on%20SAARC%202009%20brochure_20100508123840.pdf

SAARC Secretariat and the Working Divisions play a particularly important role in the design of each summit. The Secretariat selects potential issues of interest to be discussed at the summit and advises the country convening the summit on its precise framework. Eventually, the Secretariat provides guidance to a programming committee that is set up in advance of the actual summit.

The standing committee then draws up a draft of the agenda to be discussed at the summit and presents it at the foreign secretaries meeting that precedes all SAARC summits. Subsequently, a meeting of foreign ministers takes place at which the proposed agenda is evaluated. Ministers have the option to approve the agenda in its entirety or to refer some issues.

3.1.10. The Enlargement of SAARC

SAARC, like other regional and multilateral institutions, has struggled to enlarge its membership. This phenomenon should not be surprising to students of institutions. On the one hand, rationalist and public choice theoretical approaches to the study of institutions would suggest that distributional conflicts and political tensions are likely to arise during and enlargement process based on the expected redistribution of enlargement gains and relative losses after expansion. At the same time, although governments may be expected to pursue self-interested preferences and goals, it is also possible to understand the association's enlargement process from a more informal desire to expand common regional values and norms. So far, SAARC has expanded its membership once, but as we will see, there are continuing pressures from other countries to join this regional body.

3.1.11. Regionalism and Multilateralism

Given the location of the member countries, it is logical to portray SAARC as a regional institution. John Ruggie defines a multilateral organization as one that is “defined by such generalized decision-making rules as voting for consensus procedures,” and this definition suggests that the difference between regional and multilateral institutions is

conceptualized within the international relations theories. A regional and multilateral institution cannot be differentiated on the basis of a voting system which exists in most multilateral systems-some institutions do not have them only-since the procedure is neither elaborate nor thorough enough to articulate the distinctiveness of each system. For instance, the voting procedures of the United Nations Conference on Trade and Development (UNCTAD) have dwindled over the years even though they had an intricate start. On that note, since the UN Conference on the Law of the Sea did not involve an alternative to voting, it was considered a major step in decision making by approval. The initial stages of institutionalization result in an inherent tension between the existing institutional arrangements (e.g. the constituent colonial administrative units prior to the end of the colonial period) and the transforming institutional modalities (e.g., the post-independence landscape in South Asia after 1947).

Institutions like SAARC, which do not require the destruction or replacement of existing institutions, face the added challenge of legitimizing the emerging institution with the presence of already existing competing institutions. A transitional phase enables emerging institutions to be viewed through the prism of existing institutions. Principally, an International institutional theory tends to at best oversimplify institutional distinctiveness to a lone identity, thus undermining their uniqueness. However, in the case of SAARC, the prominent effect of multilateralism has to be considered in order to build a regional identity. From the constructivist perspective, identity is viewed as a mechanism to explain state practice, interests, and interactions internationally. According to Hopf, constructivism assumes that "the selves, or identities, of states are a variable; they likely depend on historical, cultural, political, and social context. "In this framework, identity is understood to be a "particular set of interests or preferences with respect to choices of action in particular domains, and with respect to particular actors."

3.1.12. SAARC: Relation with intergovernmental organizations

SAARC has linked up with quite a few intergovernmental organizations. 23

Memorandums of Understanding (MoUs) were signed with myriads of intergovernmental organizations namely, United Nations Educational, Scientific and Cultural Organization (UNESCO, 2008); two UN agencies (UNDP, 1995 & UNODC 1995); the United Nations International Strategy for Disaster Reduction (UN/ISDR, 2008); and other UN agencies such as (UNESCAP 1994; UNDP 1995; UNODC 1995; UNIFEM 2001; UNAIDS 2004; & UNEP 2007), between 1993 and 2010 alone.

SAARC also signed more MoUs with the World Health Organization (WHO, 2000), the International Telecommunications Union (ITU, 1997), Food and Agriculture Organization (FAO, 2004), and the World Bank (WB, 2004). Even though it is difficult to pinpoint any initiatives undergone with respect to these associations, SAARC considers the association with UNs major agencies a kinship with UN

To endorse their developmental goals, SAARC joined forces with agencies for development on a regional, environmental and national scale. Canadian International Development Agency (CIDA, 1997), Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP, 2007), Asia Pacific Tele-community (APT, 1994), South Asia Cooperation Environment Program (SACEP, 2004), Asian Development Bank (ADB, 2004), Japan Special Fund (JSF, 2006), the Asian Disaster Preparedness Centre (ADPC, 2006) are a few of the organizations MoUs have been signed with by SAARC. SAARC also collaborates with multiple organizations on different projects without the signing MoUs. A few examples of organizations in this category are, the German Society for Technical Cooperation (Deutsche Gesellschaft fur Technische Zusammenarbeit, GTZ), the International Standards Organization (ISO), United Nations Industrial Development Organization (UNIDO), and the ASEAN. The effects of signing these MoUs have not been seen widespread; the MoUs were

plainly expressions of interests. So, whether or not it was rather beneficial or not remains a question.¹⁹⁴

3.1.13. Accession of Afghanistan

In sum, according to the constructivist understanding, state identity formation and state interest are inherently linked. As mentioned earlier, one of the biggest and most important challenges faced by SAARC has been its proposed enlargement of the association beyond its seven founding members. Ever since its inception only one additional country has been granted membership in the association. In November 2005, Afghanistan formally requested that it be permitted to join SAARC. Naturally, the inclusion of a new member resulted in significant public debate which centered on the expected benefits to be derived from adding an unstable, war-torn country in to an already volatile regional cooperation framework. The question of dilution of the South Asian identity was also raised.

After some initial reluctance and considerable internal debates, the inclusion of Afghanistan as the eighth member of SAARC was announced during the 13th SAARC summit held in Dhaka, Bangladesh, on November 12-13, 2005. In an interview, the Indian Prime Minister Manmohan Singh declared, "we have agreed to admit Afghanistan as a member of the SAARC."¹⁹⁵ Bangladesh's Ex-prime minister Begum Khaleda Zia declared that she was happy to announce that the SAARC leaders have admitted Afghanistan as a full member of SAARC, subject to completion of formalities.¹⁹⁶ Subsequently, officials from the government of Afghanistan were invited to attend SAARC meetings and the draft modalities were finalized at the 27th SAARC Council of Minister's meeting held on 31 July -2 August

¹⁹⁴SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

¹⁹⁵Nasreen, "Inclusion of Afghanistan in SAARC: From Reluctance to Sudden Rush."

¹⁹⁶ "Afghanistan's Entry Okayed," Times of India, 14 November 2005.

2006 in Dhaka. Eventually, Afghanistan was formally inducted into the association's declaration, agreements, and legal documents, during the 14th SAARC summit held in Delhi, India, on 3-4 April 2007.

3.1.14. SAARC Observers

SAARC observers who are also multilateral organizations are the prime reason SAARC could not expand its tentacles. The People's Republic of Japan and China were two of the first countries approved for the status of an observer. India opposed China's inclusion as an observer as noted by the Pakistani media, but this was not the only incongruity that had formed between the participating nations on the topic of who could receive the observer status. Hence a meeting of Council of Ministers was arranged in Dhaka on August 2006, where 27 of them partook. United States, South Korea, and EU applications or observer status at SAARC was also reviewed in the meeting. In 2008, the 15th SAARC Summit was organized in Colombo, Sri Lanka and there the members developed with the observers, a Guidelines for Cooperation. As of today, the SAARC observer status lies with only one international organization and eight nations.

TABLE 3: 4 LISTS OF SAARC OBSERVERS

Country or Multilateral Institutions ¹⁹⁷	Date of Joining ¹⁹⁸
China	2005
Japan	2005
European Union	2005
South Korea	2006

¹⁹⁷ Extracted from the South Asian Association for Regional Cooperation website (available at: www.saarc-sec.org/Cooperation-with-Observers/13).

¹⁹⁸ Saez, 2012 p. 37

United States of America	2006
Mauritius	2007
Iran	2008
Australia	2008
Myanmar (formerly known as Burma)	2008

There are varying degrees of interest and motivation regarding participating in SAARC summits as an observer, but the underlying assumption is that South Asia is an important economic and political hub. This is made clearer in the opinion of the Ministry of Foreign Affairs of Japan, which notes that SAARC is “an association significant for its ability to provide a platform for the stability and development of the South Asia region”. Australia has also issued official statements to reiterate its desire to engage with SAARC in order to enhance closer ties with individual SAARC nations on issues of trade, education, science and technology cooperation and counter-terrorism.¹⁹⁹

In official statements, Australia has also reiterated the benefit of engaging with SAARC in order to enhance closer ties with individual SAARC nations on the issues of trade, education, science and technology cooperation and counter-terrorism. It is to be understood that a growing number of SAARC observers represents both challenges and opportunities regarding the sustainability of the association. There is a risk of the dilution of the core functions of the institutions due to the involvement of too many international observers with great political and economic influence in the region. Special attention from China is particularly understandable because of the country’s commercial interest in South Asia.

¹⁹⁹ Department of Foreign Affairs and Trade, Australia, “Australia invited as observer to the South Asian Association for Regional Cooperation (SAARC) summit”

China has begun to see SAARC as a potential instrument to facilitate and consolidate Chinese engagement in South Asia.

In recent years, other countries have expressed active interest in achieving full membership in SAARC. In 2008, Myanmar requested an application for full membership in SAARC.²⁰⁰ Iran also has studied the possibility of accession to SAARC.²⁰¹ Myanmar's unconvincing bid to become a SAARC member failed, but China and Iran attempted to join SAARC in 2010 using a rather understated approach.

3.1.15. The Major Challenges Facing SAARC

The history of SAARC since its foundation to the present day has not been smooth. Deep-rooted mistrust and disbelief among some of the neighboring countries motivated by perceptions of the region's history, has impeded collective progress. The SAARC process has often faltered for various reasons, leading to postponements or cancellations of summit meetings, in some cases painfully, at the last minute. This has caused frustration and disillusionment.²⁰²

3.1.15.1. Political Challenges

SAARC was born at a time when there were domestic and interstate security crises in the region; this caused SAARC to shy out as an organization.²⁰³ (Naik, 1999:334 in Ahmed, 2000). Due to their negative national attitudes towards SAARC, India and Pakistan half-heartedly welcomed SAARC. Therefore, in the earlier years, regional cooperation was almost paralyzed. Each member state of SAARC follows a rigid foreign policy. For example,

²⁰⁰ "Myanmar Seeks SAARC Membership," Daily News, 21 May 2008.

²⁰¹ Nilofar Suhrawardy, "Iran Considering to Join SAARC, Says Kharazzi" Arab News (Jeddah), 23 February, 2005.

²⁰² SAEZ, The South Asian Association for Regional Cooperation (SAARC): An emerging collaboration architecture. 2011.

²⁰³ Ahmed, Z.S. (2000). Regionalism and Regional Security in South Asia: The Role of SAARC

Pakistan has returned to its traditional position on SAARC vis-a-vis India, which is linked to the resolution of the Kashmir dispute - "the core issue", as stated by a Pakistan representative at the SAARC Secretariat.

However, formulation of a foreign policy relating to national policy aims is not just limited to South Asia because this is the general practice in international organizations (Haas 1956:241). According to a delegate at the SAARC Secretariat, in any regional cooperation there are competing interests among the member states. That has been the case of SAARC. Therefore, it has even been difficult for SAARC to take action in certain areas because each country has its own priorities.

A renowned Nepali political analyst argued:

“Each country has different images. Each country has different capabilities and also each country has different perceptions of the other neighbors and they have different intentions. Unless, they are harmonized into a common regional identity, no matter size varies, no matter histories differ, and we cannot cope with the future challenges until we come together.”²⁰⁴

The SAARC process was initiated on the basic assumption of functionalism, i.e. that economic cooperation leading to economic integration would pave the way for peace and stability in the region; therefore, there is a need to evaluate the progress of SAARC in a wide range of so-called uncontroversial areas to test the success of the functionalist approach.

3.1.15.2. Institutional Challenges

For SAARC to be more active, the Secretariat needs to have a direct and efficient mechanism of communication with its member states. SAARC intended to provide for the welfare of South Asians, but its target group is hardly aware of its role. A high-ranking official from the SAARC Secretariat at Maldives stated, “caution with the media” as a reason

²⁰⁴ Regionalism and Regional Security in South Asia: The Role of SAARC, By Zahid Shahab Ahmed page 57

for poor communication, suggesting limited outreach in the mainstream media; though there was a decision at the Thirty-sixth Programme to overturn this situation. Since emerging and third world countries constitute to the South Asian region they tend to prioritize national welfare to regional development. Some countries do not pay much attention to regional cooperation because they are fully occupied with their domestic affairs, development issues. For instance, for Bhutan, the country's infrastructural development is a prime concern and for Afghanistan, the obligations towards SAARC are difficult, due to the country's persistent instability.

For some SAARC member states, it has been hard to commit financially to every initiative of the organization. A SAARC Secretariat representative disclosed that Bhutan, the Maldives, Nepal and Sri Lanka have already expressed several times that there might be difficulties for them to financially contribute towards the South Asian University (SAU). Another SAARC official admitted that, being a member state of SAARC involves certain financial implications as Afghanistan has to contribute five per cent towards the overall budget of SAARC.

3.1.16. Conclusion

The enlargement of SAARC, the inclusion of Afghanistan despite reservations by the largest member state of SAARC, India, demonstrates that the landscape of South Asia can be flexible in opening itself up to other countries. It is not implausible that countries with strong historical roots on the Indian subcontinent such as Myanmar and, even, country's like Mauritius, might become member countries of SAARC. However, the reservations and the controversy surrounding the inclusion of Afghanistan have highlighted the question of the association's lack of defined parameters in terms of inclusivity of other country.

Chapter 3.2: SAFTA: Genesis and its' dreams

3.2.1. Introduction:

The Committee of Experts (COE) was set up at the 10th South Asian Association for Regional Cooperation (SAARC) Summit. The COE comprised of a nominee of each Member State, whose job was to draft a comprehensive treaty framework for establishing a free trade agreement (FTA) among the members of the SAARC, taking into consideration, inter alia, the irregularities in development within it. The COE was, mandated by member States, to draw up a treaty that is compatible with the rules of the World Trade Organization (WTO). The treaty was to be drawn in particular with the rules relating to regional integration.²⁰⁵ The SAFTA was signed on 6 January 2004 during the 12th SAARC Summit in Islamabad and was effective after 1 January 2006.²⁰⁶ Among the members was an important and apparent realization regarding the vital importance of intra-SAARC trade? This dream was the SAFTA. The purpose of this dream was to make it the South Asian counterpart of NAFTA.²⁰⁷

Alongside a regional PTA, the member States of SAARC were exploring the options of bilateral trade agreements. As a result of this exploration the India-Sri Lanka FTA was signed in 1998.²⁰⁸ Additionally, the Pakistan-Sri Lanka FTA was signed in 2002.²⁰⁹ Perhaps, similarities can be drawn with the Uruguay rounds where the member countries of the GATT were negotiating for bi partisan PTAs alongside the negotiations of the WTO. The binding factor in

²⁰⁵ See SAARC, 'Terms of Reference of the SAARC Committee of Experts on Drafting a Comprehensive Treaty Regime for a South Asian Free Trade Area', <www.saarc-sec.org/main.php?id%46&t%42.1>, 10 Dec. 2008.

²⁰⁶ SAARC, 'Agreement on South Asian Free Trade Area (SAFTA)', <www.saarc-sec.org/main.php?t%42.1.6>, 12 Dec. 2008. S. G. Jilane, SAARC Promises and Performance South Asian (December 2011).

²⁰⁷ S. G. Jilane, Whither SAARC?, SOUTH ASIAN (November, 2014).

²⁰⁸ Free Trade Agreement between the Republic of India and the Democratic Socialist Republic of Sri Lanka, signed on 28 Dec. 1998 (entered into force on 1 Mar. 2000).

²⁰⁹ Free Trade Agreement between the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka, signed on 1 Aug. 2002 (entered into force on 12 Jun. 2005).

both cases is the apprehensiveness of the member parties regarding the effectiveness of the larger trade agreement, namely WTO or SAFTA. Similar to the trend of difference between WTO concessions and concessions in most PTAs, these bilateral deals in theory offers better prospects than what the SAFTA does. Besides direct trade effects and administrative complications of these bilateral PTAs among the member states of the SAFTA, member states are likely to raise the institutional challenge that PTAs raise for the WTO. Member states are likely to hinder and weaken the trade liberalization framework of the SAARC in the same way that many observers believe that PTAs hinder and weaken the WTO.

3.2.2. Objectives and Main Principles of the Agreement:

Textually, the SAFTA aspires to advance trade and economic cooperation among the member states by, inter alia:

- “(I) dismantling trade barriers and facilitating the cross-border movement of goods between their respective territories;
- (II) Promoting fair competition in the free trade area and ensuring equitable benefits to each signatory with due consideration to respective levels and pattern of economic development;
- (III) Creating useful means for the implementation and application of the Agreement and for the resolution of any disputes that may arise under it; and
- (IV) Setting up a structure for more regional cooperation to augment the mutual benefits of the Agreement.”²¹⁰

²¹⁰ Article 3(1) of the SAFTA.

“This Agreement supersedes the Agreement on SAARC Preferential Trading Arrangement (SAPTA).”²¹¹ “Each party to the SAFTA have agreed to grant national treatment to imports from another signatory to the Agreement in consonant with the national treatment provisions as enshrined in Article III of the GATT.”²¹² This is only applicable for the non-WTO members of SAFTA as the member states are already eligible for this treatment due to the national treatment rules of GATT.

3.2.3. Tariff Reduction Scheme

Article 7 of the Agreement provides for the modality of tariff reduction called ‘Trade Liberalization Programme’ (TLP). The TLP provides a distinction between developing and Least Developed Country (LDC) contracting parties of the SAFTA. The LDC are those that are classified as such by the UN.²¹³ They are Afghanistan, Bangladesh, Bhutan, the Maldives, and Nepal. The Maldives has been granted a special concession that even if it graduates from the LDC to developing country status in the UN, it will continue to be accorded LDC status under the SAFTA as well as all subsequent contractual arrangements framed under it.²¹⁴ All Member States but Nepal and Sri Lanka had commenced the TLP on 1 July 2006 and Nepal and Sri Lanka did this with effect from 1 August 2006 and 16 September 2006, respectively.²¹⁵

²¹¹ Article 22(1) of the SAFTA.

²¹² Article 5 of the SAFTA.

²¹³ Article 1(3) of the SAFTA.

²¹⁴ Article 12 of the SAFTA.

²¹⁵ WTO Committee on Trade and Development, Notification of Regional Trade Agreement, WTO Doc. WT/COMTD/N/26 (24 Apr. 2008) [Notification].

TABLE 3: 5 TARIFF LIBERALIZATION PROGRAM UNDER SAFTA

Serial No.	Country	Date of implementation	Percentage of Tariff Reduction
1	All member states	July 01, 2006	TLP Start
2	All Member States	By 2016	0%-5%
3	Developing Countries	By 2013	0%-5%
4	Sri Lanka	By 2014	0%-5%
5	Non-LDCs	By 2008	from existing tariff rates to 20%
6	LDC States	By 2008	from existing tariff rates will be to 30%

The TLP sets the target of reduction of tariffs to 0%–5% within ten years of coming into force of the Agreement, that is, by 2016. The SAFTA aims at reduction of tariffs to 20% (30% for LDCs) by 2008 and between 0% and 5% before 2013 by developing contracting parties (for Sri Lanka, it is 2014) but allows the LDC contracting parties to reduce tariffs to 0%–5% by 2016.²¹⁶

Tariff cuts through PTAs only have any commercial effect when there is a gap between applied MFN²¹⁷ tariff rate and the preferential tariff rate. As the initial tariff cut was too shallow,

²¹⁶ Article 7(1) (a)–(d) of the SAFTA.

²¹⁷ Under the WTO agreements, countries cannot normally discriminate between their trading partners. A Country should not discriminate between its trading partners (giving them equally “most-favoured-nation” or MFN Status); and It should not discriminate between its own and foreign products, services or nationals (giving them “national treatment”). In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong. See also at, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

preferential tariff cut of only 20% or 30% in the initial two years could have made preferential tariff rate higher than applied MFN tariff for some goods. For those products, preferential tariff would have made no sense. To address this anomaly, a special rule has been created for those products for which applied tariff rate in developing contracting parties at the time of the entry into force of the Agreement was below 20% (below 30% in LDC contracting parties). In the case of those products for which applied MFN tariff rates of respective non- LDCs were below 20% when the preferential tariff treatment commenced, tariffs were to be reduced on actual margin of preference basis of 10% on the applied rate for each of the initial two years.²¹⁸ In the case of those products for which applied MFN tariff rates of respective LDCs were below 30% when the preferential tariff treatment commenced, tariffs were to be reduced on actual margin of preference basis of 5% on the applied rate for each of the initial two years.²¹⁹ A dismaying aspect of the TLP is that there is no obligation to reduce to zero or even reduce below 5% in all areas over time. This lack of stipulation on the total elimination of tariffs significantly limits the intensity of the tariff concessions.

The SAFTA allows member countries to notify the sensitive or negative list. This is a list of products that will not enjoy concessional import duties. Whereas under the SAPTA, tariffs were reduced only in cases of goods specified in the Agreement, under the SAFTA, tariffs are removed or reduced for all products apart from those falling on each country's sensitive products list. Textually, this is a step forward. However, the efficacy of this negative list approach has been severely limited by the very long list of products in the sensitive category of individual countries. Initially, Afghanistan had a single sensitive list of 1,072 tariff lines for LDCs and non-

²¹⁸ Article 7(1) (a) of the SAFTA.

²¹⁹ Article 7(1) (b) of the SAFTA.

LDCs alike; Bangladesh had a sensitive list of 1,249 tariff lines for the LDC members and 1,254 tariff lines for non-LDC members; Bhutan had a consolidated list of 157 tariff lines; India had 744 tariff lines for LDCs and 884 tariff lines for non-LDCs; the Maldives had a consolidated list of 681 tariff lines; Nepal had 1,299 tariff lines for LDCs and 1,335 tariff lines for non-LDCs; Pakistan had a single list of 1,191 tariff lines; and Sri Lanka had a consolidated list of 1,071 tariff lines.²²⁰

The sensitive list of member countries will be assessed every four years or earlier as the SAFTA Ministerial Council (SMC) may decide with a view to trimming them, but there is no condition of any compulsory cutback.²²¹ Agricultural products take priority in the sensitive list. Despite the non-existence of a binding provision for trimming the sensitive list in the Agreement, the experience of the first round of revision of the sensitive list is modestly positive. First, it has been conducted before the treaty requirement of four years. Second, all contracting parties except Afghanistan and the Maldives have pruned their respective sensitive list.

Under this revised scheme, currently Bangladesh has tariff lines for 1,231 LDCs and 1,240 tariff lines for non-LDCs; Bhutan has a consolidated list of 150 tariff lines; India has 480 tariff lines for LDCs and 868 tariff lines for non-LDCs; Nepal has a list of 1,257 tariff lines for LDCs and 1,295 tariff lines for non-LDCs; Pakistan has a consolidated list of 1,169 tariff lines; and Sri Lanka has a consolidated list of 1,065 tariff lines.²²² However, it is evident that there have not been any noticeable changes in the number of products in the sensitive list for imports

²²⁰ The list was collected from the SAARC Secretariat website, <www.saarc-sec.org/main.php?t/42.1.6>, 12 Jan. 2009.

²²¹ Article 7(3) (b) of the SAFTA.

²²² This revised list is available online at the SAARC Secretariat website, <www.saarc-sec.org/main.-php?t/42.1.6>, 5 Jan. 2010.

from developing countries. Even for LDCs, significant reduction has only been offered by India alone. The reductions by the other developing members are nominal. While there is no specific requirement in the SAFTA that member countries must maintain separate sensitive list of products for developing members and LDCs, arguably there is an implicit recognition that they should do so. Several factors support this connotation.

Preamble of the SAFTA underscores that LDC members need to be granted special and differential S&D treatment proportionate to their development needs. Article 3(f) of the SAFTA provides that one of the governing principle of the SAFTA is that the particular needs of the LDCs must be visibly accommodated by non-reciprocal concrete preferential measures in their favor.²²³ Article 11 provides for a special set of S&D treatment for the LDCs. It may appear that this article wanes the persuasiveness of the argument that LDCs may deserve a shorter sensitive list as it sets out what special rights they may be accorded. However, use of the words ‘In addition to other provisions of this Agreement’ placed at the beginning of the Article unequivocally indicates that it is not an exhaustive list. Above all, the tariff liberalization scheme of the SAFTA itself draws a distinction between developing countries and LDCs. If there is an implicit obligation to maintain a trimmed list of sensitive products for LDCs, the next question would arise to on whom this obligation is imposed. In other words, does an LDC member need to have a separate sensitive list for other LDCs? This seems to be having a relatively uncomplicated answer.

The Preamble refers to the aspirations of the ‘The Governments of the SAARC’ and does not make any distinction among member countries. Neither Article 3(f) nor Article 11 does contain any expression that will limit the onus of according Special & differential treatment

²²³ Article 3(f) of the SAFTA

obligation to the developing member countries. In the light of these arguments, it appears that by providing an identical list for all members of the SAFTA, Afghanistan, Bhutan, the Maldives, Pakistan, and Sri Lanka have not adhered to the principle of Special & differential treatment for LDCs as contained in the SAFTA.

3.2.4. Administration of the Agreement

Article 10 of the Agreement provides for the establishment of the SMC consisting of the Ministers of Commerce/Trade of each contracting party and performing the responsibilities of the highest decision-making body of the SAFTA. The role of the SMC with respect to the SAFTA is analogous to the role of the Ministerial Council with respect to the WTO. It has a supervisory role of administering and implementing the SAFTA and all decisions and arrangements that may be made within its legal framework.²²⁴ The SMC must hold meeting at least annually or more often as the contracting parties may deem necessary.²²⁵ In order to assist the SMC, there is a COE, comprising of one nominee from each contracting party at the level of a senior economic official who have expertise in trade issues.²²⁶ There is no explanation of the phrase senior economic official, but presumably it refers to senior government officials with expertise in trade matters. The COE is entrusted with the duty of monitoring, reviewing, and facilitating implementation of the provisions of the Agreement and performing any other assignment that may be assigned to it by the SMC.²²⁷ It must meet at least biannually and shall

²²⁴ Article 10(2) of the SAFTA.

²²⁵ Article 10(4) of the SAFTA.

²²⁶ Article 10(5) of the SAFTA.

²²⁷ Article 10(6) of the SAFTA.

submit its report to the SMC twice a year.²²⁸ One of the key functions of the COE is to carry out the role of the Dispute Settlement Body under the Agreement.²²⁹

3.2.5. Trade Remedy Measures

There is no undertaking in the Agreement to abolish the adoption of trade remedy measures in the trade among the parties. The Agreement allows contracting parties to resort to safeguard measures to protect domestic industry from surge in imports from other contracting parties. A contracting state may provisionally suspend concessions granted under the SAFTA when, in accordance with an investigation conducted by a public authority, it finds that imported products cause or threatens to cause like or directly competitive products in the importing country.²³⁰ The investigation by domestic authority must comply with Article XIX of the GATT and the WTO Agreement on Safeguards.²³¹ Resembling Article XIX of the GATT, three conditions must be fulfilled for the adoption of a safeguard measure. There must be a surge of imported product from the other contracting parties; the import must cause serious injury to producers of like or directly competitive products; and there must be a causal link between the injury and imports from producers within the region.²³² The drafters of the SAFTA have done away with the requirement of Article XIX GATT that the surge in import must be unforeseen.

²²⁸ Articles 10(6) and 10(8) of the SAFTA.

²²⁹ Article 10(7) of the SAFTA.

²³⁰ Article 16(1) of the SAFTA.

²³¹ Article 16(4) of the SAFTA.

²³² Article 16(1) of the SAFTA.

This would help get rid of the interpretative difficulty that has surrounded the wording in the WTO.²³³

A corollary of this omission and simplification would, however, be that it would be easier for contracting parties to resort to safeguard measures. This would be unfortunate because inherently safeguard measure is a response to fair trade practice and should therefore be used very sparingly. A safeguard measure under the SAFTA cannot be applied against imports from an LDC contracting party unless its share of the total import of the product is more than 5%.²³⁴ Where a safeguard measure is applied against a product that is exported from more than one LDC contracting parties, the LDC producers will be exempted from the measure unless their collective share of import is more than 15% of total import.²³⁵ Other than this special exemption for imports from LDCs, a safeguard measure must be applied indiscriminately.²³⁶ A safeguard measure can be maintained for up to three years.²³⁷ Unlike Article XIX(3) of the GATT, there is no provision for the exporting countries affected by a safeguard measure to suspend comparable trade concessions to the exports from the contracting party that resort to a safeguard measure. In practice, this absence of scope for retaliation is likely to lead any aggrieved exporting country with the only option of going for challenging the measure in the dispute settlement forum of the

²³³ The issue of the interpretation of this term arose in several GATT and WTO Reports, for instance, Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, WTO Doc. WT/DS98/AB/R (1999; Report of the Appellate Body); Argentina – Footwear Safeguards Measures on Imports of Footwear, WT/DS121/AB/R (1999; Report of the Appellate Body); United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia, WTO Doc. WT/DS177/AB/R, WT/DS178/AB/R (2001; Report of the Appellate Body).

²³⁴ Article 16(8) of the SAFTA.

²³⁵ Ibid

²³⁶ Ibid.

²³⁷ Article 16(2) of the SAFTA.

Agreement. When a contracting party takes recourse to a safeguard measure, it must instantly notify the exporting contracting state/s and the COE.²³⁸ Although the Article does not provide for any consultation between the importing and exporting countries, it is conceivable that the purpose of notification is to provide scope for consultation for finding any alternative trade compensation in lieu of those withdrawn on account of the import surge.

3.2.6. Dispute settlement mechanism in the SAFTA

Any FTA is subject to various forms of disagreements and/or dispute amongst the member countries. As a result, it is imperative that the FTA incorporates a form of dispute settlement so as to avoid controversy and roadblocks in implementation of the FTA objectives.

It is generally considered safest to have a rule based dispute settlement system in place, so as to mitigate the power disparity amongst the member countries of the FTA. At the multilateral forum, perhaps GATT contracting parties recognized that diplomatic negotiation-based soft approach to dispute settlement was not sufficiently capable of adequately protecting all contracting parties trading interests. Therefore, to protect the trading rights of all Member States irrespective of their clout, the WTO adopted a rule based system. Maybe this same reason explains why both the EC and NAFTA state parties have adopted this type of formal, rule-based dispute settlement system. Developments in these comparable institutions reinforce the desirability of having a rule-based dispute settlement system in place in any FTA. However, in the SAFTA, there is no strong rule-based dispute settlement mechanism in place. It appears that the SAFTA aims to provide for a minimalist and consultation focused procedure that would let the disputing parties to resolve their disputes. These disputes are resolved through consultation

²³⁸ Article 16(6) of the SAFTA.

and allowing maximum flexibility and control over the dispute settlement process, should consultation fail. The dispute settlement system in its current form is sketchy. It enacts that any dispute among the state parties would be settled amicably.²³⁹ Any contracting party that have any grievance against another contracting party is required to make a request for consultation in writing to the other party setting out the measures at issue.²⁴⁰

3.2.7. Rules of Origin

Like other FTAs, the SAFTA seeks to limit favorable tariff treatment to its parties so that producers from non-member countries cannot benefit from the treaty through transshipment of their products through one of the countries. To ensure this objective, the treaty adopts a preferential Rules of Origin, which forms an integral part of the SAFTA.²⁴¹ Rules of Origin of the Agreement provides that a product that is wholly produced or obtained in the territory of a particular exporting contracting country would be eligible for preferential treatment under the Agreement.²⁴² A product that is not wholly produced or obtained within a member country will be eligible for preferential treatment if they have undergone substantial manufacturing process in the exporting country.²⁴³ This substantial manufacturing criterion can be fulfilled by meeting two conditions. The total value of the materials, parts, or other inputs originating from non-Member States or of undetermined origin in the production of the exported product must not exceed 60% of the Free on Board (FOB) value and the final processing of the product must be performed

²³⁹ Article 20(1) of the SAFTA.

²⁴⁰ Article 20(2) of the SAFTA.

²⁴¹ Article 18 of the SAFTA.

²⁴² Rule 4(a) of Annex IV to the SAFTA.

²⁴³ Rule 8(a) of Annex IV to the SAFTA.

within the territory of the exporting Member State.²⁴⁴ Furthermore, the final product must change in tariff heading at four-digit Harmonized Coding System (HS), that is, it must take a different line from any of the third party originating materials used in the production.²⁴⁵

LDCs have a further flexibility that in their case any non-member contents or contents of undefined origin can be up to 70%, and for Sri Lanka, non-member or undefined contents can be up to 65%.²⁴⁶ The Rules of Origin is more liberal in cases of regional accumulation. Regional accumulation rules would apply when a product is worked or processed in any of the contracting parties using domestic inputs as well as that of one or more of the other contracting parties. In this case, a product would be eligible for preferential treatment if the domestic content of the territory where it is processed consists of at least 20% of the FOB value of the final product and domestic content plus other contents from partner countries is at least 50% of the FOB value.²⁴⁷ Additionally, the rule of change in tariff heading would be applicable.²⁴⁸ Aside from these general rules, there is Product Specific Rules applicable to 191 tariff lines.²⁴⁹ The Product Specific Rules slightly vary in domestic content requirement from the general Rules of Origin.

The rules of Origin of SAFTA was drafted in the Twelfth Committee of Experts on South Asian Free Trade Area (SAFTA), which was held in Kathmandu from 29 November to 1st of December, in 2005. There are Seventeen (17) Rules which cater to a wide range of topics such as the category of product and the subsequent treatment of such products. The following section aims to summarize the rules drafted. The major discussion points of the Rules of Origin are:

²⁴⁴ Rule 8(a)(ii) of Annex IV to the SAFTA.

²⁴⁵ Rule 8(a)(i) of Annex IV to the SAFTA.

²⁴⁶ Rule 10 of the Annex IV to the SAFTA.

²⁴⁷ Rules 9(a) and 9(b) of the Annex IV to the SAFTA.

²⁴⁸ Rule 9(c) of the Annex IV to the SAFTA.

²⁴⁹ Annex A of Annex IV to the SAFTA.

Wholly obtained, originating materials, Non-Qualifying Operations, Value added test, Hybrid, Assemble, and Specific Process.

3.2.7.1. Wholly Obtained:

The wholly obtained rules of origin are the produce that are obtained or produced in the territory of the Exporting Contracting State.

3.2.7.2. Originating Materials:

The originating materials refers to the products that, upon obtaining eligibility pertaining to specific Rules of the Rules of Origin; can be imported into the territory of a contracting state from another contracting state.

3.2.7.3. Non-Qualifying Operations:

Rule 7 refers to the alterations that makes any product ineligible to be labelled as originating product. The guidelines explicitly mention guidelines regarding the conditions which would render such products ineligible to be considered originating goods. The annexure provides a comprehensive list of the conditions that are to be met in order for the products to be qualified. For example, in case of assembly, labelling parts of product as a complete product will result in disqualification of originating product and won't be granted originating status.²⁵⁰

3.2.7.4. Value Added Test:

The following condition is one of the two primary conditions which are to be met in order for the products to be considered eligible for originating status: The final product is classified in a heading at the four-digit level of the Harmonized Commodity Description and Coding System differently from those in which all the non-originating materials used in its manufacture are

²⁵⁰ SAFTA Rules of Origin, Rule 7, Subsection 6.

classified.²⁵¹ Products worked on or processed as a result of which the total value of the materials, parts or produce originating from other countries or of undetermined origin used does not exceed 60% of the FOB value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting State.²⁵²

3.2.7.5. Regional Value Content:

The regional value content refers to the products manufactured or processes in a specific contracting state with inputs coming from any contracting state within the free trade zone is eligible for preferential treatment, provided the following condition is met: The aggregate content (value of such inputs plus domestic value addition in further manufacture) is not less than 50 percent of the FOB value.²⁵³

3.2.8. Technical Assistance for LDC members and Trade Facilitation Measures

In Article 8 of the SAFTA, lofty objectives have been set up to facilitate intra-SAARC trade. These are transit facilities for efficient intra-SAARC trade, removal of barriers to intra-SAARC investments, simplification and harmonization of import licensing and registration procedures, and harmonization of standards and mutual recognition of test results. These are all critical issues deserving attention of the signatories. However, it remains to be seen how these goals would be achieved as no concrete and region-wide concerted steps have yet followed to make them happen. The developing contracting parties have undertaken to expand technical assistance to LDC contracting parties for the development of their trade-related capacity.²⁵⁴ The

²⁵¹ SAFTA Rules of Origin Rule 8, Clause (a), Subsection (i)

²⁵² SAFTA Rules of Origin Rule 8, Clause (a), Subsection (ii)

²⁵³ SAFTA Rules of Origin Rule 9, Clause (a)

²⁵⁴ Article 11(d) of the SAFTA.

Agreement sets the objective of technical assistance for trade capacity building, development and improvement of tax and tariff policy and laws, and improvement of national expertise on different Agreements of the WTO, undertaking studies on improving trade-related infrastructure, support for export, and investment promotion.²⁵⁵

3.2.9. SAFTA: Existing Status and Prospects

South Asian countries, which had open economies in the immediate post-independence period in the 1940s, had become some of the most highly protectionist economies in the world by the 1970s. Tariff and, even more important, nontariff barriers were extremely high, state interventions in economic activity had become pervasive, attitudes to foreign investments were negative, often hostile, and stringent exchange controls were in place. This started to change in the late 1970s, however. In 1977, Sri Lanka initiated a process of policy liberalization, and other countries followed in the 1980s. The liberalization process, however, was often rather hesitant and was uneven across countries. It was from the early 1990s, with the start of a major reform process in India that the region as a whole really started to liberalize. By the end of the decade, although important policy barriers to trade and foreign investment remained, enormous progress had been made throughout the region in this direction (World Bank 2004).

The changes to the trade policy regime in South Asia have been driven primarily by across-the-board, unilateral liberalization by individual countries. However, a process of preferential trade liberalization also has been ongoing since the establishment in 1985 of the SAARC. South Asia was fairly late in embracing the concept of regional economic cooperation—it took a decade after the initial establishment of SAARC for the region to turn its

²⁵⁵Annex II of the SAFTA.

attention to the promotion of trade through a regional agreement. Nevertheless, having accepted the concept of regional economic cooperation, SAARC was quick to set itself an ambitious agenda. The proposal to set up a SAPTA was accepted and came into formal operation in December 1995.

In 1996, SAARC member countries agreed in principle to go a step further and attempt to enact a SAFTA by 2000, but not later than 2005. With the apparent progress of three rounds of negotiations under SAPTA completed by 1998, it was proposed that the date for establishing SAFTA be brought forward to 2001. The momentum of economic cooperation in South Asia suffered a setback from late 1998, however, with the deterioration in bilateral relations between India and Pakistan that saw the consequent postponement of SAARC Heads of State Summits for the next three years. With the resumption of official contact in January 2002, negotiations on a Framework Treaty on SAFTA were initiated and the framework was adopted in January 2004.

Outstanding issues in key areas of the tariff liberalization program, rules of origin, sensitive lists, and so on, were completed on schedule by January 2006 to allow the implementation of SAFTA to begin in July 2006. Under the proposed TLP, SAFTA will become fully effective for non-LDC member countries of SAARC by 2013 (and by 2016 for LDC member states). The SAFTA process has generated only limited enthusiasm. It suffers from significant shortcomings, primarily on account of a cautious approach adopted to achieve the ultimate objective of free trade within the South Asian region. Concerns about the very usefulness of SAFTA have been mounting in light of more liberal bilateral FTAs as well as preferential access that could conceivably be granted through alternative trading arrangements among SAARC countries. The dynamics of regional integration in South Asia have also changed with the growing emergence of India not only as an Asian economic power, but also as a rapidly

emerging world economic power. With India looking increasingly to strengthen economic relations with the wider Asian region through initiatives such as Association of Southeast Asian Nations (ASEAN+3+India), the strategic interests of the smaller South Asian economies are likely to become inextricably linked to successful integration with the Indian economy. The evidence to date suggests that economic integration of the South Asian region is gathering pace, but that SAFTA remains fairly marginal in that process.

3.2.10. SAPTA to SAFTA: WILL “Free” Trade in South Asia yield Benefits?

Despite few empirical studies that have looked at the prospects for regional integration in South Asia, the results remain inconclusive. The quantitative assessments have used a variety of methodologies, including gravity models, computable general equilibrium (CGE) models, and partial equilibrium studies. Early studies predicted pessimistic outcomes for the most part. They concluded that most of the preconditions required for a successful trading arrangement were not present in South Asia, and that the region would be better off liberalizing trade unilaterally.

Others argued strongly that regional trade integration initiatives in South Asia will yield a net welfare loss and slow unilateral liberalization. Indeed, it has long been recognized that the fact that South Asian countries share some basic similarities (low income, relatively abundant labor, comparative advantage in similar commodities, such as tea and garments) reduces the potential for comparative advantage driven trade. Nevertheless, it has been argued that increased economic integration would carry with it the ability not only to secure new and larger markets for traditional products, but also to enable the diversification of domestic economic structures.

More topical studies have highlighted benefits to be had from pursuing economic integration in South Asia, not only in trade in goods but also in services and investment.

Notwithstanding the inconclusive nature of empirical assessments, the notion that deeper

regional trade integration can create spillover effects that would strengthen economic and political ties between South Asian countries has persisted. SAPTA was intended as the initial step in the process to support regional economic integration. However, the SAPTA process was rather ineffective. Three rounds of negotiations were completed under SAPTA where the consolidated list of concessions covered 3,857 tariff lines, including special concessions (2,762 tariff lines) offered to LDCs.

The most limiting factor of SAPTA was the actual trade coverage of preferential access granted. In fact, it has been estimated that on average only 8.4 percent of tariff lines in the case of imports from non-LDCs (and 6.2 percent in the case of imports from the LDCs) were covered. In reality, products imported under SAPTA concessions translated to only 15 percent of total imports between SAARC member countries. Thus, SAPTA had little or no impact in changing the existing trade patterns in South Asia. Intra-SAARC trade continued to stagnate in the region of 05 percent of total trade with the rest of the world, one of the lowest volumes of intraregional trade of any major geographic region. SAFTA was intended to provide a fresh boost to the integration process. Unlike SAPTA, SAFTA adopted a negative list approach with the intention that South Asian countries would phase out import tariffs to other member countries on all goods apart from those items reserved under a “sensitive” list. The key features of the Agreement related to the modalities of the TLP, the treatment of sensitive goods, and the rules of origin.

3.2.11. SAFTA: Multilateral Agreement versus Bilateral Agreement

As far as the TLP is concerned, the approach adopted makes a commitment toward a top down reduction of tariffs in which non-LDC member states are required to reduce existing tariffs to 20 percent within 2 years of implementation of the agreement, and thereafter to further reduce tariffs to a range of 0–5 percent in the next 5 years. 3 LDC member countries are required to reduce existing tariffs to 30 percent in 2 years and further ensure a reduction to a range of 0–5

percent in the next 8 years. One criticism that may be made of this formula is that it may allow back-loading in the tariff-reduction process. That is, those countries whose tariffs are well below 20 percent may not have to commit to substantial reductions until the last minute. The agreement only requires a 10 percent margin of preference reduction in each of the two years and recommends a 15 percent reduction each year in the second phase. However, the formula adopted unlike the alternative of a progressive linear reduction formula is not without its benefits. It is likely to be more efficient if convergence is achieved initially by all countries lowering their tariffs to a maximum rate and then proceeding further. An alternative of an annualized percentage reduction, on the other hand, would have meant that countries with high tariffs still continue to benefit in relation to the other regional partners.

TABLE 3: 6 COMPARATIVE TLP ACROSS FTAs IN SOUTH ASIA

	SAFTA	ISFTA	PSFTA
Immediate 0%	Not Applicable	India: 1,351 items	Pakistan: 206 items
		Sri Lanka: 319 items	Sri Lanka: 102 items
TLP for others	Non-LDCs reduce tariffs to 20 percent over 2 years (LDCs 3 years)	India: duty on balance items to be phased out over 3 years	Pakistan: duty on balance items to be phased out over 3 years
	Non-LDCS: reduce 0-5 percent over next 5 years (LDCs 7 years)	Sri Lanka: duty on balance items to be phased out over 8 years	Sri Lanka: duty on balance items to be phased out over 5 years 2010

Date of Full Implementation	2016	2008	2010
Source: Respective Agreements Note FTP = Free Trade Agreement; ISFTA = India–Sri Lanka Free Trade Agreement; PSFTA = Pakistan–Sri Lanka Free Trade Agreement; SAFTA = South Asian Free Trade Agreement; TLP = Tariff Liberalization Program.			

International experience of regional blocs generally, finds clauses that favor convergence as in SAFTA to be more successful in ensuring that benefits of tariff reduction are extended to all member countries. Another key area is rules of origin (ROO), which is an important provision in any FTA. Within trade arrangements, ROO have a number of functions. The most important are to limit the benefit of preferences to countries within the agreement, and related to that, to encourage industrial development within the member countries. ROO can have positive as well as negative effects. Positive effects of properly constituted ROO requirements generally include prevention of trade deflection, facilitating value addition, and augmenting the volume of intraregional trade. On the negative side, it is often argued that ROO might inhibit intraregional trade and favor high cost and inefficient production. Ideally ROO should, therefore, be open, transparent, predictable, and consistent in application, as simple as possible and leave little room for administrative discretion.

Three criteria are generally used to determine whether ‘substantial transformation’ of goods that is, the final product should be distinct from its constituents has taken place. Each rule could be applied in isolation, in the alternative, or in tandem. The rules are: (1) A percentage test according to which a minimum percentage of domestic value addition (DVA) should be achieved

on the basis of domestic inputs; (2) a change in tariff heading (CTH) test whereby the tariff heading of the final product is different from the tariff headings of its components; and (3) a specified process tests that require a product to undergo certain stipulated processes.

The SAFTA agreement requires DVA of 40 percent for India and Pakistan (as non-LDC member countries), 35 percent for Sri Lanka (as a small economy), and 30 percent for LDCs, in combination with a change of tariff heading (CTH) at classified at the four-digit Harmonized Commodity Description and Coding System (HS) code. However, derogation from the General Rule has been permitted under SAFTA because some products may undergo substantial transformation and allow the DVA criteria to be met without CTH at the four-digit code and vice versa. Besides the single-country ROO, there is also provision for cumulative ROO with a minimum aggregate content of 50 percent with the proviso that the minimum input from the exporting country should be 20 percent. The SAFTA ROO is more or less the same as those under the bilateral FTAs in the region. One of the most critical provisions in SAFTA is the one that deals with sensitive sectors.

TABLE 3: 7 COMPARATIVE RULES OF ORIGIN ACROSS FTAs IN SOUTH ASIA

	SAFTA	ISFTA	PSFTA
Single Country ROO			
DVA (% of FOB)			
India and Pakistan	40%	35%	35%
Sri Lanka	35%	35%	35%
LDCs	30%		
CTH	4-digit	4-digit	4-digit
Cumulative ROO			

Minimum Aggregate Content	50%	35%	35%
Input from Exporting Country	20%	25%	25%
Derogation from General Rule	DVA: 25, 30, 40 or		NA
	60% CTH: at 4- or		
	6-digit Process: PSR		
Source Respective agreements			
Note CTH = Change of Tariff Heading; DVA = Domestic Value Addition; FTP = Free Trade Agreement; ISFTA = India–Sri Lanka Free Trade Agreement; LDC = Least Developed Country; PSFTA = Pakistan–Sri Lanka Free Trade Agreement; ROO = Rules of Origin; SAFTA = South Asian Free Trade Agreement.			

It seems reasonable that each country has some Sensitive industries that should not face increased competition, even from relatively less competitive neighbors. An improvement in the SAFTA treaty compared with the bilateral FTAs in the region was that it provided room for negotiations to ensure a maximum ceiling on items that can be placed under the negative list by each member country. It appeared in the initial stages of negotiations that a fairly liberal approach would be adopted, perhaps limiting the negative list to 10 percent of tariff lines (of a total of 5,224 tariff lines at the HS six-digit level), but the final decision was to retain a negative list of 20 percent of tariff lines for non-LDC member states and a close approximation of that for the LDC member countries.²⁵⁶

²⁵⁶ http://saarc-sec.org/areaofcooperation/detail.php?activity_id=35

TABLE 3: 8 COMPARATIVE NEGATIVE LISTS ACROSS FTAS IN SOUTH ASIA (UP TO 2012)

Country Name	SAFTA	ISFTA	PSFTA
Afghanistan	858		
Bangladesh	987 (LDCs) & 993 (NLDCs)		
Bhutan	156		
India	25 (LDCs) & 614 (NLDCs)	419	
Maldives	154		
Nepal	998 (LDCs) & 1036 (NLDCs)		
Pakistan	936		540
Sri Lanka	837 (LDCs) & 963 (NLDCs)	1180	697
Source Respective agreements			
Notes FTA = Free Trade Agreement; ISFTA = India–Sri Lanka Free Trade Agreement;			
PSFTA = Pakistan–Sri Lanka Free Trade Agreement; SAFTA = South Asian Free			
Trade Agreement. * For LDCs 1,249. ** For LDCs 744.			

This means, in principle, that the actual trade coverage of the negative lists of each country could be quite high. Perhaps of more concern is that there is no formal and binding provision in the framework agreement requiring that negative lists are pruned down over time. In contrast, the ASEAN Free Trade Agreement (AFTA) requires explicitly that its negative list products—the corresponding Temporary Exclusion List—be phased out in five equal installments. The only provision that the SAFTA treaty has made is for a “review” of the negative list at least every four years “with a view to reducing the number of items” (Agreement of South Asian Free Trade Area, Article 7(3b), p. 5). The underlying intention may be to prune it, but the provision is vague and has no authority to require any movement from the current

position of member countries. Given that SAFTA has left the issue of negative lists fairly open ended—even four years is a fairly long-time horizon to wait for any improvement in the agreement—there is always the danger that the agreement will fall short of free trade even in the long term. By comparison to SAFTA, the negative lists of existing bilateral FTAs in the region are more limited. Indeed, mapping the sensitive list of each country to their imports from the rest of South Asia reveals that nearly 53 percent of total import trade among South Asian countries by value (at the time negotiations were initiated in 2004) is excluded from the liberalization of tariffs proposed under the SAFTA treaty. The LDC member countries such as Bangladesh, Maldives, and Nepal have sought to “protect” 65–75 percent of their imports from South Asia by excluding them from being subject to tariff liberalization. Sri Lanka (51.7 percent) and India (38.4 percent) also have restricted a fairly high share of imports from being subject to tariff cuts. At first glance, it appears that Pakistan has been fairly generous in restricting only around 17 percent of its current imports to the sensitive list, despite the fact that it has the largest number of items in the sensitive list of non-LDC members. However, Pakistan maintains a positive list of items in regard to its trade with India that, in theory, can limit the potential trade volumes to a great extent.

TABLE 3: 9 TRADE RESTRICTION UNDER SAFTA

	Value of imports from SAARC subject to SL (%)	Value of exports to SAARC subject to SL (%)
Bangladesh	65	22
India	38.4	56.5
Maldives	74.5	57.6
Nepal	64	46.4

Pakistan	17.2	34
Sri Lanka	51.7	47
Total	52.9	
Source: Weeakoon and Thennakoon 2008		
Note SAARC= South Asian Association for Regional Cooperation; SL= Sensitive List		

3.2.12. Non-tariff Barriers within SAFTA

Another area of concern in the SAFTA treaty is the lack of an explicit commitment to deal with the issue of nontariff barriers (NTBs). In identifying NTBs, a distinction can be made between those that have to be eliminated and those that have to be harmonized, such as measures relating to technical standards, plant and animal health, and environmental protection and safety. If any quantitative restrictions exist, these can more easily be converted to tariffs and subsequently reduced. Generally, the experience of FTAs has been that customs surcharges, technical measures and product characteristic requirements, and monopolistic measures (particularly in relation to exclusive import rights of state-controlled enterprises) are the most difficult to identify and eliminate. While South Asia has made significant progress in eliminating quantitative restrictions (QRs), nontariff measures do exist that can act as a barrier to the free flow of goods between SAARC countries. The SAFTA framework agreement has provisions to deal with para-tariffs and NTBs, but no explicit commitment is required of countries. In particular, there is no commitment in the SAFTA framework agreement to eliminate NTBs on items for which tariff reductions are to be made. By contrast, an important feature in AFTA, for example, is that member countries are required to eliminate QRs on products on which they receive concessions, and eliminate other NTBs within 5 years of receiving such concessions.

What is contained in the SAFTA treaty appears to be merely an understanding that NTB-related issues will be subject to continuous negotiations.

The SAFTA treaty has been confined to trade in goods, which is viewed as a limiting factor. Globally, the trends governing bilateral and regional trade initiatives are toward implementing broader economic partnership agreements that include trade in services and investment, and areas of economic cooperation. SAARC has taken some initial steps to incorporate services and investment into the SAFTA framework agreement by commissioning a joint study to examine the issues that need to be addressed. Thus, it is clear that SAFTA as it stands contains certain limitations. Nonetheless, implementation is progressing per the terms of the agreement, subject to the early dispute that arose with regard to the application of Pakistan's Positive List to trade with India regarding the implementation of SAFTA. However, the required initial tariff liberalization (for example, to achieve a threshold of 20 percent) is quite minimal given that most South Asian economies have been unilaterally lowering Most Favored Nation (MFN) tariffs quite substantially over time. For instance, if the liberalization formula is applied to the Sri Lankan context, leaving aside those items in Sri Lanka's SAFTA sensitive list, it is clear that the only commitment required is to reduce tariffs from 28 percent to 20 percent on approximately 300 tariff lines (at HS six-digit) in three installments over a 2-year period.

The other main area of progress is perhaps that of pruning sensitive lists. But here again, it is confined largely to a voluntary exercise, with India taking the initiative with an offer to unilaterally prune its sensitive list ahead of schedule by removing an additional 264 items applicable to LDCs. India has long been viewed as the key to enabling a successful regional economic integration effort in South Asia, given the significantly asymmetric nature of economic power it wields. In light of India's growing economic stature—alongside a rapidly changing

pattern of trade and investment linkages across the wider Asian region—the prospects for integration in South Asia have to be viewed from a broader perspective. Such a perspective would include an assessment not only of India’s own economic interests and how they relate to the South Asian region, but also how other South Asian economies respond to new challenges.

3.2.13. Conclusion

South Asia in the twenty-first century has an opportunity to lead the world by addressing the challenges of poverty, peace, and environmental degradation through cooperation in a region where these challenges are manifest in their most intense form. Regional cooperation in South Asia could enable a new form of equitable and sustainable economic growth.²⁵⁷ There are clear implications for South Asia. A fully functional SAFTA would be good for all countries in the region. The smaller countries in the region can in fact gain more from unhindered trade. There are clear gains for consumers and exporters, and even for those producers serving the domestic market.²⁵⁸ A fully functioning SAFTA is an essential first step in the vision of an economic union. Leaders should complete SAFTA with the right mix of reforms so that the benefits of deeper integration can begin to be seen on the horizon.²⁵⁹

²⁵⁷ Id. at.

²⁵⁸ SANJAY KATHURIA AND SOHAIB SHAHID, SAARC summit Need for a well, THE BUSINESS RECORDER, PAKISTAN (November 26, 2014).

²⁵⁹ Id. at.

Chapter Four

Chapter 4.1: South Asian Free Trade in Service (SATIS)

4.1.1. Introduction

Services are one of the basic and most important components of almost every economy in the world. They account (as of October 2010) for 1/3 to 1/2 of aggregate world trade. Across all the services accounts are developed countries 74% (April 2013), OECD Countries 75% (May 2014), APEC 50%, Developing Countries 51% (April 2013) of total GDP.²⁶⁰ This issue arose in the Uruguay Round of trade negotiations, which led to the General Agreement on Trade in Services (GATS). It is an WTO Uruguay Round agreement which aims to increase transparency and predictability by framing clear rules and regulations for the trade in services. Further, it deals with the signatories' obligations. The design of these obligations is specifically to eliminate trade restrictions and create a unified legal structure. Moreover, it calls for ongoing round negotiations for progressive liberalization of trade in services.²⁶¹

The GATT, of course, is a treaty for multilateral trade that specifically deals with merchandise trade. The GATS came into force in January 1995 with the conclusion of the Uruguay round of WTO trade agreements, through which the new World Trade Organization was born on 1 January 1995 with a revised GATT and GATS.

“Doha round services dialogs truly pre-date the Round. At the November 2001 Doha Ministerial Conference, they were incorporated into the single undertaking scheme of the round and the basic goal of service talks is to improve and clarify rules and regulations on services trade, with a view to opening markets while at the same time giving poor countries flexibilities.”²⁶² After

²⁶⁰ Raj Bhala, et al., *Classifying Services and 4 Modes of Services supply (GATS Parts I, V-VI)*, in *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK* (2015).

²⁶¹ The Ceylon Chamber of Commerce, *Things to Know About Trade in Services and GATS* (November, 2015).

²⁶² Professor Raj Bhala, *Modern GATT Law: A Treaties on the Law and Political of the general Agreement on Tariffs and Trade and Other world Trade Organization Agreements*, chapter 34 *Industrial Product and Services*

all, services account for over two-thirds of global GDP, and for over 50 percent of employment in developed countries.²⁶³

South Asian countries are working to maximize economic cooperation by exploring their potential trade opportunities within the region with the spirit of mutual accommodation. But they are doing this without compromising the sovereign equality and territorial independence of each of the countries. Inter-regional investments and expansion of production opportunities are of key importance for developing the economic growth in this region.²⁶⁴ In April 2010, parties signed the SAARC agreement on Free Trade in Services (SATIS) in Thimpu and it came into effect in November 2012. From its onset, the agreement struggled with regulatory red tape and the slow motion of trade and service pattern in South Asian countries. This chapter shall make a critical analysis of the frameworks of SATIS and GATS.

4.1.2. Legal Framework and coverage of GATS

The definition of services trade in GATS depends upon the territorial presence and residence of the supplier and customer at the transaction time. GATS identify four modes of trading services, namely, cross border supply, consumption abroad, commercial presence, and presence of natural persons.²⁶⁵ Briefly, each mode for the cross-border supply of services is as follows:

Trade Liberalization (December 2008 and April 2011 Draft Texts), page 1100-1101, Second Edition, Volume I, (2013)

²⁶³ See Rick Mitchell, Doha Conclusion Unlikely to Ease barriers to Trade in Legal Services, 28 International Trade Reporter 729 (BNA) (May 05, 2011)

²⁶⁴ SATIS Agreement.

²⁶⁵ https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm

- Mode 1: Cross border supply: This Mode covers cross-territory services. For example, trade across borders through mail and electronic media (i.e. airfreight of lab samples, medical education, internet consultations, and others).
- Mode 2: Consumption abroad: This Mode focuses on consumer services required when travelling to other countries. For example, patients travelling to other countries for medical services.
- Mode 3: Commercial presence: This Mode covers situations where the establishment of one country establishes a territorial presence in another country's territory to provide services. Opening subsidiary companies or foreign companies in another jurisdiction mainly do this.
- Mode 4: Presence of natural persons: This Mode concerns situations where the natural persons of one country enter another country to provide a service (e.g. lawyers, doctors, teachers, engineers etc.). This Mode also covers self-employed persons and the persons who are on temporary assignment. Here, the term 'natural person' is deliberately inserted to differentiate individuals from the generic 'persons' that covers individuals, partnerships, companies, branches, associations, estates, trusts, government agencies and others.²⁶⁶

²⁶⁶ OECD Aid for Trade: Promoting TRADE, INCLUSIVENESS AND CONNECTIVITY FOR SUSTAINABLE DEVELOPMENT (2017).

Governmental authority services designed for the public in the exercise of government authorities fall outside of the jurisdiction of GATS. Similarly excluded are traffic rights and all associated services. Further, issues like fiscal policy, taxation measures, management of exchange rates, and immigration rules regarding temporary business entry fall outside of GATS's jurisdiction. For streamlining the commitments, WTO's Services Sector Classification is called the W120, which is drawn under the following U.N. Central Product Classification (CPC) list into a) Sectors; b) Sub-sectors, and c) Sub-sub-sectors.²⁶⁷

There are 11 Standard Sectors are including in core services.²⁶⁸

- i. Business services (Accountancy, legal, Midwife, Engineering services etc.)
- ii. Communication services (Couriar, Postal etc.).
- iii. Construction and related engineering services.
- iv. Distribution services.
- v. Educational services.
- vi. Environmental services (Sanitation, Waste Disposal, etc.)
- vii. Financial services (including insurance and banking).
- viii. Health and Social service (including Nursing and health related services)
- ix. Tourism and travel-related services.
- x. Recreational, cultural, and sporting services (Library, Museums, entertainments, etc.)

²⁶⁷ Raj Bhala, et al., *Classifying Services and 4 Modes of Services supply (GATS Parts I, V-VI)*, in *INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK* (2015) page 1303.

²⁶⁸ Id. At. P.1303, And See more at https://www.wto.org/english/tratop_e/serv_e/serv_e.htm

- xi. Transport services (includes Air and maritime service)

Under this categorization, Members can include any service sector to the schedule of commitments with specific market access and national treatment obligations. Each WTO Member has submitted to such a schedule under GATS.²⁶⁹

4.1.3. Procedure of SATIS

The most important WTO agreements are GATT, GATS, Dispute settlement, and the Agreement on Trade-related Aspects of Intellectual Property Rights (IPR). GATS are the first set of enforceable rules governing international trade in services. Under GATS the ‘supply of service’ includes production, distribution, marketing, sale, and delivery of that service. SATIS followed GATS and provided a ‘positive list’ of trade liberalization.²⁷⁰ Under SATIS, WTO Members created ‘offer list’ containing GATS commitments. Amongst South Asian countries, Bhutan is not a WTO Member. As a result, Bhutan enjoys flexibility in preparing the ‘offer list.’ Further, India, Pakistan, and Sri Lanka are obligated to comply with the Doha Development Agenda. A meticulous analysis of the offer-lists shows that many ‘offer list’ do not contain the basic ingredients of GATS plus. Further, there are many services in GATS plus that are not available to other SAARC member states.²⁷¹ For example, Mode 4 focuses on cross-border

²⁶⁹ Commerce, November 2015.

²⁷⁰ General Agreement on Trade in Services is a treaty of the WTO that entered into force in January 1995, after negotiation in the Uruguay Round. A bilateral/multilateral Trade in Service Agreements can offer “wider” or “deeper” commitment concerning market access or national treatment compared with that of GATS. Regional / Bilateral Service Agreements can produce these “GATS-Plus” by offering commitments that can extend the national treatment and market access to areas where the member has not made such commitment in the GATS yet.

²⁷¹ Kalegama, The Daily Star, 2014

delivery of services by natural persons. Under this scheme, a lawyer may go to a foreign country to represent or assist their client by temporarily moving there.²⁷²

Mode 4 provisions were highly debated in the Doha Development Round of Negotiations.²⁷³ These negotiations caused the streamlining of Mode 4 provisions. For example, GATS Article 1 defines Mode 4 as “the supply of a service by a server of one member through presences of natural person of a member in the territory of any other member.” The Annex of the Movement of Natural Persons Supplying Services talks about two measure categories. The first is measures that have an impact on natural persons who are “service suppliers of a member” (i.e. self-employed individuals who receives their remuneration directly from the end-customers). The second is measures concerned about natural persons of a member state who are “employed by a service supplier of a member in respect of the supply of a service.”²⁷⁴

To enhance trade in services SATIS takes different steps. These steps include developing regulatory capacity through exchange of experiences and best practices among the contracting state’s regulatory bodies. Additionally, SATIS takes steps to incorporate various working groups designated for specifies sectors of interest comprising of national authorities and stockholders. SATIS ensure effective amalgamation and coordination with WTO/GATS negotiations and by forming a working group under the heads of SAARC Statistical Organizations (SAARCSTAT) to

²⁷² The other three modes are: "cross-border supply" (Mode 1), "consumption abroad" (Mode 2) and "commercial presence" (Mode 3). A lawyer offering his assistance to a foreign client on-line provides his service via Mode 1. A lawyer assisting in his office a foreign client provides his consultancy service via Mode 2. Finally, a lawyer establishing an office abroad to service the foreign market is exporting his services via Mode 3.

²⁷³ Marion Jansen and Roberta Piermartini, *The Impact of Mode 4 Liberalization on Bilateral Trade Flows*, STAFF WORKING PAPER ERSD-2005-06 World Trade Organization Economic Research and Statistics Division (NOVEMBER 2005).

²⁷⁴ *Id. at.*

collect and exchange statistics and regulations to improve collection of trade statistics in services.²⁷⁵

4.1.4. SATIS Objectives

The core SATIS objectives are promoting trade in services within SAARC countries “in a beneficial and equitable manner by establishing a framework for liberalizing and promoting trade in services with the region,” liberalizing trade in services with “broad-based and deeper coverage of majority of server sector/sub-sectors;” and engaging in negotiations on “specific commitments for progress liberalizing based on “request-and-offer approach.”²⁷⁶ However, SATIS excludes areas like government procurement of services designated for exercising governmental duties. Similarly, SATIS excludes transportation including transportation through air. Whereas, areas like repairing, maintaining, sales, marketing, and logistic support to transportation industries are included.²⁷⁷

4.1.5. SATIS Obligations

SATIS identifies the importance of service sectors, and to strengthen them SATIS focuses on potential intra-regional trade services. TLP’s approval bolsters this step by stating that under otherwise mentioned in the “Schedule of Specific Commitments’ no measures shall:

²⁷⁵ Id at.

²⁷⁶ See more at: http://saarc-sec.org/areas_of_cooperation/area_detail/economic-trade-and-finance/click-for-details_7

²⁷⁷ Divesh Kaul, *Eliminating Trade Barriers through Preferential Trade Agreements: Perspectives from South Asia*, (2017).

- Be maintained and adopted to limit the service suppliers by using quotas or monopolies;
- Restrain any form of numerical quotas on the value of service transactions or assets;
- Enforce quota on service operation, on the total quantity of services; and
- Control the emergence of foreign capital in terms of maximum percentage limits on foreign shareholders or by aggregating foreign investment.

To ensure transparency, SAARC members, by SATIS, must publish relevant measures relating to the agreement within fourteen days of entry into force unless there is an emergency.

4.1.6. Trade in Services Role in South Asia

SATIS receives mixed responses within the SAARC community. Many argue that to get the full benefit of SATIS, proper implementation of SAFTA is mandatory. Studies reveal that in South Asian service have higher complementarities than goods. The trade imbalances with India and other South Asian countries are much lower in services than in goods.²⁷⁸

Recently, there has been a shift from dependence on agriculture in this area. Nonetheless, agriculture provides for more than half of total employment in 2010. Since the 1970's, there has been a noticeable shift in the service sector. For example, in 2011 the service sector provided for 56% of the GDP while it was 38% in 1970.²⁷⁹ Further, this region has the fastest growing exports

²⁷⁸Kalegama, UNESCAP: Regional Trade Agreements in South Asia: Current Outlook and Challenges, 2012.

²⁷⁹ The share of agriculture, manufacturing, and service sector in the South Asian Economy as percent of GDP, for details see World Bank 2012, World Development Indicator available on: <http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2012>.

of services. For example, from 1995 to 2010 the commercial service exports of this region escalated around 13 times.²⁸⁰ On the contrary, the agricultural value added declined sharply from 40% to 18% from 1970 to 2011. However, the industry value added remained constant because of manufacturing sectors especially textile and clothing.²⁸¹

This region has a higher potential for the intra-regional trade in services especially in the areas of tourism, education, health services, and other business activities. For example, if 0.5% of the people in this region travel within the region it would result in 8 million tourists. This can significantly bloom the tourism industry of the countries within this region. Additionally, it will open new doors for exchange of views and cultural diversification and advance a shared understanding. To attract such tourists, steps are necessary to ease visa processing within the countries, effective transport, and communication links attracting foreign investments and streamline trade facilitation.²⁸²

Currently, the service sector contributes more than 50% of the GDP in South Asia. However, SAFTA overlooks this important point. Statistics reveal that trade in services has a better prospect for sustainable growth in this region than trade of manufactured goods (Ghani, 2010). According to WTO Statistic, Service sector is the vibrant contributor to the national GDPs, around

²⁸⁰ Ibid.

²⁸¹ Hoi-Yong*. Dhruva Kumar Gautam**. Lee Chong, Hak-Chun, South Asian Free Trade Area (SAFTA) and Regional Integration: Revisit the Existing Reality, (2014).

²⁸² Sohaib Shahid Sanjay Kathuria, Boosting South Asian Trade – Carpe Diem! _ End Poverty in South Asia (World Bank ed., 2014).

36% in 2017.²⁸³ In addition, service sectors contributed 57.6% to the overall GDP of Sri Lanka in 2014.²⁸⁴

It is the view of the World Bank and multilateral donor agencies that cross-border gas and electric supply can play a crucial role in fulfilling the regional demand. SATIS promises to play a key role in achieving this goal.²⁸⁵

FIGURE 4: 1 SOUTH ASIAN TRADE BALANCE IN SERVICE²⁸⁶

(In US\$ millions)

	Exports			Imports			Trade Balance	
	2003	2014	Average annual growth rate (2003-2014), %	2003	2014	Average annual growth rate (2003-2014), %	2003	2014
Afghanistan	..	2895	2064	831
Bangladesh	1012	1431	3	1711	7180	14	-700	-5749
Bhutan	20	131	18	108	215	6	-87	-84
India	23902	155627	19	24878	146930	18	-976	8697
Maldives	432	2975	19	120	765	18	312	2210
Nepal	372	1043	10	266	1051	13	106	-8
Pakistan	2968	3498	2	3294	7747	8	-326	-4249
Sri Lanka	1411	5574	13	1679	5590	12	-268	-16
SAARC	30116	173174	17	32057	171542	16	-1940	1632

Source: UNCTAD, online database
Note: Data for Afghanistan are for 2013

4.1.7. Barriers to Trade in Services Raises Costs

The key barriers to trade in services do not concern territorial borders within the countries. Rather, the principal impediments involve legal and regulatory frameworks of the government

²⁸³ WTO, World Trade Statistical Review 2017, (2017).

²⁸⁴ Commerce. November 2015.

²⁸⁵ OECD. 2017.

²⁸⁶ Unlocking the Potential of Regional Economic Cooperation and Integration in South Asia Potential, Challenges and the Way Forward. (2017).

specifically designed to discriminate between foreign and domestic services or suppliers (GATS Article XVII: National Treatment). Such barriers may also be non-discriminatory, such as, limiting or restricting the total number of service suppliers or operations, determining the value of the transactions, or by defining the ambit within which a legal entity can lawfully provide services (GATS Article XVI: Market Access). The schemes for market access and the government measures are indicators of contestability and competition within the service market.

Across modes of supply, barriers to trade service may include monopolies, discretionary foreign investment screening, foreign equity limits, capping the number of licenses, restraining temporary movement of natural persons who are supplying services, and imposing additional licensing requirements and subsidies. Such policies also include measures relating to supply of services by foreign suppliers, whether cross-borders through establishment or by natural persons moving to supply services. The restrictive nature of policy often leads to economic isolation that hinders economic developments. The impact of such policies goes to the very root of a country's economy that may engender significant costs and limiting connectivity and other associated economic benefits. Further, as services include input to merchandise trade, they are crucial determinant of trade costs for goods. Despite this, there is considerable amount of restrictions and cross-border trades in services remain high and widespread.²⁸⁷

In practice, the costs of trade in services are significantly higher than trade in goods. Recent statistics reveal that for final services trade costs were 277%²⁸⁸ ad valorem and 194% for

²⁸⁷ OECD 2017.

²⁸⁸ Miroudot and Shepherd estimated the trade costs for 2011 using the World Input-Output Database for 40 economies. See also Miroudot et al (2013) and Miroudot and Shepherd (2015). The approach used in these studies does not calculate trade costs relative to a benchmark country, but rather is based on the country's trade in services

intermediate services.²⁸⁹ Concerning costs of goods, all the trade costs such as distance, consumer preferences, and regulatory divergence have come down significantly. However, these do not represent measures of protection, barriers to trade in services contribute significantly to estimate services trade costs.²⁹⁰

4.1.8. Conclusion

Services play an important role in the global economy. They impact trade in goods, and contribute to the economic growth, employment, and sustainable development. As a result, restrictive measures in services affects both physical and digital connectivity. In this regard, the government can take initiatives to provide aid for improving connectivity by reforming their service market policies. This initiative can help reduce costs and promote competition in the service sectors, and enhance regulatory frameworks transparency. Ensuring an environment friendly to services sectors can work as a catalyst in attracting more investments in infrastructure. Further, governments can work to enhance the performance of services sectors, so as to boost the capacity of services supply, and ensure services suppliers meet the diversity of societal needs, with a view to exporting both goods and services.²⁹¹

in relation to domestic consumption of services. Such estimates focus on cross-border trade and do not attempt to assess trade costs for mode 3 (commercial presence) or mode 4 (movement of natural persons).

²⁸⁹ Miroudot, S. and B. Shepherd (2016), "Trade Costs and Global Value Chains in Services", in Sauvé and Roy (eds.), *Research Handbook on Trade in Services*, Edward Elgar Publishing, Cheltenham, UK, pp. 66-84.

²⁹⁰ In a recent study, Jafari and Tarr (2017) calculate ad valorem equivalents of services trade barriers on the basis of the World Bank's STRI. In another study, the OECD (forthcoming (a)) has done similar work on the basis of STRI.

²⁹¹ OECD. 2017.

Chapter 4.2: Recent Trends of SAARC & SAFTA

4.2.1 Introduction

The provisions of RTAs are indefinite. Moreover, the SAFTA is nothing like alteration than others FTA. The success of a RTA depends on various aspects such as member countries attitudes, existing inter-regional trade facilities between countries, each country's trade statistics viewed in light of the global competition, trade policies designed and implemented to facilitate a RTA, etc. Preferential trade agreements do not always bring the member countries positive change, and even if they achieve positive trade, its distribution is often unequal among member countries. It is important to study the RTA benefits of multilateral liberalization and trade to gain a better understanding of the benefits of trading agreements. In multilateral trade negotiations, the primary source of gain from trade liberalization is the reduction of home tariffs. However, in a RTA the country's gains arise from the other country's reduction of the tariffs.²⁹²This chapter is dedicated to critically evaluating SAARC and SAFTA agreement.

4.2.2 Overall SAFTA Advancement

RTAs advancement within South Asia is difficult. Both developing, and least developed countries have a poor record of accomplishing RTAs. However, statistics reveal that poor countries struggle the most. International trade expert Mohammad A. Razzaque found that,

“In fact, countries that form an RTA are usually heterogeneous, as reflected in their (a) size in terms of geographic area and population as well as gross national output, (b) economic structure as manifested in the composition of goods and services produced and traded, and (c) policy intervention mechanisms in place by way of fiscal, financial, and trade related measures,

²⁹² Jagdish Bhagwati, David Greenaway and ArvindPanagariya, *Trading Preferentially: Theory and Policy*, The Economic Journal Vol. 108, No. 449 (Jul., 1998), pp. 1128-1148, Wiley on behalf of the Royal Economic Society

which influence domestic production and trading activities. These varied characteristics of the members greatly influence their gains from an RTA.”²⁹³

Various researches strived to find out the impact of preferential agreements on low-income countries. The research depicts that low-income countries sufferer from regional integrations.²⁹⁴ SAFTA provides preferential treatment to the LDCs. This treatment should ensure equal distribution and equal opportunity within SAARC countries.

In its forty-first session, the SAARC Standing Committee approved the Special Meeting of SAFTA Committee of Experts to convene after the Eighteenth SAARC Summit. In making this decision, they considered the proposals from India, Pakistan, Bhutan, and Maldives that promised to reduce the peak of tariffs from 0% to 5% by 2020. However, the proposals excluded around 100 tariff lines reserved as the Sensitive Lists of the Member States.²⁹⁵ Following the approval, on 4th July 2015 a Special Meeting assembled in Islamabad to consider various aspects of this proposal. The provisional/confirmed position to future trade liberalization and reduction of the sensitive lists created in that meeting follows:

²⁹³ Sadiq Ahmed; Saman Kelegama; Ejaz Ghani, *Promoting Economic Cooperation in SA, beyond South Asia*, (2010). Chapter 16, *Weaker Economies in SAFTA Issues and Concerns*.

²⁹⁴ The empirical literature seems to suggest that RTAs involving relatively high-income countries promote convergence of per capita income levels. Ben-David (1993, 1996), for example, showed that lower-income countries within the European Union (such as Ireland, Portugal, and Spain) registered more rapid growth than the larger and richer countries. On the other hand, Venables (2003), referring to the East African Common Market, among others, as an example of South–South integration, pointed out how the greater divergence within the member countries eventually led to the collapse of the cooperation scheme. In general, North–South trading blocs involving the rich industrial and poor countries are regarded as beneficial to the poorer countries.

²⁹⁵ Please visit at: http://saarc-sec.org/digital_library

TABLE 4: 1 TARIFF REDUCTION SCHEME

Member State	To Reduce Sensitive Lists up to	To reduce Tariff to	Positions
Afghanistan	235 by 2030	0 to 5% by 2030	Confirmed
Bangladesh	450 by 2030	0 to 5% by 2030	PROVISIONAL
Bhutan	100 by 2020	0 to 5% by 2020	Confirmed
India	100 by 2020 (for NLDCs)	0 to 5% by 2020	Confirmed
Maldives	100 by 2020	0 to 5% by 2020	Confirmed
Nepal	500 by 2030	0 to 5% by 2030	PROVISIONAL
Pakistan	100 by 2020	0 to 5% by 2020	Confirmed
Sri Lanka	To give position by October 2015 after consulting stakeholders		

4.2.3 Tariff Reduction Scheme

Prior to SAFTA, there was no inter-regional tariff framework. The tariff schedules depended on the country's own mechanisms. However, under the aegis of SAFTA, the Trade Liberalization Program required contracting states prepare a 'schedule of tariff reductions.' The tariff reduction schedule has distinct features. For example, its purpose is the reduction of import tariffs specifically for the LDCs as opposed to non-LDCs through implementing a two-phase procedure for tariff elimination. Under the first phase, by 2008 the non-LDC countries such as India, Pakistan, and Sri Lanka had to reduce their import tariff by 20%, whereas the LDCs such as Bangladesh, Afghanistan, Bhutan, Maldives, and Nepal had to reduce their import tariff by 30%. In the second phase, the tariffs within the LDCs like India and Pakistan had to reduce to 0%-5% by January 2013. The smaller non-LDCs have to do this by January 2014 or January 2015. SAFTA is promising as it focused on the demands of

the LCDs in the association. Another important feature of the tariff reduction scheme is it provided for an annual review by the Committee of Experts of all the Contracting States.²⁹⁶

4.2.4 Sensitive Lists:

On 6th July 2015, the third meeting of the Working Group on Reduction in the Sensitive Lists under SAFTA (Phase III) convened in Islamabad. The meeting was dedicated to reducing the Sensitive Lists under SAFTA. In that meeting the delegates of the Member States agreed on the following reduction of their Sensitive lists under Phase-III.²⁹⁷

TABLE 4: 2 SENSITIVE LISTS

Member State	Original Sensitive Lists		Sensitive Lists (Phase-II)		% Reduction (Phase-III)		Sensitive Lists (HS-2012)
	LDCs	NLDCs	LDCs	NLDCs	LDCs	NLDCs	
Afghanistan	1072		850		20 %		Not received
Bangladesh	1233	1241	987	993	20 %		Received
Bhutan	150		156		Not Applicable		Received
India	480	868	25	614	0%	20 %	Received
Maldives	681		154		Not Applicable		Received
Nepal	1257	1295	998	1036	20 %		Received
Pakistan	1169		936		20 %		Received
Sri Lanka	1042		837	963	10 %		Received

²⁹⁶ Id. art. 7(4); id. art. 10 (“The SMC shall be supported by a Committee of Experts (hereinafter referred to as COE) The COE shall monitor, review and facilitate implementation [of SAFTA’s provisions] and undertake any task assigned to it by the SMC. The COE shall submit its report to SMC every six months. The COE will also act as SAFTA’s Dispute Settlement Body.”); id. art. 1(6) (“Para-tariffs mean border charges and fees, other than ‘tariffs’, on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered as para tariff measures[.]”); id. art. 1(5) (“Non-tariff measures include any measure, regulation or practice, other than ‘tariffs’ and ‘para-tariffs.’”).

²⁹⁷ See more at: http://saarc-sec.org/digital_library

Further, under SAFTA countries are required to prepare a list of sensitive items exempt from tariff elimination. The purpose of these lists is to protect the interests of domestic stakeholders. Typically, these lists are subject to review every 4 years or earlier to reduce the number of items on the list. India has two separate sensitive list, one for non-LDCs, and one for LDCs of other SAARC countries. The later list contains fewer items. SAFTA Article 11 provides for special and differential treatment for regional LDCs. These measures allow LDCs to benefit from the cooperative arrangements with non-LDCs. Generally, issues like technical assistance by non-LDCs, trade measures taken by non-LDCs to facilitate export of LDCs, and compensation by non-LDCs for the loss of customs revenue followed by tariff reductions.²⁹⁸ The Asian business environment is unstable due to shifting trade policies. In order to have a clear understanding of SAFTA and its potential limitation, it is necessary to incorporate the background cultural, historical and societal contexts of the past trade policies. Logistical restrains cause further hindrance in international trade. However, in recent times tariff barriers have gradually declined in South Asia. Despite this, other factors contribute to the higher trade costs. These factors include high border transactions, poor institutional facilities, inadequate infrastructure, and lack of effective regional transit trade.²⁹⁹

4.2.5 Regional Connectivity Development

The Eighteenth SAARC Summit marked significant progress towards finalization of SAARC Motor Vehicles Agreement and SAARC Regional Railways Agreement. During this Summit, the heads of state planned to hold meetings in three months to approve the final agreement. The goal was to ensure a seamless regional connectivity through building roads, railways, waterways, energy grids, infrastructures, and air links, ensuring free movement of

²⁹⁸ Prabir De, Why is trade at borders a costly affair in South Asia? An empirical investigation and Promoting Economic Cooperation in South Asia. (2010) and (Deb & BAsu, 2012).

²⁹⁹ Prabir De (2010)

goods, services, capital, technology, and people. Further, the leaders expressed their concerns regarding connecting the contiguous regions of South and Central Asia. The leaders committed to taking requisite measures to ensure national, regional, and sub-regional connectivity.³⁰⁰

On 12-13 April 2017, the Third SAARC-ADB Special Meeting on Regional Economic Integration Study (Phase II) convened in Islamabad, Pakistan. This was specifically dedicated to ‘Transport Connectivity.’ The purpose of this meeting was the Role of Transport Connectivity in Trade Facilitation for moving towards South Asian Economic Union (SAEU): Review of Progress in launching Indian Ocean Cargo and Passenger Ferry Service. Asian Development Bank submitted Feasibility Study Report for SAARC Cargo and passenger Ferry Service. A meeting gathered in Colombo in 1-2 December 2015 to analysis the report. Representatives of India, Sri Lanka, Asian Development Bank, and SAARC Development Fund attended the meeting. At the meeting, the parties decided to explore the prospects of the Ferry and Cargo Services between Sri Lanka and India. Afterwards, Bangladesh, Pakistan, and Maldives may also join this service.³⁰¹

4.2.6 Increasing Bilateral Border Trade

To facilitate border trade between farmers at the border India and Bangladesh decided to open more border markets. These border markets should provide a common trading platform, encourage people to do business, and reduce the smuggling in this area. The 2011 pilot project was highly successful and there are plans to open eight more duty free haats. Presently, haats play a ceremonial role where border people engage in informal trades.

³⁰⁰ See more at http://saarc-sec.org/areas_of_cooperation/area_detail/economic-trade-and-finance/click-for-details_7

³⁰¹ Id. At.

However, these haats have a potential for marketplace interaction.³⁰² Due to the infrastructural differences and different service requirements, it is difficult to ascertain governing principles of good practices. As a result, governing principles are broad so the other countries can accommodate their requirements in light of those principles. Those governing principles cover the issues such as transparency, competition, non-discrimination that are very crucial for enhancing both infrastructural and service facilities.

4.2.7 SAARC Visa Exemption Scheme

SAARC Visa Exemption Scheme is another important step towards liberation of trade. This scheme came into operation in 1992 following the Fourth Summit, held in Islamabad, in December 1988. However, it was limited to special travel document for certain dignitaries. The Council of Ministers regularly reviews the list of the people entitled under this category. Presently, the list consists 24 categories of personnel such as Judges of the higher courts, Parliamentarians, Businessmen, Journalists, Sportsmen, senior officials of the government, and others.³⁰³ However, this model is far different from the EU free movement of persons provision. In the EU, any citizen can freely travel to any other European country with ease. Tourist coming from outside the EU can travel through Europe if they obtain a visa from any European countries.

However, visa schemes strictly apply in Asia, especially between India and Pakistan. Travelers from both countries are required to report to the police station, return through the same port of entry, and use the same transport means. This means that within these territories a passenger cannot come by railway and go back by airway. The regulatory scheme of Bangladesh and Nepal is stricter. Therefore, in practice SAARC fails to provide visa-free

³⁰² Syed Tashfin Chowdhury, India to expand bilateral trade with Bangladesh, KHABAR SOUTH ASIA, December 21, 2012.

³⁰³ See more at. Please visit: <http://saarc-sec.org/>

travel. Visa-free travel could have promoted goodwill and peace amongst neighboring countries.³⁰⁴

Despite the concerns about the free movement of persons, SAARC countries only provided for dignitaries. Therefore, the idea of free movement does not work.³⁰⁵ Further, Vikramjit Singh, the president of SAARC Chambers of Commerce and Industry (SCCI), in a call to the Chamber of Commerce Presidents and Vice Presidents, suggested extending the visa tenure program from 3 months to 1 year. The Member States have decided to implement Visa Stickers to the entitled people that will last for 1 year.³⁰⁶ The Immigration Authorities of SAARC Member States regularly review this implementation. Vikramjit observed that the lack of trade largely hinders the integration and growth of the South Asian region. He further stressed the role of private sectors in this region.

4.2.8 Progress or Stagnation: Comparing other FTAs

Most South Asian countries trade with outer regions as opposed to neighboring nations. The trade price index, which is unavailable for South Asian countries, reflects the influences of countries outside of the region.³⁰⁷ Productivity growth can be determined by using a time trend and regional dummy. The time trend focuses on the average shift over the sample period of the production frontier whereas the regional dummy helps to identify the regional shift of the frontier in the pre-SAFTA and post- SAFTA regime.³⁰⁸

³⁰⁴ S.G. Jilane, Whither SAARC? Launched with much enthusiasm, SAARC has failed to live up to its promise., NOVEMBER 2014.

³⁰⁵ GS-TODAY & Developing Perspective for UPSC, SAARC, BIMSTEC, ASEAN and ASEAN Regional Forum, GS-TODAY DEVELOPING PERSPECTIVE FOR UPSC [HTTP://WWW.GS-TODAY.COM](http://www.gs-today.com) (2015).

³⁰⁶ Editorial, Saarc president for reviving visa exemption, THE DAWN, February 06, 2014.

³⁰⁷ Tristan Kohl, Do we really know that trade agreements increase trade?, 150 REVIEW OF WORLD ECONOMICS (2014).

³⁰⁸ A mirul Islam, et al., Does Regional Integration Affect Efficiency and Productivity Growth? Empirical Evidence from South Asia, 28 REVIEW OF URBAN & REGIONAL DEVELOPMENT STUDIES 107(2016).

In the last two decades, there were some notable Economic Integration Agreements (EIAs). Empirical studies reveal that EIAs can promote member trade 420%.³⁰⁹ South Asia has the fastest economic growth in the world.³¹⁰ In 2014, the growth rate of South Asia was 6.9%, and its growth projection is 7.1% by 2015.³¹¹ On the other hand, it is one of the poorest regions of the world because over 40% of 400 million people are living on less than \$1.25 a day.³¹² This region suffers from rapid unplanned urbanization and uneven development, 200 million of people live in slums, and over half a billion have no access to electricity.³¹³ SAARC trade bloc has great potential to alleviate trade conditions. However, the region fails to prosper due to ineffective implementation of a regional trading bloc. The nature of the population, economic strength, and overall progress of development varies between countries. Moreover, countries like India and Pakistan are historically in a hostile relationship hindering trade between these countries. A recent study conducted by Geo TV, analyzed various regional trade agreements statistics provided by the WTO. The study shows that SAARC only boosted 5-10 % of regional business. However, the EU facilitates 66% of trade, NAFTA 3% of trade, the ASEAN 25% of trade, and Asian Pacific regional generates 32% of trade.³¹⁴ In the SAARC region 43% of the people live below the poverty line and food and security issues pose a great threat. This relates to SAARC's disparity and lack of coordination. SAARC is not effectively addressing the region's economic needs. Since its inception, there have only been 18 summits and their functions were moot on development

³⁰⁹ Kohl, *REVIEW OF WORLD ECONOMICS*, (2014) and (Subramanian and Wei, 2007).

³¹⁰ South Asia, *WORLD BANK*, <http://www.worldbank.org/en/about/annual-report/regions/sar> (last visited Oct. 17, 2017).

³¹¹ *Id.* At

³¹² *Id.* At

³¹³ Divesh Kaul, *Eliminating Trade Barriers through Preferential Trade Agreements: Perspectives from South Asia*, (2017).

³¹⁴ Saurabh Kaushik, *Sub-Regional Cooperation in South Asia: A New Lease of Life?* (23 February 2015)

and progress. Although SAARC countries broadly talk, about integration and cooperation within member states infrastructural development and policy formulation to build this region as an effective commercial bloc are lacking.

4.2.9 The South Asian Century: Progressing Towards Regional Integration

In recent times, global competition has substantially increased due to various unilateral, plurilateral, and multilateral trade liberalizations. However, placing orders and paying for goods significantly hinder competition within the market and thus affect a country's economy. These obstacles are cumbersome for consumers and governments. In light of modern commerce, which is premised on production fragmentation and low lead times, delay in the borders and complex paperwork in harbors and docs adds to the difficulties in conducting business. Additionally, the hidden trade cost is hindering business. In 2002, by the Organization for Economic Co-operation and Development (OECD) conducted a study revealing that trade transactions constitute 2-15% of the overall value of global trade.³¹⁵

For sustainable economic development, South Asian countries should focus on manufacturing, importing, and exporting cross border goods. However, intra SAARC trade only contributes a nominal amount in projected total trade within this region. There are several bilateral and regional trade agreements between countries, but they are insufficient to cross border trade. This is due to weaknesses in those treaties. SAARC members should work

³¹⁵ Edited by, et al., REGIONAL INTEGRATION AND ECONOMIC DEVELOPMENT IN SOUTH ASIA, ADB (2012) and Wilson, (2006).

together to improve trade amongst SAARC members and convert illegal cross-border trade into legal channels.³¹⁶

4.2.10 SAEU

SAARC countries leaders stressed the commitment of regional integration, cooperation, and the importance of annual Summits in furthering core objectives by applying common strategies envisaged by the association's charter. Moreover, they took a pledge to strengthen the association by being pro-active, result oriented, and adopting new strategies. The SAEU's aspiration is to create a more prosperous South Asia. The SAEU's purpose is to eradicate non-tariff barriers and other infrastructural constraints hindering regional integration and cooperation.³¹⁷ In forming, the SAEU leaders need to look to other international forums like the EU, ASEAN, and other notable international organizations. They need to amalgamate these lessons with the Regional Cooperation and Integration (RCI) through creating binding agreements as envisaged by SAFTA, open-regionalism, and voluntary principles adopted by SAARC and ASEAN. Additionally, SAEU needs to create a bottom up market driven approach. The base of this approach must be global value chains, cross border production, and distribution according to cost, time effectiveness, location, and geographically focused programs and projects ensuring cross border connectivity (i.e. providing transport corridors).³¹⁸

³¹⁶ Muthukuda Arachchige Dona Shiroma Jeeva Shirajanie Niriella., Legal Cross-Border Trade vs. Illegal Cross-Border Trade: Promoting Sustainable Regional Cooperation in South Asia through Transnational Trade, Asian Journal of Humanities and Social Sciences (AJHSS)(November, 2014), available at <http://ajhss.org/pdfs/Vol2Issue4/11.pdf>.

³¹⁷ NEXT STEPS TO SOUTH ASIAN ECONOMIC UNION: A STUDY ON REGIONAL ECONOMIC INTEGRATION (PHASE II) COMMISSIONED BY THE SAARC SECRETARIAT. (2014).

³¹⁸ Selim Raihan, South Asian Economic Union, 16 SOUTH ASIA ECONOMIC JOURNAL 3s(2015).

4.2.11 SAARC Apex Body Associate Organizations

Since its inception, SAARC established various bodies for facilitating regional trade integration.³¹⁹ These Apex Associate Organizations help many ways to make effective South Asian Trade. Some of the notable ones are as follows:

4.2.11.1 SAARC Chamber of Commerce & Industry (SCCI)

SAARC Chamber of Commerce and Industry formed in 1992. It coordinates the chamber of commerce and industry of eight SAARC countries. The chamber encourages and promotes strong business amongst the entrepreneurs of this region.

4.2. 11.2 SAARCLAW

SAARCLAW, established in 1991, consists of legal profession members from South Asia. Its objective is to provide a platform for the legal communities to work closely and make laws more functional within the region.

4.2. 11.3. South Asia Foundation (SAF)

In 2000, UNESCO goodwill Ambassador Madanjeet Singh formed SAF. It is a secular non-political organization, which focuses on promoting regional co-operation within SAARC countries. It became an Apex Body in August 2006 and its headquarters in India.

4.2. 11.4. South Asian Federation of Accountants (SAFA)

SAFA, established in 1984, coordinates the accountancy profession in the region. In 1997, it became a SAARC body and subsequently in 2002 became a SAARC Apex Body. Its Secretariat is in India.

4.2. 11.5. Foundation of SAARC Writers and Literature (FOSWAL)

This organization is consisting of writers and intellectuals within this region. It is responsible for promoting art and culture. FOSWAL's headquarters are in New Delhi. In 2007, this organization gained SAARC Apex body status.

³¹⁹ http://saarc-sec.org/areas_of_cooperation/area_detail/economic-trade-and-finance/click-for-details_7

4.2. 11.6 South Asia Initiative to End Violence against Children (SAIEVAC)

SAIEVAC formed in 2012 to institutionalize the framework of ending violence against children. This organization works to eliminate all violence, abuse, exploitation, discrimination, and child labor. It gained status as a SAARC Apex Body in 2011 and its headquarters is in Kathmandu, Nepal.

4.2.12 SAARC Recognized Bodies:

At this time, Some Associate Recognized bodies are working within the SAARC umbrella.

Most of them are professional organizations. These are as follows:

4.2.12.1. Association of Management and Development Institutions in South Asia

(AMDISA)

AMDISA is a network of Management Education and Management Development Institutions in South Asia. Its purpose is the management of education, economic, and cultural development. It received SAARC recognition in 1997 and its headquarters are located in Hyderabad, India.

4.2.12.2. South Asian Association for Regional Cooperation of Architects (SAARCH)

The SAARCH was established in 1991, facilitates the national architectural bodies within the region. It received SAARC recognition in 1997. This is the platform, where member countries architecture can share their creative or innovative ideas.

4.2.12.3 Federation of State Insurance Organizations of SAARC Countries (FSIO)

FSIO received SAARC recognition in 2002. Its aim is strengthening cooperation among state sector insurers in the SAARC region. It also helps to prevent fraudulent activities by networking with same type of financial institution of the member countries.

4.2.12.4 SAARC Diploma Engineers Forum (SDEF)

SDEF received SAARC recognition in 2002. Its goal is to create a platform for exchanging technical information and experiences. Its headquarters are located in Dhaka, Bangladesh.

4.2.12.5 Radiological Society of SAARC Countries (RSSC)

RSSC received recognition as SAARC body in 2002. This society's goal is advancement of science through education and scientific research.

4.2. 12.6 SAARC Teachers Federation (STF)

STF received SAARC recognition in 2002. This forum's goal is education and welfare. Its financial support comes from the Education International (EI).

4.2. 12.7 SAARC Surgical Care Society (SSCS)

SSCS received SAARC recognition in 2002. The goal of this forum is to develop a sound understanding between surgeons through exchanging information and experiences.

4.2. 12.8 South Asia Free Media Association (SAFMA)

SAFMA received SAARC recognition in 2004. The members of this association are mainstream media practitioners. It aims to promote networking and connectivity among the media community and thus improve media and professional standards. It carries out media training and undertakes joint media productions.

4.2. 12.9 SAARC Women's Association (SWA)

SWA received SAARC recognition in November 2005. It aims is furthering friendship between SAARC countries through cultural activities for a charitable cause.

4.2. 12.10 Hindukush Himalayan Grassroots Women's Natural Resources Management (HIMAWANTI)

HIMAWANTI received SAARC recognition in 2007. This body specifically aimed at making policies in relation to the rural women. This organization advocates for women rights and works to provide moral strength to them.

4.2. 12.11 Federation of Association of Paediatric Surgeons of SAARC Countries (FAPSS)

FAPSS received SAARC recognition in 2007. This body's objective is promoting children's health and facilitating the exchange of information and cooperation. Additionally, it promotes paediatric surgery in countries where facilities are not available. Its coordination office is in Chittagong, Bangladesh.

4.2. 12.12 South Asian Federation of Exchanges (SAFE)

SAFE received SAARC recognition in 2007. It provides securities markets effective coordination and harmonization. This is the only regional platform for capital markets. SAFE's Secretariat is in Islamabad, Pakistan.

4.2. 12.13 SAARC Federation of Oncologists (SFO)

SFO received SAARC recognition in 2009. Its purpose is promoting education and science of oncology. It further facilitates socio-economic aspect of practice and deals with methods of improving and continuing education in applied professional fields.

4.2. 12.14 South Asia Association of National Scout Organization (SAANSO)

SAANSO, established in 2011, is dedicated to promoting the values and ethos of scouting. It works to improve the National Scout Organizations (NSOs) overall organizational development. Its headquarters are in Bangladesh.

4.2. 12.15 South Asian Network of Economic Research Institute (SANEI)

SANEI got recognition from SAARC in 2011. It promotes networking amongst economic research institutes. Its initiative is to interlink broader concerns of development. Its office is in Kathmandu, Nepal.

4.2. 12.16 SAARC Academy of Ophthalmology (SAO)

SAO is an association of ophthalmologists who are the members of ophthalmology in SAARC countries. It aims to promote peace, solidarity, and ocular health. Its headquarters are in India.

4.2. 12.17 South Asian Women Development Forum (SAWDF)

SAWDF works for socio economic empowerment of South Asian women. It arranges dialogues, advocacy, connections, and networking. It is a non-profit autonomous body based in Kathmandu, Nepal. It gained SAARC recognition in 2014.

4.2. 12.18 Self Employed Women Association (SEWA)

SEWA received SAARC recognition in 2016. It focuses on women small business owners who do not have regular salaried employment. It aims to promote issues like work, income, food, and social security.

4.2. 12.19 South Asia Forum:

This forum developed following the sixteenth SAARC Summit in 2010. This forum consists of eminent personalities and provides a ‘Vision Statement’ for exchanging ideas. This concept arose in the Informal Meeting of SAARC Council of Ministers in India (New York, 28 September 2010). The first meeting of this forum occurred in Delhi, with the theme of “Integration in South Asia: Moving towards a South Asian Economic Union.” This forum aims to promote culture, connectivity, energy, environmental issues, and strengthening the existing regulatory SAARC frameworks.

4.2. 12.20 SAARC Speakers and Parliamentarians Association

In 1992, this association formed in Kathmandu. The Seventh SAARC Summit, held in Dhaka in April 1993, welcomed this initiative. The association aims to provide a platform for exchanging ideas and information on parliamentary practices and procedures. This association transcends the message of mutual understanding, trust, and friendship with SAARC countries. It also helps share experiences amongst parliamentarians.

4.2.13 Conclusion

Regional organizations across the globe have gained importance in economic and political interaction. These regional blocs have emerged as platforms which influence world affairs. Despite failures, SAARC has made some achievements. Trade liberalization and effective cooperation within the region have been hindered by global, regional, and domestic turbulences. However, there has been progress in SAARC states relationships. Mutual interest between countries acts as a triggering factor for regional cooperation and integration. SAARC member countries use SAFTA to promote their interest in global trade negotiations. Member states collectively can improve representation and trade negotiation. Member states can advocate and protect traditional knowledge, geographical product indication, and fight for prevention of new multilateral agreements on investment and competition.

**Chapter 4.3: South Asian Transit and Border Trade: A Comprehensive
Portrait of Transit Stuffs**

4.3.1. Introduction

The world trading system has become increasingly open textured over the last few decades. The triggering factors for this have been the reduction of Tariff rates and elimination of quantitative restrictions (quotas), e.g. Multi-Fiber Agreement (MFA).³²⁰ South Asia is looking to attain the goal of CUs and Economic Union by 2020. In light of this, in 2006 SAPTA converted to SAFTA. Despite their suitable geographical position, the South Asian countries fail to perform according to their trade potentials. One of the vitiating factors is the lack of regional transit trade unlike European countries. Nonetheless, partial transit exits between Afghanistan, Bhutan, and Nepal. To integrate the regional connectivity the South Asian countries are incorporating various regional transit agreements and reducing regional and multilateral trade transportation costs.

Generally, regional transit means stronger multilateral transit. However, there are numerous challenges. Regional transit agreements potentially benefiting economies with geographical contiguity can eradicate barriers to trade and transport. Typically, South Asian countries have various bilateral transit agreements that are based on the priorities and necessities of the contracting parties. But, the terms are not consistent with each other, and thus fail to achieve the broader goal of reducing the trade barriers within the region. To improve the situation and facilitate free trade the countries should design and develop regional transit agreement in addition to the existing bilateral arrangements³²¹.

4.3.2. GATT Articles and WTO provisions on Transit trade

In November 2001, the Doha Ministerial Conference called for negotiations on trade facilitation after the 2003 WTO Ministerial and subject to agreement on the modalities of

³²⁰Sachin Chaturvedi Prabir de &Abdur Rob Khan, Transit an Border Trade Barriers in South Asia (Sadiqu; Kelegama Ahmed, Saman,;Ghani, Ejaz ed., Sage India, New Delhi January 01, 2010).

³²¹Prabir De & Khan, January 01, 2010.

negotiation. The current mandate of the Negotiating Group for Trade Facilitation (NGTF) established in 2004 is mainly to clarify and improve Articles V (freedom of transit), Article VIII (fees and formalities connected with import and export) and Article X (publication and administration of trade regulations) of the GATT 1994. The NGTF also pointed out the special and differential treatment for developing and least-developed countries apart from exploring areas for technical assistance and support for capacity building for the developing and the least developed country members. The most relevant articles of the GATT are discussed as follows.

4.3.2.1. Freedom of Transit (GATT Article V)

The freedom of transit through the most convenient route has been enshrined in Article V of the GATT intended at non-discrimination on the grounds of vessel, place of origin, entry, departure, exist or destination. The core objectives of the Article were to prevent hindering of traffic in transit caused by unnecessary delays and imposing unreasonable charges and also to provide MFN treatment to all the transit of goods of the WTO Member States.

4.3.2.2. Fees and formalities (Article VIII)

Article VIII of the GATT imposes limits on the costs and complexities. It imposes specific legal obligations on the member states in regard to fees and charges relating to import and export of the goods and also deals with the penalties that may be imposed for breaches of standard custom procedures.

4.3.2.3. Transparency (Article X)

Under Article X the WTO Member States have an obligation to publish trade reports in a prompt and accessible manner. Further, the Member states have to set up tribunals and devise procedures for prompt administrative actions relating to custom matters. Moreover, while

publishing the reports and data the Member States should use modern technology (i.e. the internet).

4.3.3. Regional Transit Arrangements

Although Article V focuses on the national transit schemes it is silent on transit at a regional basis. But the regional cooperation is vital in enhancing the texture of existing international and regional transit agreement. Some of the notable ones are the TIR Convention; the European Convention on common transit; the ASEAN Framework agreement on the facilitation of goods in transit, and UN instruments relating to transit. Members can set up various regional co-operation schemes within the spirit of Article V.

India plays a dual role, in that it provides transit facilities from Nepal and seeks the same from Bangladesh. It is done by bilateral agreements between these countries. However, Bangladesh is concerned and thus reluctant to provide transit facilities to India because it fears leakage of Indian goods into the markets of Bangladesh. It is thought that it will distort the market and thus will significantly hinder the economy. To prevent this, there can be further inspection of the goods and also request the importing states to publish a list of sensitive items. Bangladesh and India can incorporate such terms in their bilateral agreement.

4.3.4. Relevance of the Revised Kyoto Convention

WTO Members can look for various international instruments of transit. The Revised Kyoto Convention contains provision for a safe, secure, and standard procedure of transit. The World Customs Organization (WCO) endorses the international regimes relating to transit such as the TIR Convention and instruments. The Member States are encouraged to accede to the TIR Conventions when drawing up customs transit bilateral agreements under the standards and recommended practice of the Revised Kyoto Convention.

4.3.5. Trade Facilitation and Regional Cooperation

The Economic Cooperation Organization (ECO) is working to alleviate the transit trade facilities. Such facilities include transport infrastructure, friendly legal framework, setting up proper administration, human resource management, and requisite ICT capacity. This is particularly important for the land-locked countries. The perception is that the bilateral and regional transit arrangements should be consistent with the broader objectives of the relevant internationally agreed conventions.³²²

Bangladesh is a beneficiary of GATT Article V, because of its potential to offer transit to neighboring landlocked countries. For example, both Nepal and Bhutan show keen interests to use the transits in Chittagong and Mongolia. However, there is no clear information about the Bangladesh's strategy relating to adopting the guidelines envisaged by GATT Article V.³²³

In light of GATT Article V, India provides transit facilities to landlocked countries like Bhutan and Nepal. At present, the Indian custom authority requires a declaration of all the goods in transit. Furthermore, customs are working to enhance coordination amongst various border agencies. In addition, they are working to simplify the procedures involved in transit. In India, there is no charge duty or tax on transit goods, and there is no requirement of cash deposit for goods in transit nor any securities and guarantees.³²⁴

Generally, India provides transit facilities through bilateral trade and transit treaties regulated by the Directorate General of Foreign Trade in light with the International Conventions. To prevent abuse of the customs transit corridors, India issues a list of sensitive

³²²GS- Today & Developing Perspective for UPSC, SAARC, BIMSTEC, ASEAN Regional Forum, (2015).

³²³Prabir de & Khan, January 01, 2010.

³²⁴ Chaturvedi, S. 2006. "An Evaluation of the Need and Cost of Selected Trade Facilitation Measures in India: Implications for the WTO Negotiations." ARTNeT Working Paper No. 4, UNESCAP, Bangkok.

commodities at periodic intervals. Additionally, many elements of GATT Article V are not applicable to Nepal since it is a landlocked country. Therefore, Nepal made a transit treaty with India for easy access to Kolkata and Haldia seaports.

Nepal and Bhutan are dependent on the Indian seaports for their exports and imports. whereas, Afghanistan relies heavily on Pakistan ports. When a 20-foot container transported from Delhi to Dhaka reaches Chittagong through Mumbai, Colombo, Singapore it costs 2500 USD and has to cover some distance by railways from Chittagong to Dhaka. Further, it takes around 30-35 days. On the other hand, if the same container directly reaches Dhaka by rail, it will take only 4-5 days and the cost will be only around 850 USD.³²⁵

TABLE 4: 3 LANDLOCKED COUNTRIES IN SOUTH ASIA AND TRANSSHIPMENT POINTS

Landlocked Country	Transshipment Seaport	Transshipment Country
Afghanistan	Karachi	Pakistan
Bhutan	Kolkata, Haldia	India
Nepal	Kolkata, Haldia	India

4.3.6. Overall Transport Issues in South Asia

Harmonization of the transport facilities plays an important role in facilitating international trade. In this respect, the UN offered seven international conventions categorically developed under the auspices of the EC for Europe.³²⁶ These legal regimes provide a basic framework for the cross-border movement of goods and vehicles such as:

³²⁵http://www.afghanistan.bznsl.com/index.php?option=com_content&view=article&id=1895:importance-of-free-transit-agreement-for-trade-in-trade-in-saarc&catid=139:business-a-politics-&Itemid=447

³²⁶ SAARC Countries have been discussing a Regional Motor Vehicles Agreement since 2007. See the note entitled “India’s Chairmanship of SAARC” issued by the SAARC Division, Ministry of External Affairs, Government of India, 22 April 2008, New Delhi

- ✓ The Convention on Road Traffic, 1968.
- ✓ The Convention on Road Signs and Signals, 1968.
- ✓ The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), 1975.
- ✓ The Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956.
- ✓ The Customs Convention on Containers, 1972.
- ✓ The International Convention on the Harmonization of Frontier Controls of Goods, 1982.
- ✓ The Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956.

Further, on April 23, 1992, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) adopted Resolution 48/11 on roads and rail transport modes in relation to facilitation of measures. This called for consideration of the international conventions regarding facilitating transportation. However, the Member States of South Asia seem reluctant to adhere to the UN norms. The Member South Asian countries have ratified the conventions for the cross-border movements of goods and vehicles.³²⁷

Amongst South Asian countries, Bangladesh and Sri Lanka have signed the Convention on Road Traffic and India and Pakistan have signed both Convention on Road Traffic and Convention on Road Sign and Signals. Yet, Bhutan, Maldives, and Nepal did not sign any of the seven UN conventions. Moreover, only Afghanistan signed the Customs Convention on the

³²⁷Dipak K. Dash, India meets neighbours to pave way for transit of passenger vehicles across borders -, THE TIMES OF INDIA (February 1, 2015).

Temporary Importation of Commercial Road Vehicles or the Convention on the International Transport of Goods under TIR Carnet. Furthermore, there are different versions of these conventions that may create anomalies. Some countries are party to the 1949 Convention on Road Traffic, but they did not ratify the 1968 version. In these scenarios, the Convention on Road Traffic 1949 remains valid in relation to those contracting parties. The ethos of the Customs Transit Procedures, covered in detail in Specific Annexure E, Chapter E.I of the Revised Kyoto Convention facilitates a safe and secure standard transit procedure.

4.3.7. Transit of Passenger Vehicles Across Borders

Topmost bureaucrats from India, Nepal, Bangladesh, and Bhutan have decided to meet to take forward the sub-regional transport agreement for seamless movement of passengers' vehicles across the countries. Already, the passenger bus service has started between India and Nepal.³²⁸ Officials said that the focus is to start phase launching similar movement of passenger services on routes between other countries in the region. "We will work out the protocols for operation and movement. Recently we undertook a trial run of bus service between Guwahati and Dhaka. We want to formalize the agreements for better vehicular movement," said a government official.³²⁹

³²⁸ Nihar R Nayak, BBIN-MVA_ Pushing Regional Integration through Sub-regional Cooperation _ Institute for Defence Studies and Analyses, [HTTPS://IDSA.IN/IDSACOMMENTS/BBIN-MVAPUSHINGREGIONALINTEGRATION_NNAYAK_190615](https://idsa.in/idsacomment/BBIN-MVAPUSHINGREGIONALINTEGRATION_NNAYAK_190615) (June 19, 2015).

³²⁹ Prabir de & khan January 01, 2010

4.3.8. Present Conditions of Land Customs Stations (LCS)

As part of their obligation under GATT Article V: Freedom of Transit and the facilitation, Bangladesh-India selected border-crossing corridors in eastern South Asia. As part of this process, both countries selected five land border-crossing corridors and corresponding land customs stations for connecting four countries. These five border-crossing corridors are the potential transit point falling within the Asian Highway (AH) and/or SAARC Regional Multimodal Transport corridors.

There are both similarities and dissimilarities between the LCSs of India and Bangladesh. For example, the operational hours of customs and immigration amongst the LCs are the same. However, the days of operation are different. Apart from the basic facilities of immigration, customs, security, and the other facilities, are different in both physical and non-physical categories. There are stark differences between the e-governance of customs between these two countries. The Benapole and the Birganj border use the ASYCUDA world software, whereas, the few others use the ICEGATE software for customs and immigration. The performances of other custom formalities are typically manual. Furthermore, the existing Electronic Data Interchange (EDI) suffers from many shortcomings adding a further layer of costs. For example, the filing of declaration may be possible online. Nonetheless, the system generates a hard copy of the declaration and signing for a variety of legal and other requirements. This requirement vitiates the overall requirement of the online declaration form.

In addition to these, most of the LCSs have limited warehouse capacity and lack banking and foreign exchange facilities. In some cases, like Burimari, Panitanki, and Karkabitta, the local banks are several kilometers away from the LCSs. Further, foreign exchange capacities are not available at the borders. However, apart from the Kolkata and Haldia seaports there are adequate hardware and software support to deal with the goods in transit. To facilitate goods in transmit

the Member States need to cooperate and coordinate in designing and applying bilateral and regional transit. In this regard, India took the following initiative. India opened Land Port Authority of India (LPIA) whose function is to oversee the establishment of 13 Integrated Check Posts (ICPs) along with the international borders with Pakistan, Bangladesh, Nepal, and Myanmar. The LPIA's objective is to equip border crossings with all the modern facilities to alleviate cross-border trade. These facilities are immigration points, cargo inspection sheds, scanners, quarantine laboratories, custom clearances, banks, currency exchange, warehouses/cold storage, parking facilities, and hotels/restaurants. In 2011, the first ICP began at the Indo-Pak border. This ICP is an institution for inter-agency coordination between the neighboring countries.³³⁰

4.3.9. Open Border Markets (Haat between In-Bd)

Following the success of India's pilot projects in 2011, the neighboring countries have decided to operate a weekly market (Haat) at the shared frontier. Succeeding this, Bangladesh and India have decided to open eight duty free weekly markets at border crossings. These Haats will ensure remote area farmers will get a fair price of for products and improve interaction between neighboring country citizens. Presently, Haats operate at the Balamari, Bangladesh, Kaliachar, Meghalaya, India, and the Dolora, Bangladesh-Balat crossings.

These Haats benefit people on both sides of the border and create a harmonious relationship between them. A report of the Ministry of Commerce of Bangladesh, submitted to a parliamentary watchdog, observed that, "The border Haat enables the local people to sell their products without duty and buy their daily necessities." As per the bilateral agreement, local

³³⁰Sandeep Raj Jain, Coordinate border management: the experience of Asia and the Pacific region (2012), available at: <http://www.worldcustomsjournal.org/media/wcj/-2012/1/Jain.pdf>

authorities in each country enlist 25 traders living within the 5-kilometer radius of the Haat to operation it. A local management committee headed by a magistrate regulates the Haat. At present, the Haat occurs on Tuesdays on each part of the border. The border guards of each country adequately guard the Haat.

4.3.10. Improved Transit Facilities and Alternative Routes

Nepal and Bhutan are highly dependent on the Chittagong and Mongla ports. Chittagong ports are the world's least productive container port.³³¹ Alternatively, Mongla is a more viable option for Nepal. In 1976, there was a bilateral agreement between Bangladesh and Nepal, which gave transit rights to Nepal, in order to have access to the overseas markets through Bangladesh. However, due to India's non-cooperation in providing transit facility to Nepal for third-country trade via Bangladesh, Nepal cannot effectively utilize this agreement. In comparison to the Kolkata port, Mongla is more user friendly because of the shorter turnaround time, lower detention, and demurrage. However, this port is under-utilized. Further, Bangladesh provided a 50% discount on port handling charges for Nepali trade handled through Mongla port, with possible further extension if Nepal can trade through the port.

4.3.11. SAARC Nations opt for Motor Vehicle Deal for Connectivity

In 2015 four SAARC Countries (India, Bhutan, Nepal, and Bangladesh) are considering signing an agreement to establish a seamless transit across borders of passengers, personal, and cargo vehicles.³³² These four nations have drafted a motor vehicle agreement for cargoes and

³³¹ Thomas, Simon. 2009. Supporting Growth through better connectivity: Role of Regional Transport. In GhaniEjaz and Sadiq Ahmed (eds). Accelerating Growth and job creation in South Asia, New Delhi: Oxford University Press.

³³² Times of India, Seamless transit across borders comes close to reality- The Times of India, (February 7, 2015).

passengers with contemplating connecting these countries' roads and highways.³³³ This agreement should significantly reduce the loading and unloading of passengers and make cross border trade more efficient. If this agreement happens then passengers and cargos will move freely without the need for trans-shipment border crossings.

This agreement's implementation will be through protocols negotiated separately by neighboring countries under the umbrella of this agreement. The official release says, "They agreed to set up individual national committees and a sub-regional joint committee for overall facilitation of land transport and to coordinate and monitor the agreement's implementation, it added."³³⁴ This arrangement is a parallel initiative to the proposed SAARC transport agreements.

The draft agreement is a motor vehicle agreement for the regulation of passenger and cargo vehicular traffic between and among the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, and Nepal (BBIN). This agreement outlines the broad features on vehicular movement as "there will be authorized routes and immigration checkpoints and land custom stations. All the vehicles of a BBIN country will require permits from plying through the other BBIN countries."³³⁵ The draft copy, obtained by New Age, states, "Non-regular passenger vehicles will be permitted temporary admission on a case-to-case basis for a period for up to 30 days, permits for regular passenger transportation and regular cargo transportation will be multiple entries, valid for one year and renewable every year subject to a maximum of five

³³³NazmulAhsan, 4 SAARC nations opt for motor vehicle deal for connectivity/ New Age (2015), available at: <http://newagebd.net/91818/4-saarc-nations-opt-for-motor-vehicle-deal-for-connectivity#stash.tkWqxLXx.dpbs>.

³³⁴ Id. At.

³³⁵ Id. At.

years.”³³⁶ Despite the draft agreement promises, senior officials of the transport and bridge ministry have observed no tangible progress in the SAARC motor vehicle agreement.³³⁷

4.3.12. Economic Impact of Transit Trade

Rehman Sobhan found that in order to enhance and develop production Bangladesh needs to have access to the wider South Asian market, mainly through India, via SAFTA. Bangladesh’s exports account for around 12% of its GDP. This amount has risen in the past quarter of a century. However, it is only two-thirds of the amount obtained by other low-income countries.³³⁸ Around 80% of Bangladesh’s trade is with OECD members. Further, there is a noticeable amount of smuggling at the Indo-Bangladesh border. This is mainly because the trade and customs tariffs are significantly more than the smuggling risks.³³⁹ The assumption is that dissolving barriers will increase trade prospects regarding GDP, promote geographic border dissolution and territorial expansion, and increase tax incomes by not pressuring people to adhere to strict rules.

Various factors influenced illegal cross-border trade. One factor is the high transaction costs including the cost of information, search, and risk in formal trade. To carry out trade in an effective manner a degree of trade related information is necessary such as product requirement,

³³⁶ Id. at.

³³⁷Rehman Sobhan, Building a Responsible Civil Society: Challenges and Prospects, in BANGLADESH- PROMISE and PERFORMANCE 341, 352, 361 (Rownaq Jahaned 2000) (emphasis original).

³³⁸Azizur Rahman Khan, Economic Development: From Independence to the End of the Millennium, in BANGLADESH- PROMISE AND PERFORMANCE 247, 259 (noting merchandise export to GDP ratios of 2.4%, 5.6%, and 12.2% in 1975, 1980, and 1997, respectfully) [Hereinafter, Khan].

³³⁹Azizur Rahman Khan, Economic Development: From Independence to the End of the Millennium, in BANGLADESH-PROMISE AND PERFORMANCE 247, 259 (noting merchandise export to GDP ratios of 2.4%, 5.6%, and 12.2% in 1975, 1980, and 1997, respectfully) [Hereinafter, Khan].

technology, expertise, knowledge, price, tariffs, industrial trends, trade regulations, and procedures. Further, there is no mechanism ensuring effective exchange of trade information between SAARC countries. Furthermore, it is very difficult to analyze the goods suitable for the business. These factors impose high costs on cross-border trade. But, the informal trading partners provide all the necessary information and significantly reduce the overall costs. As a result, the low transaction cost of informal trading diverts the stream in the cross-border trade.³⁴⁰

Bangladesh has a huge trade deficit with India.³⁴¹ This bilateral imbalance results in cargo trains carrying exports from India to Bangladesh via the Singhabad-Rohanpur interchanging point, the nearest operative point to Nepal's two major economic hubs through which 87 % of Nepal's foreign trade passes, return with empty wagons.³⁴² Bangladesh might take part in competitive railway tariff if it can properly utilize these empty wagons for Nepal's import from Bangladesh.³⁴³ In 1980, there was a transit agreement between Bhutan and Bangladesh. However, it did not come into practical use because there was no tripartite agreement between Bhutan, India, and Bangladesh facilitating Bhutan's use of Bangladesh seaports.³⁴⁴ A study based on the eastern sub-region of South Asia comprising of Bangladesh,

³⁴⁰ Muthukuda Arachchige Dona Shiroma Jeeva Shirajanie Niriella., Legal Cross-Border Trade vs. Illegal Cross-Border Trade: Promoting Sustainable Regional Cooperation in South Asia through Transnational Trade, Asian Journal of Humanities and Social Sciences (AJHSS)(November, 2014), available at <http://ajhss.org/pdfs/Vol2Issue4/11.pdf>.

³⁴¹ See more at: <http://cpd.org.bd/indo-bangladesh-bilateral-trade-deficit-seize-the-opportunities-to-reduce-it/>

³⁴² Nepal Intermodal Transport Development Board/Government of Nepal (NITDB/GON). 2008. Pre-feasibility Study Report: Singhabad (India)/Rohanpur (Bangladesh) Railway Transit Route, Final Draft, March.

³⁴³ Kharel, (2009).

³⁴⁴ Prabir De & Khan. January 01, 2010.

Bhutan, India, and Nepal suggests that the texture of the overall regional trade would enhance if there were regional transit arrangement between these countries.³⁴⁵

The above discussions demonstrate that high trade transaction costs result in complex and cumbersome cross border trading practices. This also hinders harmonization of technological standards. In 2005, ADB conducted study on SAARC Regional Multimodal Transport Study (SRMTS) suggests that decrease of 10% transaction costs may facilitate around 3% of exports of a region.³⁴⁶ It takes around 30-45 days for a 20 feet container to move between New Delhi and Dhaka. This cost around 2500 USD. The container travels the maritime route to Chittagong via Mumbai and Singapore/Colombo. After arriving in Chittagong, the container transports via train to Dhaka. Creating a direct train connectivity would reduce the time taken to 4-5 days at a cost around 850 USD.³⁴⁷

The scarcity of direct train lines, goods from Punjab, India must travel 3,000 km via sea route to reach Punjab, Pakistan. Creating a direct rail route would reduce the distance to around 300 km. Furthermore, the distance between Dhaka and Lahore is around 2,300 km. However, any of these transactions of goods must travel 7,162 km by sea because India does not provide direct transit facilities. Further, it is possible to transit to Afghanistan through Pakistan. As a result, India is trying to develop an alternative route in collaboration with Iran to Kabul and Central Asia through using the Iranian Chabahar port.

Moreover, goods from Agartala, Tripura, to India must travel 1,645 km through the Kolkata port to Chittagong. However, the direct distance between Agartala and Chittagong is

³⁴⁵Kharel, (2009).

³⁴⁶ Asian Development Bank (ADB). 2005. SAARC Regional Multimodal Transport Study (SRMTS). Manila: ADB.

³⁴⁷ Id. At.

only 75 km. Similarly, tea from Assam must travel 1,400 km to reach Kolkata port. Creating direct transportation facilities would reduce travel to around 400 km between Kolkata and Bangladesh. Due to lack of adequate transit facilities with Bangladesh, India in collaboration with Myanmar is trying to create an alternative route to connect the northeast India to Sittwe port of Myanmar.³⁴⁸

Due to geographic conditions, Meghalaya is dependent on Bangladesh instead of India's northeastern states. This dependency is because Meghalaya cuts through the rough terrain within this part of India. As a result, the business leaders are eager to build good business relationship with Bangladesh. Dolly Khonglah, the Meghalaya International Exporters Chamber of Commerce Secretary observed, "Exports to Bangladesh, if infrastructure is improved, could be beneficial for the local economy."³⁴⁹ Moreover, India and Bangladesh are working to make the border Haat scheme successful by opening one test site at Kaliarchar in the west of Garo Hills in 2011.³⁵⁰ It is likely the trade volume between India and Bangladesh will significantly increase if there is development in the existing infrastructure at the border.³⁵¹

³⁴⁸ Rahmatullah, M. 2009. Strengthening Physical Connectivity in South Asia. Presentation at the 2nd South Asia Economic Summit 10-12 December, New Delhi, India; Rahmatullah, M. 2010. Transport Issues and Integration in South Asia. In Ahmed, Sadiq, Saman Kelegama and Ejaz Ghani (eds.). Promoting Economic Cooperation in South Asia: Beyond SAFTA. New Delhi: Sages Publications Pvt. Ltd. ; and Thomas, Simon. 2009. Supporting Growth through better connectivity: role of regional Transport. In Ghani, Ejaz and Sadiq Ahmed (eds.). Accelerating Growth and job creation in South Asia. New Delhi: Oxford University Press.

³⁴⁹ Shahana Ghosh, Peace revives regional trade hopes for remote border village, [HTTP://KHABARSOUTHASIA.COM/EN_GB/ARTICLES/APWI/ARTICLES/FEATURES/2012/1...](http://khabarsouthasia.com/en_gb/articles/apwi/articles/features/2012/1...) (HTTP://KHABARSOUTHASIA.COM/EN_GB) (December 14, 2012).

³⁵⁰ Id. At.

³⁵¹ Saurabh Kaushik, Sub-regional Cooperation in South Asia: A New Lease of Life?, (February 23, 2015).

4.3.13. Border Management in South Asia: Volatile, Violent and Porous

The borders within the South Asian countries are artificial in nature and specifically designed to serve the colonial purposes of imperial power. As a result, such demarcation did not take into account the practical needs and circumstances of the geographic conditions. The borders between these countries are result of the escapist mentality of the British rulers. However, in order to get the fuller picture of the border disputes it is necessary to discuss time prior to the East India Company arrival. At that time, Mughals ruled this land. However, they were politically diverse and had religious barriers. Moreover, there were many different monarchies, kingdoms, tribes, and clans. Despite this diversity, the Silk Route connected China with Russia and the Grand Trunk Road connected the Bengal with Kabul. These trade roads demonstrate that, despite their political differences goods and peoples moved freely within the different kingdoms and monarchies. At that time, divisions and political boundaries were unstable and occurrences of territories and boundaries over the game of cards or on a drunken gamble between the local rulers.³⁵²

These examples illustrate that previous changes in territory did not affect goods in transit amongst these regions. Further, it points out the contemporary failure to realize the true essence of borders and border management. The contemporary concept of a border is a territorial line that has significant military importance. This analogy fails to understand that it is also a region as inhabited by people. Further, we have become protective, insular, and negative about border issues and as a result, there are military troops, barbed wire fences, and border included in maps to protect and guard our borders. However, consideration of border issues may in less aggressive

³⁵² D SubaChandran, *Border Management in South Asia: Volatile, Violent and Porus* by D SubaChandran, (2013).

way is beneficial. Borders are an amalgamation between protection via military, social, and economic engagement between two neighboring regions.

Border areas can transcend a great spirit of harmony and act as bridge between two different regions. Even in ancient times, countries built monumental borders such as the Great Wall of China and the Walls of the Rajputs of Rajasthan, but they were for preventing opposing armies. In those times, great flexibility for the free movement of people and goods existed. This granting of flexibility was to free the movement of people and the movement of goods and ideas. This ensures harmonization and amalgamation of different cultures, foods, religion, and other factors. As a result, trans-border movement can be an opportunity to bridge with the neighboring regions. Using them for the sole military purpose and making them insular will only raise tensions in the border area and trigger volatility and violence.³⁵³ The neighboring countries can establish one-stop border posts to enhance better cooperation between the border agencies.³⁵⁴

Despite infrastructure, the transport connectivity between the South Asian countries is practically fragmented.³⁵⁵ The free transit for Bhutan and Nepal through India to access the markets of Bangladesh demonstrates how effective co-operation between the states can create a win-win situation for all. Furthermore, India seeks free transit through Bangladesh so that it can connect to the northeastern states of Assam, Nagaland, Tripura, Meghalaya, Manipur, Mizoram, and Arunachal Pradesh collectively known as the “Seven Sisters.” Such transits were previously

³⁵³ Id. at.

³⁵⁴ AGARWAL, 2013.

³⁵⁵ Rahmatullah, M. 2009. Strengthening physical connectivity in south Asia Economic Summit, 10-12 December, New Delhi, India. Organized by Research and Information System for developing countries (RIS), and other organizations.

operational through East Pakistan, which lasted up to the 1965 Indo-Pak war.³⁵⁶ However, such transit was not available to India after independent Bangladesh was born. Bangladesh provides India limited water transit. The goods transferred to the Seven Sisters go through the narrow strip of land popularly known as the chicken's neck. A transit through Bangladesh might reduce 71% of the distance.³⁵⁷ As far as some of the Seven Sisters are concerned, the Chittagong port is significantly closer than the Kolkata port. As a result, using the Chittagong port would significantly reduce the import cost and alleviate the competition in the market. In bargaining for providing transit to India, Bangladesh may seek for transit facilities through India to connect to Bhutan and Nepal. If so, Bangladesh can transit goods in those countries by virtue of its bilateral agreements. A study conducted in 2005/2006 indicated that Bangladesh expected to get a profit of 430.79 million USD if it enters into transit arrangements with India, Bhutan, and Nepal. Additionally, Bangladesh can also benefit from direct business with Bhutan and Nepal.

4.3.14. Security Issues

Security concerns are one of the significant factors behind Bangladesh's reluctance to allow transit facilities to India. These are legitimate concerns because India is not providing transit facilities to Nepal on the grounds of security concerns.³⁵⁸ In relation to this, Zaid Bakht the research director of the Bangladesh Institute of Development Studies (BIDS) observed,

³⁵⁶ Karim, Shahnaz. 1997. Security Imperatives and Economic Benefits of Transit Facility: A Bangladesh Perspective. In Iftekharuzzaman (ed.). Regional Economic Trends and South Asian Security. Pp. 92-104. New Delhi: Manohar Publishers and Distributors.

³⁵⁷ Rahmatullah, M. 2010. Transport Issues and Integration in South Asia. In Ahmed, Sadiq, Saman Kelegama and Ejaz Ghani (eds.). Promoting Economic Cooperation in South Asia: Beyond SAFTA. New Delhi: Sages Publications Pvt. Ltd

³⁵⁸ Kharel, (2009).

“Bangladesh has some competitive advantages in the northeastern states due to its geographical proximity. The prices of the Indian products go up due to the higher transport cost.” Further, the modernization of the Akhaura-Agartala check-post is an added advantage for both Bangladesh and India.³⁵⁹

The new border-crossing facilities on the Indo-Bangladeshi frontier promise to boost commerce and harmonization of business with the landlocked northeastern states. As part of this process, India set up the new ICP in the border of Agartala, India and Akhaura, Bangladesh. This check-post has passenger and cargo terminals, warehouse facilities, banking facilities, automotive services along with the common facilities of immigration and customs.³⁶⁰ Abdul Matlub Ahmed, the Ex-President of the India-Bangladesh Chamber of Commerce and Industry opined, ‘This will help us tremendously to do business with the northeastern states and create new opportunities for the businessmen of both countries.’³⁶¹

4.3.15. Seamless Transit

Bangladesh is working to ensure seamless connectivity between India, Nepal, Bhutan, and Myanmar. In order to facilitate smooth operation of business, Bangladesh made available two airports in the north of the country for Bhutan use. Further, Bangladesh is working to intensify the shipping linkage with Sri Lanka. This will not only enhance bilateral trade between these countries but also open Bangladesh’s opportunities to other connected countries like the

³⁵⁹ Kamran R Choudhury, Border post upgrade augments Bangladesh-Indo trade, KHABAR SOUTH ASIA IN DHAKA (January 22, 2014).

³⁶⁰ Id. at.

³⁶¹ Id. At.

Maldives. To alleviate the regional co-operation, Bangladesh is working towards a joint water resources management scheme with India, Nepal, and Bhutan.³⁶²

4.3.16. Review of the Bilateral Trade Agreement

Bangladesh signed a Bilateral Trade Agreement with India on 28 March 1972. By virtue of this agreement, both the countries provide MFN treatment to each other but do not grant transit facilities.³⁶³ Additionally, on 4 October 1999 Bangladesh signed a bilateral agreement titled Protocol on Inland Water Transport and Trade. In 2007, the renewing of this agreement was to provide transit facilities between these two States. This bilateral agreement is rooted to the India-Bangladesh Trade Agreement. Moreover, they also agreed for railways for trade and services. Under this agreement, both of mutually agreed to operate trains (goods/passengers) through three border routes.³⁶⁴

India and Nepal signed a bilateral agreement on 6 December 1991 to control and supervise unauthorized trade and smuggling. Moreover, on 5 December 1999 the signing of the Treaty of Transit between these states commenced. Under this treaty, India provides maritime transit and supporting services to Nepal through Haldia and Kolkata ports. Further, a signed

³⁶²The Economist; London, The government of Bangladesh responds, THE ECONOMIST, LONDON (AUGUST 05, 2011).

³⁶³ Id. at.

³⁶⁴ The India–Bhutan Agreement of 2003 states that “there shall be free trade and commerce between the two countries” and “free movement of goods flowing between the two countries.” There are no references in either the Agreement or the attached Protocol, however, to road vehicles or other forms of surface transportation, or of the rules governing the use of Indian road space by Bhutanese vehicles (and vice versa). See Agreement on Trade, Commerce and Transit between the Government of the Republic of India and the Royal Government of Bhutan, India–Bhutan Trade Agreement, Ministry of Commerce and Industry, Government of India, New Delhi. Available at <http://commerce.nic.in/trade/bhutan.pdf> (accessed on 6 October 2009).

Memorandum to the Protocol detailed the import and export procedures between India and Nepal. In addition, India and Nepal have a Rail Service Agreement for managing rail transit trade. The agreement specifies the transit trade between Kolkata/Haldia ports in India and Birgunj in Nepal, via Raxaul in India as well as between stations on Indian Railways and Birgunj via Raxaul, for bilateral trade.

India and Bhutan signed a bilateral trade agreement in 1995. The objective this agreement was to ensure contour free trade between these two countries. The Protocol of this Agreement distinguished the trade routes including the transit and explained the detailed trading procedures. Further, there is a mutual understanding of free movement of vehicles through the routes although such provisions are implied. Bhutan has transit facilities to Haldia and Kolkata port of India.

On 2 April 1976, Nepal and Bangladesh signed a transit agreement as opposed to a bilateral trade agreement. This transit agreement allows Nepal to have access to the overseas market i.e. the third-party markets. However, this agreement does not provide for bilateral inland trade between these two countries. To enable bilateral transit trade, Bangladesh and Nepal signed the Operational Modalities for an Additional Transit Route between Nepal and Bangladesh agreement. As part of this agreement Banglabandha (Bangladesh)-Phulbari (India)-Khakarbitta (Nepal) are the transit corridor for bilateral trade. India does not provide Bangladesh and Nepal any extra regional transit trade and limits only between the bilateral trades.

On 12 May 2003, Bangladesh and Bhutan signed a bilateral trade agreement that granted MFN status to each other's trade. This agreement made Burimari (Bangladesh)-Changrabandha

(India)-Jaigaon (India)-Phuentsholing (Bhutan) transit routes for bilateral trade between Bhutan and Bangladesh. Both these countries have bilateral overland trade between India.³⁶⁵

Although there are many individual bilateral trade agreements and transit agreements there is no unified broader regional transport and transit arrangements for across border movement of goods and vehicles.

4.3.17. Recommendations for Transit in South Asia

To have an integrated framework for trading and ensuring smooth movement of goods there is no alternative to establishing a national wide single window system. Such a scheme will operate as an integrated hub and facilitate the importers, exporters, and all facilities relating to goods in transit. Moreover, it provides a unified electronic gateway for information exchange will make the entire process streamlined. Further, such scheme shall accelerate revenue collection and improve trade compliances, transparency, and accountability. It will also help to maintain an improved coordination between customs and other government agencies, like plant quarantine, banks, chamber of commerce, export promotion council board, insurance companies, etc.

For coordination of border management and inland locations, it is necessary to provide facilities for examination of goods, stuffing and sealing of the container in the ICDs under the supervision of customs and border agencies. Further, encouraging import clearance in inland locations can impose customs control. A national transit system through the Authorized

³⁶⁵Prabir De &Khan, January 01, 2010.

Economic Operators can efficiently implement this system. It is possible such schemes shall reduce both congestion charge and logistics charges for the goods in transit.³⁶⁶

Increased accessibility of no-man's land and endorsing it as a hub wherein the traders would meet their counterparts for dialogues, negotiations, and exchange of information across borders. It can act as an institutional arrangement for interactions and coordination and can act as the common meeting place of border region stakeholders. Further, it can act as a better way to resolve the local issues, and facilitate implementation of policies for mutual benefits, and interlink between the relationships between state and local bureaucrats. Implementing Harmonization of Standards and Conformity Assessment Procedures may further the regional integration. In order to boost the governmental agreements, agreements between the national certification institutions can be encouraged. Further, it is necessary to adopt a regional based approach rather than the present bilateral ones in order to facilitate transit facilities within the region.

To develop the economy of the border area the border Haats and the Special Economic Zones need further encouragement. This will act as the bridge connecting trade corridors needing development in a manner that they form part of the seamless web of connectivity between the people. Last but not the least, the procedure for obtaining VISA within this region must be easy, flexible, and uniformed.

³⁶⁶ Cuts International, An Agenda for Actions: Trade, Transport and Transit Facilitation in South Asia Imperative of Bridging Macro-Meso-Micro Gaps, (October 29-30, 2014).

4.3.18. Conclusion

The econometric evidence raised in this segment emphasizes the existing linkage of the trade costs and trade flows. It identified that high transaction costs hinder the way of free trade. This article discovered that a drop in 10% transaction cost could increase 2% of the overall country's export. Further, it appeared that electronic filling of customs documents at the borders accelerated the trade growth in the South Asian region. Contrarily, it also is apparent that not all border custom stations are adequately equipped with modern technologies. In South Asian region cross border transactions occur mainly through the bilateral agreement between the countries. For example, India provides overland transit facilities to Bangladesh, Nepal, and Bhutan for their bilateral trade, and maritime transit to Nepal and Bhutan for their international trade. However, promotion is necessary in order to get the full essence of the trade regional trade arrangements.

Endorsement of border corridors and their effective utilization can play a vital role in a region's competitiveness and trade prospects. Establishing highly equipped custom stations can abolish asymmetries between the corridors. Further, to improve their performances the border corridor management authorities (governments) need to evaluate regularly their operations and processes related to providing, marketing, and selling services to the users. There has to be a regional coordination of monitoring the performances. Further, the policies need revision in light of the changing global environment and regional trade. This will significantly improve competitiveness within the region. The development of the regional trade shall heavily rely upon evolution of the corridor services, introducing new performance standards, and implementation of policies both at the national and regional level.³⁶⁷

³⁶⁷ South Asia's Density: Conflict or Cooperation? Vol. 6, No. 2 INDIAN FOREIGN AFFAIRS JOURNAL 164 (April-June 2011).

Transit is as important as trade liberalization. It is the most vital practical dimension in any cross-border movement of goods and vehicles. Transit plays an important role both in the national and regional economies. To reduce transaction costs and time there is no alternative to the seamless movement of the goods within the region. The broader regional transit agreement in South Asia is necessary because cross-border trading practices are expensive, cumbersome, and involves high-trade transaction costs. Further, the goods carried by roads in South Asia are subject to transshipment that significantly impedes the regional and multilateral trade. The regional transit agreement will facilitate the South Asian countries to integrate their businesses and boosts the globalization process. The issue of traffic in transit, as envisaged by GATT Article V is very crucial in the backdrop of ever developing businesses in South Asia. The WTO brings several lessons through which the South Asian transit system can operate.³⁶⁸

³⁶⁸ Id.at.

Chapter Five

Chapter 5.1: Research Design and Research Methodology

5.1.1. Introduction

This chapter concentrates on the research design and data collection methods deployed in this study. Furthermore, the justification behind the data collection methods and procedures is explained in detail. Section 5.1.2 focuses on the nature of this study and elaborates the rationale of the preferred research design. Section 5.1.3 deals with the research design including justification of the research design, the preferred data collection method, and it mentions the data sources and the manner of collection. Section 5.1.4 focuses on the ethical considerations applied during this research work. Section 5.1.5 highlights the detailed description of data transcription and mentions the data analysis. Section 5.1.6 emphasizes how the findings of the data is objectively applied. Further, this chapter also points out the limitations of the preferred research methodology.

5.1.2. Nature of the Study

This research work is explanatory and analytical in nature. It aims to add a valuable means of investigating the subject matter of this research. Moreover, it delves into new insights and assesses phenomena in a new light.³⁶⁹ The current study attempts to understand the factors and consequences of unilateral liberalization (UL) and how UL influences a country to make multilateral commitments under the WTO. The lack of study on unilateral liberalization of the free trade or preferential trade sector, generally constrains the ability to gain a comprehensive picture of unilateral liberalization, and its impacts on trade peoples.

³⁶⁹ C ROBSON, REAL WORLD RESEARCH: A RESOURCE FOR SOCIAL SCIENTISTS AND PRACTITIONER RESEARCHERS (Oxford 1993)

There is a shortage of knowledge about how a country's unilateral liberalization in a trade sector influences its understanding of multilateral commitment (through submission of a schedule of commitments) in that sector. Therefore, it is logical to adopt an exploratory research design because this research approach provides greater understanding of a concept or crystallizes a problem rather than providing precise measurement of qualification.³⁷⁰ This study is appropriate for the current research because it helps explore substantive areas where little is known and requires novel understanding.³⁷¹ This research approach satisfies three rationales of research: to diagnose a situation, to screen alternatives; and to discover new ideas. The findings of this research promise to contribute to the existing literature on this topic, that is, to provide a deep account about the experiential factors that are trade barriers within last 12 months, and the most pressing problems facing South Asian free trade.

5.1.3. Research Design

Typically, a research design is comprised of various elements such as data collection, analysis, and interpretation of the derived data. A properly planned research design helps to cover the situations which do not arise during the initial research questions.³⁷² In preparing the research design, the researcher incrementally deployed knowledge and foresight to ascertain the issues relevant to the research questions, the required information for the research, and the sources to look for to conduct the research. The questionnaires were in English and KU qualtrics

³⁷⁰ W.G. ZIKMUND, *BUSINESS RESEARCH METHODS* (Cincinnati, OH: Thomson/South-Western 7th ed. 2003).

³⁷¹ Corbin, J., & Strauss, A. (2008). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (3rd ed.). Thousand Oaks, CA: Sage

³⁷² ROBERT K YIN, *CASE STUDY RESEARCH: DESIGN AND METHODS* § 5 (Sage Publications: Thousand Oaks Fourth ed. 2009).

website processed the data derived from the interviews. To ensure and maintain accuracy the researcher made daily computer data entry and regularly monitor it.

The following paragraphs give a detailed insight into the research design.

5.1.3.1. Case Study Approach and Justification

The research question dictates the choice of research practice.³⁷³ In this research, the researcher adopted three research questions to investigate into the topic i.e. Legal and Non-Legal Barriers to free trade in South Asia. It is inevitable that the researcher has no control over the substantive issue of the research. As a result, the researcher adopted the “what,” “how,” and “why” approach to find the most relevant data to the research question. (Berg, 2007; Erikson & Kovalainen, 2008). Notably, according to Yin (2009) the purpose of the empirical studies is to investigate contemporary situations considering real life experiences.³⁷⁴ This is the best suitable method of case study in relation to this topic as it aims to make an objective analysis on the issues like liberalization, free trade, GATT and Article XXIV issues in connection to FTAs.

Additionally, this case study method enabled the researcher to have a contemporary analysis regarding the holistic and meaningful characteristics of real life events (yin, 2009). Such views are analogous with the recommendations of Gibbert, Ruigrok and Wicki (2008) and Yin (2009). The adoption of this case study method considered the overall ambit of the research questions.

³⁷³ Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 6th Edition California State University, Long Beach©2007

³⁷⁴ Robert K. Yin , *Case Study Research: Design and Methods*, 2009

5.1.3.2. Selection of the Case

Collis & Hussey (2009, P.117)³⁷⁵ define a “research question” as a specific question the research is designed to investigate and attempts to answer. This intention is the basis of this dissertation. The intention is for this question to gather information by an inductive approach as part of a qualitative research method. It is therefore more investigative than searching for a definitive answer. Blumberg et al (2005, p.61)³⁷⁶ describes investigative questions as questions the researcher must answer to arrive at a satisfactory conclusion, by taking a general research question and breaking it into more specific questions about which to gather data or information. Legal and Non-Legal Barriers to South Asia free trade has been the central issue of this research. To have a practical insight about the study, the selection of the related stakeholders for case study are directly linked the research topic. This facilitated to overcome the perils of misrepresentation and non-representation in the existing field of study.

5.1.3.3. Qualitative Research Approach in Case Studies

The production of knowledge is through a “qualitative” research encounter best understood as the product of a specific interaction between researcher and informants.³⁷⁷ Qualitative research method of data collection is used for the case study. This is because it enables the researcher to have a detailed understanding and knowledge by portraying all key

³⁷⁵ Collis, J. and Hussey, R. (2009) Business research: a practical guide for undergraduate & postgraduate students. 3rd edn. Basingstoke: Palgrave Macmillan.

³⁷⁶ Blumberg, B., Cooper, D.R. and Schindler, P.S. (2005) Business research methods. Berkshire: McGraw-Hill.

³⁷⁷ Brannick, T, & Coghlan, D 2006, 'Reflexivity in Management and Business Research: What Do We Mean?,' Irish Journal Of Management, 27, 2, pp. 143-160.

participants.³⁷⁸ Additionally, various documentary analysis, observations and professional interviews have used for refinement of the case study.³⁷⁹ There were three intriguing factors for selecting the qualitative research method.

First, the qualitative approach facilitates understanding of a complex issue in certain contexts (Cresswell & Plano Clark, 2007).³⁸⁰ This research topic requires an in-depth knowledge and understanding about the South Asian free trade. To get the most relevant data for the research, the qualitative research method was helpful to gather first-hand information. In this research, the qualitative research method is more plausible than quantitative research method. This is because the qualitative research method ensures critical engagement of variable factors whereas the quantitative research method focuses of measurements and casual relationship with the variables.

Second, this research method facilitates shining a light on the practical aspects of the research area and permits us to evaluate how the issues raised in the research question are varies keeping pace with the variable social interactions (Silverman, 2009). Finally, the pattern of qualitative case study design is a manner that accumulates concurrent data collection and analysis.³⁸¹

³⁷⁸ Shah, S. K. & Corley, K. G. Building better theory by bridging the quantitative–qualitative divide. *Journal of Management Studies*, 2006

³⁷⁹ JILL HUSSEY & ROGER HUSSEY, *BUSINESS RESEARCH: A PRACTICAL GUIDE FOR UNDERGRADUATE AND POSTGRADUATE STUDENTS* (MacMillan Business First Edition ed. 1997)

³⁸⁰ Creswell and Plano Clark (2007, pp. 103-104) for a discussion of differences between qualitative and quantitative research purposes and questions. And Creswell & Tashakkori, *Exploring the Nature of Research Questions in Mixed Methods Research*, (2007).

³⁸¹ E. GUMMESSON, *QUALITATIVE METHODS IN MANAGEMENT RESEARCH* (THOUSAND OAKS SAGE PUBLICATIONS 2000).

TABLE 5: 1 OCCUPATION OF THE RESPONDENT

Serial No.	Profession	No. of Respondents
1	Law Maker/ Politician	4
2	Academician	11
3	Business Owner	9
4	Business Leader	1
5	Lawyer	4
6	Law Executor	14
7	Trade Related Support Service Provider	6
8	Beneficiary	1
9	Other	1
10	Total	51

Overview about Survey Questions (Annexure 5:1): Total Question 24 and part seven includes optional part of respondents 'details.

The researcher carefully selected the interviewees those have expertise in trade and WTO issues. Furthermore, the researcher selected the policy makers connected with free trade business. The researcher has over 11 years of public service experience in important public sectors which facilitated the researcher to have easy access to the interviewees who hold various key positions. SPSS software processed the contents and derived the data.

5.1.3.4. Quantitative data collection and data sources

According to Zikmund (2003, P.111) exploratory research provides greater understanding of a concept rather than providing precise measurement or quantification, and much, though certainly not all, exploratory research provides qualitative data.³⁸² This research uses multiple sources such as interviews with the policy makers of the country, academicians, business owners and other people directly concerned about the research topic. Furthermore, there is a wide range of documents used for this research, including legal journals, articles, literature on South Asian Free Trade, SAARC Summit Report, and other contemporary online articles and journals. The basis of selecting the most relevant documents was their relevance with the SAFTA agreement, the effects of pricing, variables of market shares, transparency of the market, and issues of competition within the market and the role of the SAARC as the regulator of the concerned business. Additionally, extra care is given to incorporate herein the most authentic statistics. Regular monitoring was necessary to have the most up to date information electronic version of the newspapers such as The Daily Star, the New Age of Bangladesh, the Don of Pakistan, and the Hindu in India. A detailed discussion as to how the data were derived is as follows.

5.1.3.5. Medium of Data Collection Process

Taking interviews from the experts follows the semi-structured-in-depth interview design. Face to face interviews greatly facilitated the researcher to explore all the necessary issues of the research topic. The open textured questions enabled the interviewees to express their thoughts in a manner they perceived the material issue (Patton, 2002 and Sekaran, 1992). The research questions are based upon the unilateral linearization of the free trade with emphasis

³⁸² Zikmund, W.G. (2003) Business research methods. 7th edn. Mason, OH: Thomson Learning.

on the Research Question 1 and 2. After that, the research questions were narrowed down and were directed precisely to the research questions by applying funnel technique of inquiry advanced by Ahlstrom, Young, Chan and Bruton (2004). During the interview process, it was not possible to maintain the sequences of the questionnaire which had to be subsequently slightly modified keeping in mind the central issues of the research topic.

These semi-structured interviews were conducted both by email and in person. The interview began by a brief introduction of the researcher and follows with an explanatory statement to the respondents. During the entire process the researcher ensured strict adherence to the ethical obligations of the University of Kansas. In taking private face to face interviews ensured the confidentiality of the interview and the smooth operation of the interview.

To ensure maximum output from the interview, in most of the occasions follow-up interviews were taken. In certain situations, conducting follow up communication over the telephone and email was necessary to ensure that the researcher accumulated all the data of the interview in the precise manner. On top of it, during the interview phase a dispassionate attempt was made by the researcher to double-check as to whether the researchers understanding matches with that of the respondent. Furthermore, the interviews were not deliberately recorded to provide the comfort-zone to the respondents to be enthusiastic and freely expressly their thoughts, ideas and personal experiences about the research topic.

5.1.4. Ethical considerations

According to Blumberg et al (2005, P.92) research ethics address not only the question of how to use methodology in a proper way to conduct sound research, but the question of how to use available methodology in the 'right' way. The research project was approved by the supervisor of the researcher's committee in the University of Kansas. After the approval was

received the researcher embarked on outlining the aims and objectives of the research topic, the research methodology and data collection. Furthermore, the questionnaire used for the questionnaire through using tools of www.kuclas.qualtrics.com. After that the research communicated with the interviewees. The participants knew they could withdraw from the interview anytime they wanted. To protect the privacy and anonymity of the interviewees the name of the participants and their designation are not revealed.

5.1.5. Data analysis

“The researcher who adopts a grounded theory approach, does not follow a linear path of research progression. The process of coding and analysis are in operation throughout the research process.”³⁸³ The data analysis for this research project included coding, thematic classification, counting the frequency of the same theme and text data. The insights derived from the interviews, various transcripts and documentary evidences were the main resources of data. Due to the preferred qualitative research approach the researcher had to work with huge amount of textual information. The analysis of the data derived through the qualitative research method was highly cumbersome and a daunting task for the researcher because the researcher had to mix different approaches to fulfill the requirements of the study (Miller & Crabtree, 1999 and Yin, 2009).³⁸⁴

The main sources of the research are the interviews and questionnaire answers. As a result, the researcher had to go a wide range of written information and then had to narrow them

³⁸³ Ng, K, & Hase, S 2008, 'Grounded Suggestions for Doing a Grounded Theory Business Research', *Electronic Journal Of Business Research Methods*, 6, 2, pp. 155-170,

³⁸⁴ W.L. Miller & B.J. Crabtree, *The Dance of Interpretation in Doing Qualitative Research* (B.F. Crabtree & W.L. Miller eds., 1999).

down to choose the most relevant one for the research questions. To do so, the content analysis method is effective in analyzing the interview data and the open-ended questions. On top of it, this technique is effective in extracting thematic information from qualitative materials (Tharenou, et al, 2007). There are two methods of content analysis such as i) template approach and ii) editing approach (Tharenous, et al, 2007). The researcher preferred the editing approach for this research.

5.1.6. Editing approach

In the editing analysis method, the researcher has the freedom to interpret and rearrange the texts of a material into meaningful portions that suit the objective and purpose of the study. It ensures cyclical analysis by an iterative process of data analysis (Thearenou, et al. 2007). The freedom of interpretation makes this method more plausible than template analysis as its leaves room open for subjective understanding and exploration of various factors (Tharenou, et al, 2007). Furthermore, the subjective analogy regarding the issues like the free trade of good and service of the South Asia and its impact on the undertakings GATT Article XXIV enabled the researcher to focus in these areas and generate new insights on the topic which were less researched previously. To attain this objective the editing approach was highly useful to the researcher. The researcher adopted the inductive editing approach to analyze the data. Accordingly, the researcher categorized materials in meaningful codes. These codes were thematically organized in accordance with the broader questions of the research essay. Thematic groups made further abstractions (Miller & Crabtree, 1999).

5.1.6.1. Coding data

To attain the broader objective of the research, a huge amount of data was collected from a wide range of resources. For coding and analyzing this data SPSS software was used. After that the researcher carefully went through the word-processed files to have a clear picture of the research theme and identify the key points raised during the interview sessions. Generally, theme means the inner meaning or the gist of the text (Graneheim & Lundman, 2004). To precisely understand the theme, the researcher had been keen to distil the research questions, explored and extracted concepts and phrases from narrative text through editing approach and codes the themes as “free nodes” (QSR International, 2010). Further, the researcher used the inductive analysis methods to derive themes and patterns with the help of interviews and data collection methods Bailey, Price, Esders and McDonald (2010). For this research there was creation of around 500 free nodes. After that they have been organized in accordance with hierarchy as ‘tree nodes’ to put focus on the three research questions of the study. In this process, the texture of each theme such as the issues or related concepts were considered according to its relevancy to the research questions (Bazeley, 2007). After that, the queries option of the software generated the reports.

5.1.7. Quality and rigor of the research method

The qualitative research method is often subject to criticisms. The major attack comes when it is assessed considering the quantitative standards used. Furthermore, features like subjectivity, reliability, the generality of opinions and the academic integrity of the qualitative method are criticized (Janesick, 2000 and Anfara Brown & Mangione, 2002). Furthermore, it is thought that the qualitative research offers alternative ways “that more accurately capture[s] the complexity and texture of qualitative research” [Janesick, 2000 p 393]. The instant research has

been based upon the constructivist approach of qualitative research and the criteria for such researches are discussed as follows.

5.1.7.1. Credibility

Credibility denotes the confidence as to the quality of the data and the methods of analysis deployed to focus on the research.³⁸⁵ The enhancement of the credibility of any research occurs by citing the resources from the transcribed text. Further, to uphold credibility by ensuring that no useful information or data regarding the research area is withheld even unintentionally.³⁸⁶ The researcher had been extra cautious in this regard. To maintain credibility of the research, the researcher derived data in various phases. Moreover, to maintain credibility the data testing was amongst various types of members of the same group of interviews. It is apparent that this ‘member checking’ method is greatly beneficial for the credibility of the research.³⁸⁷

Additionally, to assess the data, sharing of the summaries of the responses with the interviewees was necessary to get comments on the respective views of the interviewees. This approach greatly helped to refine the data and add credibility to the research. To scrutinize the data, the researcher conducted three follow up interviews with trade and regulatory experts of different countries of South Asia. These follow up interview helped to fill in the gaps that existed in the initial phase of the research. Further, it facilitated the addition of a wide range of resources and data to reduce any possibility of bias regarding the research work.³⁸⁸ The strategies that the researcher adopted to ensure the quality of the research are mentioned in Table 5.1.2.

³⁸⁵ U.H. Graneheim & B Lundman, Qualitative content analysis in nursing research: concepts, procedures and measures to achieve trustworthiness 24 Nurse Education Today 105(2004).

³⁸⁶ Id at.

³⁸⁷ E Driessen, et al., The use of qualitative research criteria for portfolio assessment as an alternative to reliability evaluation: a case study, 39 Medical Education (2005).

³⁸⁸ David J Cooper & Wayne Morgan, Case Study Research in Accounting 22 Accounting Horizons 159(2008).

TABLE 5: 2 TECHNIQUES APPLIED TO ENSURE THE TRUSTWORTHINESS (RESEARCH QUALITY AND RIGOR) OF QUALITATIVE RESEARCH.

Quantitative (traditional criteria)	Qualitative (trustworthiness) criteria	Meaning	Strategy suggested	Strategies adopted in this study
Internal validity	Credibility	Trustworthiness of the conclusion from the data set and the match of these conclusions with reality. Credibility depends less on sample size than on the richness of the information gathered and on the analytical abilities of the researcher	-Prolonged engagement in the field -Cross checks through member checks .	-Transcripts reviewed by the participants/member check - Triangulation of data -extended engagement in the field
External validity	Transferability	Generalizing across different settings and organizations	-Provide thick description ³⁸⁹	-thick description of different themes through editing approach
Reliability	Dependability	The study is repeatable by others with same results	-Purposive sampling -Inquiry audit of data collection, management, and analysis process -Informants' confidentiality protected -Triangulation	- Triangulation of interviews with Focus group discussion and documentary evidence - Inquiry audit -Informants kept anonymous -Purposive sampling for R.Q. 1 and 3

³⁸⁹ Denzin (1989 in Cresswell & Miller, 2000) defines thick description as deep, dense, detailed accounts. Thin descriptions, by contrast, lack detail, and simply report facts. Researchers contextualize the people or sites studied for establishing credibility. Another way of writing thick, rich description is to describe the setting, the participants and the themes, provide as much detail as possible J.W. Creswell & D.L. Miller, Determining Validity in qualitative inquiry 39 THEORY INTO PRACTICE 124(2000)..

Quantitative (traditional criteria)	Qualitative (trustworthiness) criteria	Meaning	Strategy suggested	Strategies adopted in this study
Objectivity	Conformability (neutrality)	The findings and concepts described was founded in the data and not a result of poor analysis or preconceived assumptions	-Verbatim transcription of interviews - Practice reflexivity ³⁹⁰ -Triangulation	- Reflexivity practiced -Transcription done verbatim -accurate records of contacts and interviews maintained

5.1.7.2. Transferability

Generally, transferability refers to the shared usage of the findings of the research beyond the sphere of the study.³⁹¹ Since this research is not based upon ‘sampling units’ generalization of the case study was never intended. The case study approach promises analytical generalization that critically evaluate previously developed theory into that area (Darke, et al, 1998; Yin, 2009).³⁹² This research took various attempts to alleviate the transferability of the study. First, the central issue of the research had been South Asia’s people with the objective of literal or theoretical replication as described in Yin (2009). To conduct the interviews, a wide range of people were carefully selected from free trade regulators, policy makers of the country, government officials and other key players who are directly involved in competition within the market. It is apparent the case study of the concerned players has significantly added to the

³⁹⁰ Reflexivity refers to researcher’s continuous and systematic attention to the process and context of knowledge creation

³⁹¹ K Malterud, Qualitative research: standards, challenges, and guidelines, 358 The Lancet (2001).

³⁹² Peta Darke, et al., Successfully completing case study research: combining rigour, relevance and pragmatism 8Information Systems Journal 273(1998).

transferability of the findings of the research. Second, to maintain the integrity and intellectual rigor of the research, all the interviewees were of similar designations.

5.1.7.3. Trustworthiness

Generally, trustworthiness refers to whether the research can be used or repeated by others with the same results.³⁹³ A triangulation method had been applied to ensure the reliability of the research. The research had been elaborative as it included detailed information of various data resources, procedures and questionnaire of interviews, transcription and coding of data. Further, the researcher had been extra careful to maintain the dependability by arranging various follow-up interviews whenever has been divergent result.

5.1.7.4. Conformability

Conformability means the extent of neutrality that the researcher can attach to the research.³⁹⁴ To attain conformability the researcher took all reasonable steps to eradicate any real possibilities of bias. Throughout the research the researcher had been objective and dispassionate about the research issues and refrained influencing the interviewees by giving his personal opinions. The main objective of the interview sessions was to collect the data from the interviewees those are expert in the relevant field. The interviewees were people from a wide range of people that ensure in-depth and meticulous analysis of the research topic. The interviews were transcribed in a proper manner to maintain independence and with the focus of understanding the viewpoint of a particular group of people on a certain topic note, "Participants' recognition of the findings can also be an aspect of credibility. It is not, however, a question of

³⁹³ K Hamberg, et al., Scientific rigour in qualitative research 11 Family Practice (1994).

³⁹⁴ Marie .C. Hoepfl, Choosing Qualitative Research: A Primer for Technology Education Researchers, 9 Journal of Technology Education (1997).

verification but rather a question of conformability.”³⁹⁵ The researcher kept this on mind when summarizing the data of the interview.

5.1.7.5. Triangulation

Triangulation is defined as “a process of using multiple perspectives to clarify meaning and verifying the repeatability of an observation or interpretation” by Stake (2005, p 454).³⁹⁶ Generally, there are four kinds of triangulation such as data triangulation, investigator triangulation, methodological triangulation, and triangulation of theories (Hussey & Husey, 1997, p 74). In this research data triangulation method was used. It refers to the method where the data collection is in different times from different sources about the same subject matter. Yin (2009) observes that collecting data from multiple sources about the same subject matter helps to refine the search terms and come up with accurate results. The qualitative research method enabled the researcher to explore various resources within the triangulation method. As per Perry’s (1998) view interviews of multiple people from a wide range of people, the data was rigorously monitored and the documents were meticulously scrutinized which significantly facilitated triangulation. Further, after finishing the draft essay the researcher further went for field visit to cross check the data and see as to whether there are recent developments in this area. According to the suggestion of Stake, to find and rectify the mistakes of gathered information the researcher engaged in various discussions with both critical insiders and outsiders.³⁹⁷

³⁹⁵ Graneheim and Lundman (2004, p 110)

³⁹⁶ ROBERT .E. STAKE, MULTIPLE CASE STUDY ANALYSIS (THE GUILFORD PRESS. 2006) AND STAKE (2005, p 454)

³⁹⁷ ROBERT .E. STAKE, MULTIPLE CASE STUDY ANALYSIS (THE GUILFORD PRESS. 2006).

5.1.8. Limitations

This dissertation attempts to address a broad set of topics relating to obstacles to free trade in South Asia. The topics could, of course, have been broader still. During the research, countless related topics and intriguing perspectives have presented to respondents. Given constraints of time and capacity, it is not possible to explain and develop them for inclusion in this dissertation. The thesis would be richer for them, but it could not be completed within a reasonable time or number of pages.³⁹⁸

Many limitations were faced in conducting this research. This limitation is mainly due to the observation on the research question varies from person to person. As a result, to make an objective analysis of the issues the researcher included a wide range of people as interviewees. Further, the qualitative research method facilitated enhanced analytical generalization as opposed to drawing inferences on the chose sample. Further, the researcher faced difficulties such as personal bias, response bias and recall error during the interview phase (Patton, 2002 and Yin, 2009). Furthermore, I would like to mention few things which are my limitations for primary data sources. Initially, I do not have similar number or type of respondents from each country, which makes it difficult to know if the picture you are getting of each country is comparable; Secondly, I should tell clearly that I did not attempt to find a "representative sample of specific numbers" of officials or others from each country, and mostly based on target categories of respondents.

However, with the data triangulation method the researcher tried to reduce the errors. Moreover, when conducting the interview, the researcher faced difficulties with biased notions of some of the interviewees. These biases might be motivated by the conflict of interests' situations

³⁹⁸ Lijuan Xing, *Legal Indigenization and the WTO in Comparative Perspective* (2012) University of Kansas).

they may have been. Social desirability which ‘is the tendency of subjects to respond to test items in such a way as to present themselves in socially acceptable terms to gain the approval of others’ (King & Burner, 2000 p 81) was also observed by the researcher amongst the interviewees. This might have compromised their integrity towards the data they provided for the research. To minimize the impact of social desirability the interviewees were informed both verbally and in written form that their identity would remain anonymous and they will be de-identified in the findings of the research.

Chapter 5.2: Empirical Data Analysis

5.2.1. **Introduction:**

Greater participation of all stakeholders in decision making may build the much needed support to make SAARC a viable and vibrant organisation accountable to the aspirations of its people.³⁹⁹ The researcher's in depth questions ask for Respondents to reveal their judgments and feelings, including things that may be very personal to them. This may be difficult for Respondents. From time-to-time the experiences being explored are fresh in the Respondents' minds, whereas on other occasions recalling past involvements may be difficult.⁴⁰⁰

The researcher posed survey questions to stakeholders who work in different categories of engagement with trade issues within the SAARC countries. Respondents most often replied within a range of defined prompts, but in some cases they provided additional comments. Although most of the survey questions were close-ended, the researcher posed some open-ended questions to respondent stakeholders in particular professions and locations. Most of the respondents directly participate in international trade as professionals, often at the execution level, so their opinions are very important sources of information for policy developers who seek to identify and overcome the barriers to free trade in SAFTA. The data analysis in this chapter two parts: the Primary Data analysis focuses on the Respondents' opinions, and the Secondary Data analysis considers data taken from different international sources like World Bank, WTO, ADB, UNCTAD, etc., which provide valuable context for understanding the Primary Data.

5.2.2. **Collection of data from Primary sources:**

³⁹⁹ FICCI, *The South Asian Century: Progressing Towards Regional Integration - A Study* (January 2014).

⁴⁰⁰ Jane Sutton, Zubin Austin *Can J Hosp Pharm, Qualitative Research: Data Collection, Analysis, and Management* 2015 May-Jun; 68(3): 226–231

At present, SAARC consists of eight countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The accumulation of research data from engaged stakeholders in SAARC countries enables collection and analysis of relevant and reliable facts that reveal the barriers standing in the way of free trade among South Asian nations. This presentation of such data preserves respondent confidentiality, and no respondents are identified by name or other identifying characteristic (including their specific responses) without their verbal or written consent.

5.2.3. **Primary Data analysis:**

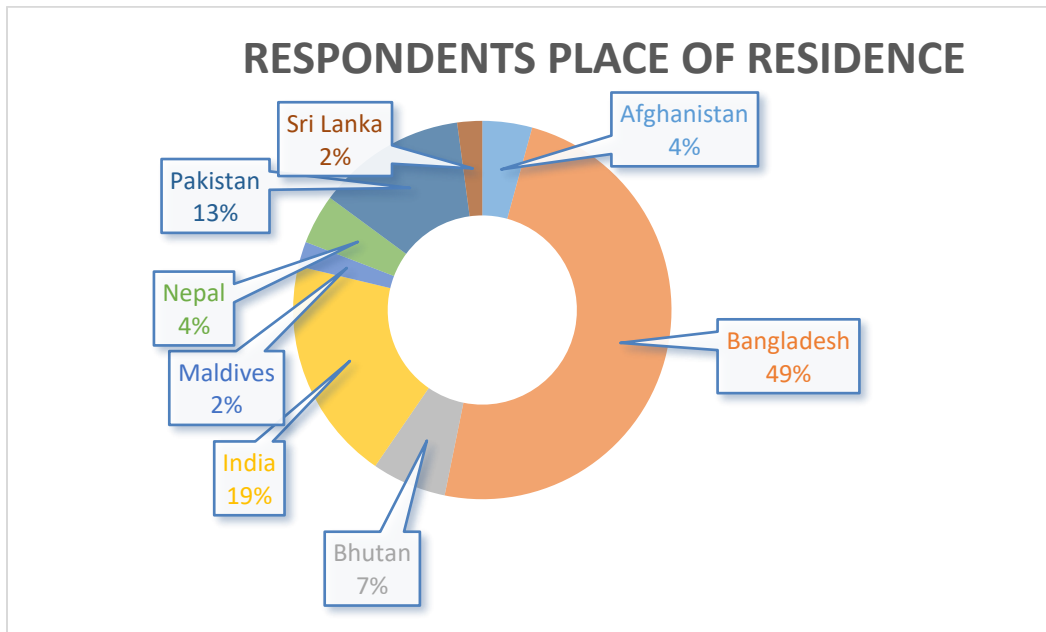
5.2.3.1. **Analysis of Respondents Answers: Country and Occupation**

The research data can be analyzed by both respondents' countries of residence and their professions.

5.2.3.1.1 Respondents' Residence:

Respondents' motherlands or actual countries of residence fall within SAARC countries, even if respondents may have been physically located in different parts of the world at the time of their responses.

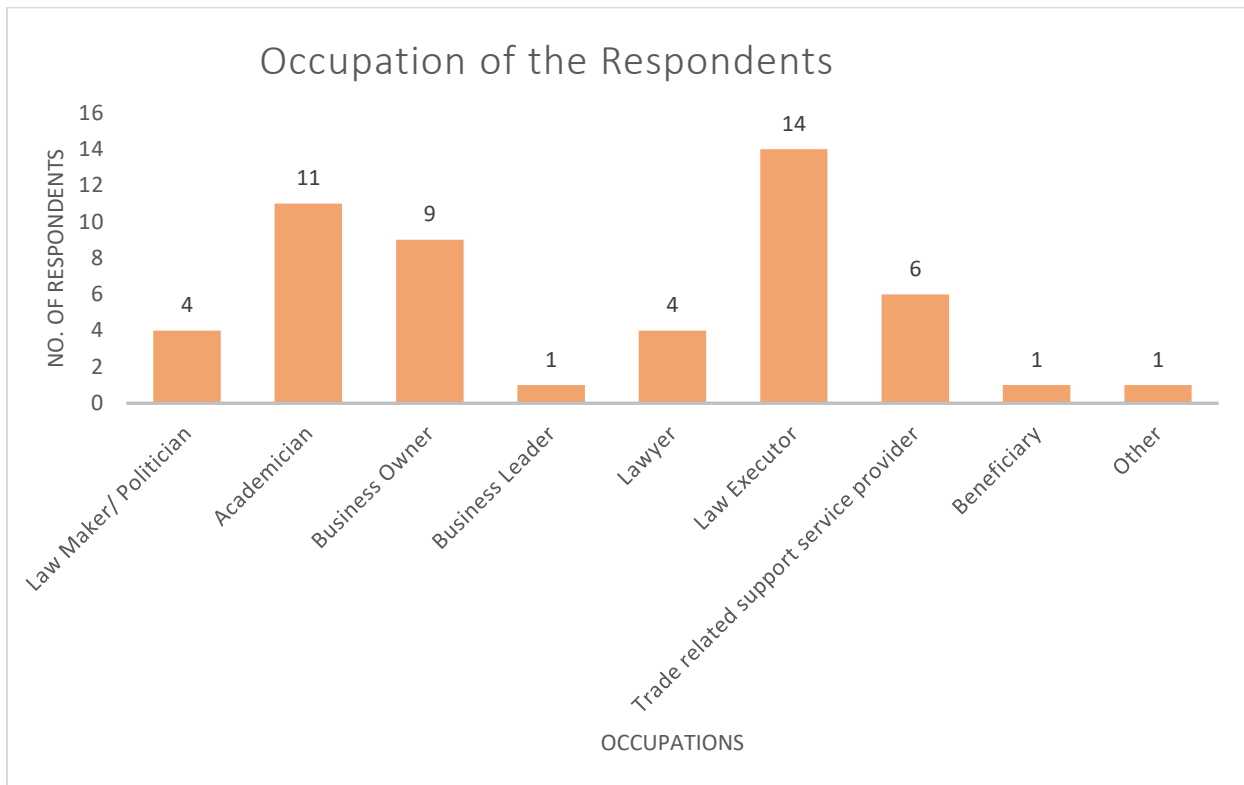
FIGURE 5: 1 RESPONDENTS' RESIDENCE



The first question asked of all respondents was their country of current residence. Figure 1 shows that most of the respondents live in Bangladesh, making up 23/47 (48.9%) of the respondent population. Sri Lanka and Maldives produced the fewest Respondents, with only 1 (2.1%) of the Respondent population.

5.2.3.1.2 Respondents' Occupations (Multiple Response):

FIGURE 5: 2 RESPONDENTS' OCCUPATIONS



Some respondents included themselves in more than one occupation category.

Respondents' occupations fall within the following 9 categories: Law Maker/Politician (8.5% of respondents), Academician (23.4%), Business Owner (19.1%), Business Leader (2.1%), Lawyer (8.5%), Law Executor (29.8%), Trade Related Support Service Provider (12.8%), Beneficiary (2.1%), and Other (2.1%).

5.2.3.2. SAFTA Barriers to Trade Experience

5.2.3.2.1 Trade Experience of Respondents:

TABLE 5: 3 TRADE EXPERIENCE OF RESPONDENTS

Serial	Issues/Options	Total Number
1	Imports	12
2	Exports	15
3	Foreign Direct Investment (FDI)	4
4	Government Service (Customs/Port)	16
5	Trade Operations (Customs/Brokers/Bankers)	6
6	Legislation of SAFTA	2
7	Participation with SAFTA related Issues (e.g., Attending Seminar)	6
8	Others	6

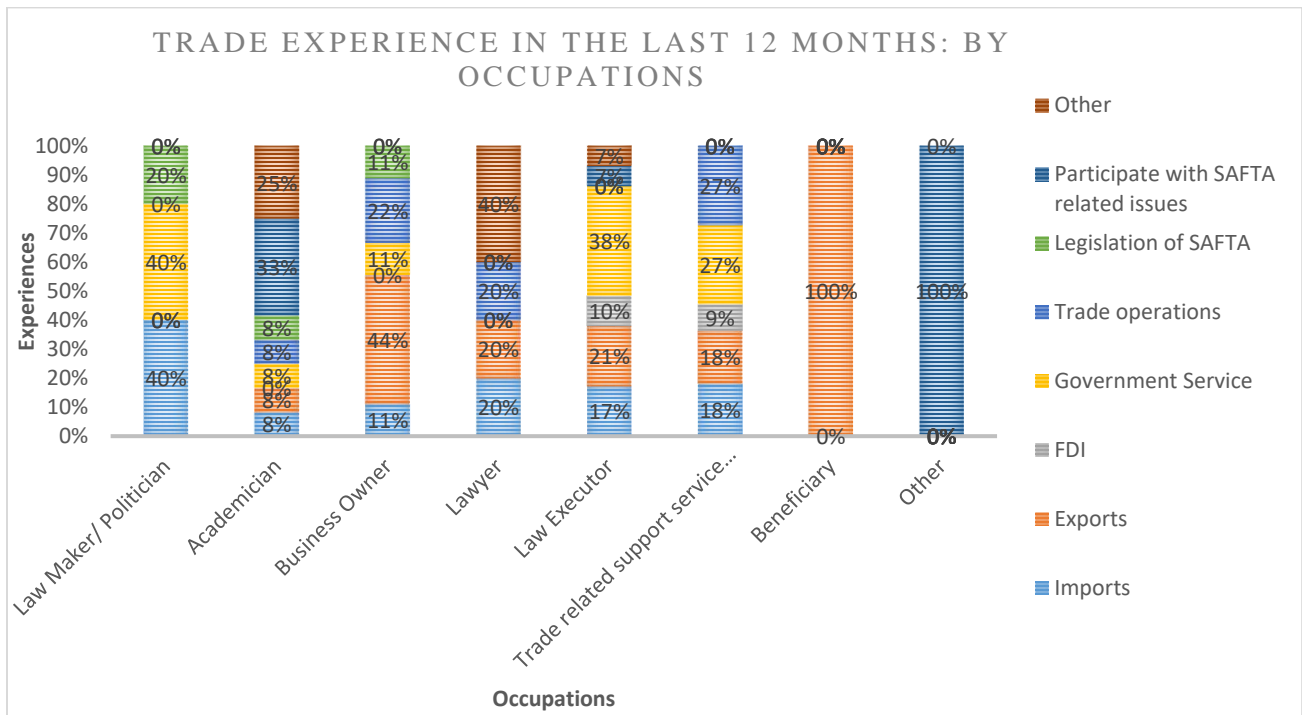
The respondents answered questions about their experience related to certain trade factors such as: Imports, Exports, FDI, Government Service, Trade Operations, Legislation of SAFTA, Participation with SAFTA Related Issues, and Others.

Import and Export are the most frequent form of trade activity irrespective of occupation. Policy level activity among respondents is not frequent, suggesting, that there is a lack of policy level exchange between SAARC countries; despite the need to address challenges in that area. The third most frequent trade activity is Government Services (Customs/Port).

Figure 5-3 (below) breaks down the trade activities in relation to occupation, focusing on the three most frequent activities. 16 (Sixteen) Respondents have trade experience in Government Services, and 15 (fifteen) Respondents have experience in Exports. Only 2 (Two) Respondents have experience in Legislation of SAFTA.

5.2.3.2.2 Trade Experience in the last 12 months: by Occupations

FIGURE 5: 3 TRADE ACTIVITY IN THE LAST 12 MONTHS



The above figure stated that majority involves with exports, in respond wise, 40% experienced with government service and imports related issues by Politicians/law maker. One-third academicians experienced by participate with SAFTA related issues, where as business owner experienced 44% through exports of their last 12 months trade experience.

5.2.3.3. Trade Barriers: By Country

This section examines the barriers faced by respondents in trading within SAARC member countries.

FIGURE 5: 4 TRADE BARRIERS EXPERIENCED BY COUNTRY

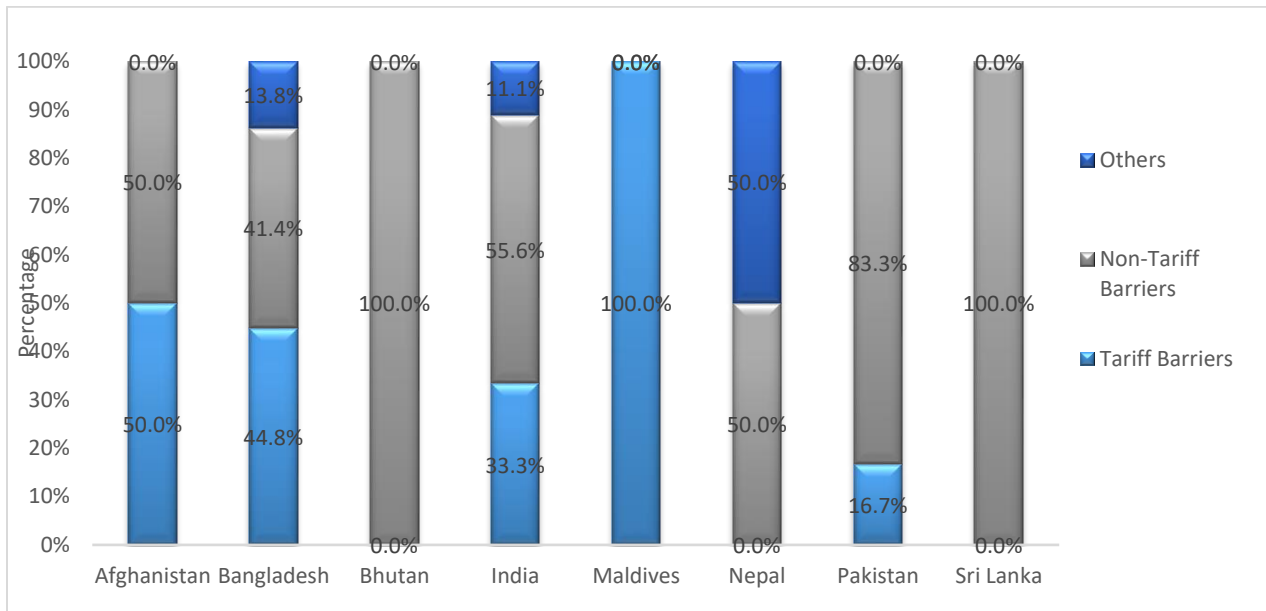


Figure 5.4 gives a holistic overview of the trade barriers experienced in each SAAARC country in response of tariff, NTBs and others experience. India and Bangladesh face all sorts of NTBs and other barriers based on past 12 months trade experience. The volume of trade undertaken by the respective countries attests to the proportion of barriers experienced by their citizens., Maldives have exclusively Tariff Barriers, while Bhutan and Sri Lanka have exclusively Non-Tariff Barriers. India and Pakistan have predominantly Non-Tariff Barriers, though in different proportions. The overall predominance of NTB warrants further discussion on the types of NTBs experienced by SAARC countries.

5.2.3.4. Trade Barriers experienced by Occupation

FIGURE 5: 5 BARRIERS EXPERIENCED BY OCCUPATION

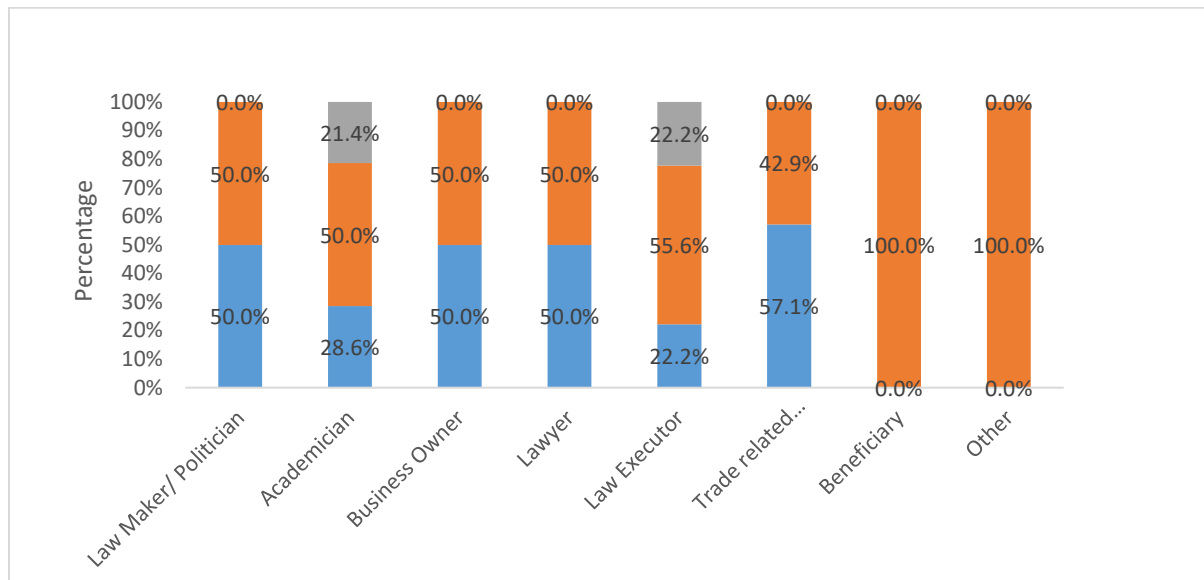
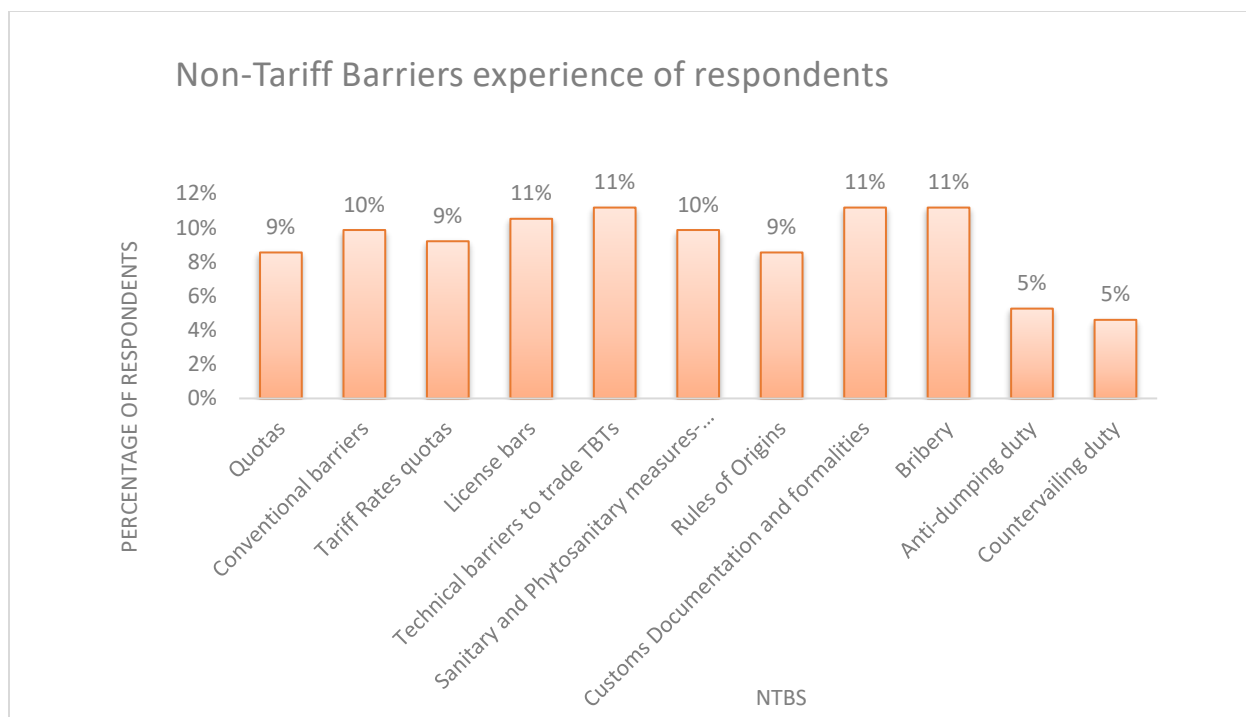


Figure 5.5 gives us a holistic overview of trade barriers experienced by respondents by occupation, reflecting the same TBs, NTBs, and other barriers as the section immediately above as they experienced directly or heard from others. Significant factors include:

- ✓ Law Makers, Business Owners, and Lawyers all experienced TB and NTBs at 50% each.
- ✓ Academicians face 50% NTBs, 28.6% TB, and the rest Other barriers to trade.
- ✓ Law Executors like Academicians face 55.6% NTB, 22.2% TB and 22.2% Other barriers.
- ✓ Beneficiaries and Other occupation holders face 100% NTBs.

5.2.3.5. Types of Non-Tariff Barriers of Respondents

FIGURE 5: 6 NON-TARIFF BARRIERS EXPERIENCE OF RESPONDENTS



NTBs make up most of trade barriers reported by SAARC states at 67.5%, whereas, TBs account for only 47.5%. Among the types of tariff barriers experienced are Ordinary Customs Duties at 64.3% and Other Customs Duties e.g., at 35.7%. The types and frequency of NTBs experienced by respondents give the impression in the bar chart above. These responses are almost evenly distributed among the categories. For instance, the most troublesome barriers are Bribery at 11%, Customs Documentation and Formalities at 11%, and Technical Barriers to Trade at 11%, following close is Others at 9% and 10% with Anti-Dumping and Countervailing Duties being 5% of the barriers.

Comparison of survey results identifying types of NTBs by respondent occupation reveals the following:

- Law Makers face most of their barriers in License Bars and TBTs at 20% each. This is the highest among all the other occupations for TBTs, although, other occupations face about 20%

barriers in TBTs. For the other categories, Law Makers face an average of 6.3% in each, and in Sanitary and Phytosanitary Measures 12.5%.

- Academicians face most of their barriers in Tariff Rates Quotas, License Bars, and Bribery, at 13.3% each and the least in Countervailing Duty at 3.3%. For Tariff Rates Quotas, they are the second highest compared to Business Owners who have a maximum of 13.6% barriers in this category. In the Other category they average a 6.7% barrier rate.
- Business Owners face their highest barriers in Conventional Barriers, Tariff Rates Quotas, License Bars, Customs Documentation and Formalities, and Bribery all at 13.6%. For Tariff Rate Quotas, 13.6% is the highest in this category among all occupations. They do not face Anti-Dumping Duty and Countervailing Duty barriers.
- Lawyers face their highest barriers is Conventional Barriers, Tariff Rates Quotas, License Bars, TBTs, Customs Documentation and Formalities, Bribery, and Anti-Dumping Duty, all at 11.8%. In case of Anti-Dumping Duties, 11.8% is the highest percentage of NTB compared to all other occupations. However, Lawyers face no barriers in Countervailing Duty.
- Law Executors face the largest number of barriers in Rules of Origins and Bribery at 11.7%. This is the highest percentage of barriers faced by Law Executors in comparison to any other occupation. Law Executors face the least number of barriers in Anti-Dumping Duty at 5%.
- Trade related occupations face the most of their barriers in Conventional Barriers at 14.3%, Sanitary and Phytosanitary Measures at 14.3%, Bribery at 14.3%, and Customs Documentation and Formalities at 28.6%. These are the maximums among all the other occupations. However, Trade related occupants face no barriers regarding Quotas, Tariff Rates Quotas, Rules of Origins, Anti-Dumping Duty, or Countervailing Duty.

- Beneficiaries face barriers of 9.1% in all NTB categories listed. 9.1% is the maximum possible barrier in the Countervailing Duties Category.

5.2.3.6. Impact of Other Trade Problems on SAARC Countries

FIGURE 5: 7 MOST PRESSING PROBLEMS BY COUNTRY

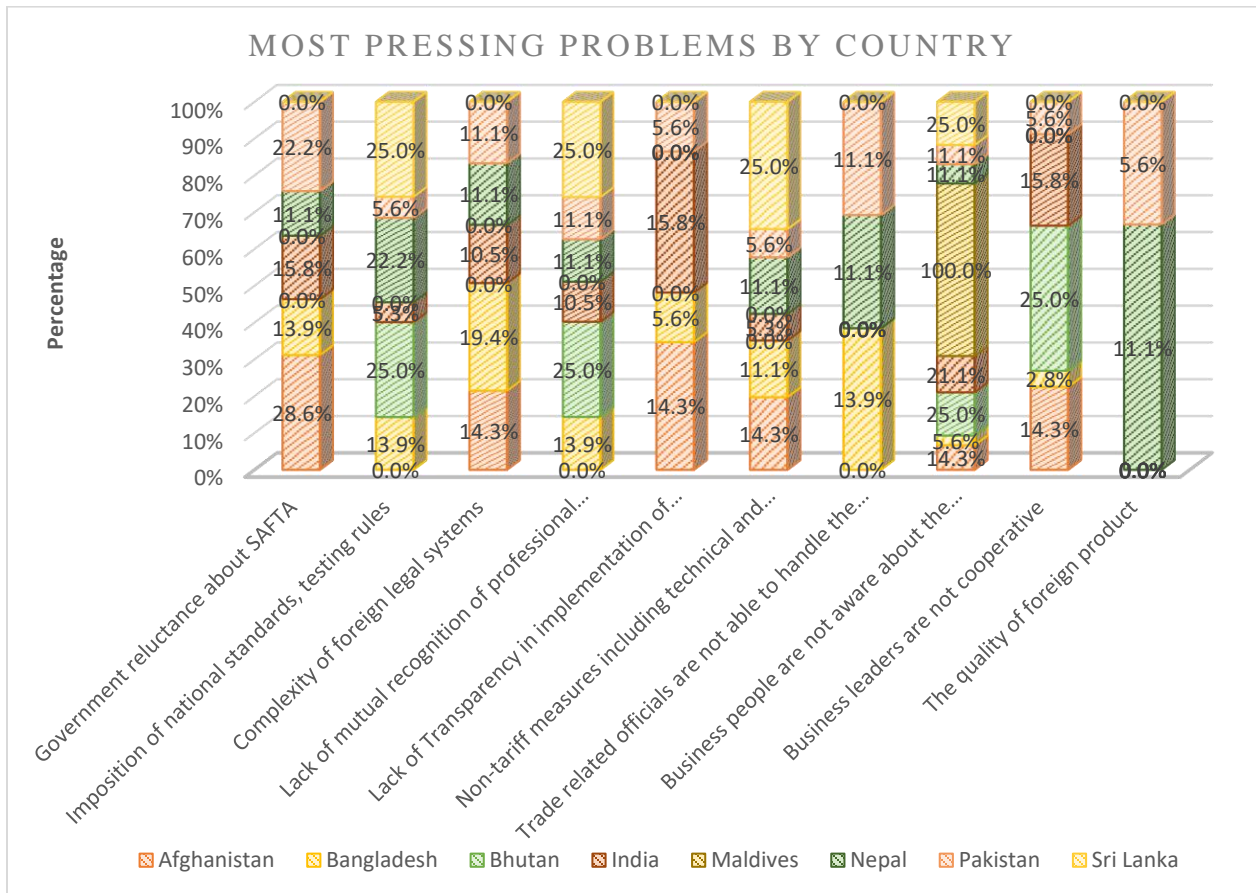


Figure 5:7 shows the various problems faced by SAARC countries that are not directly related to trade legislation or tax issues. The predominant problem, outside of non-tariff and tariff barriers, is lack of centralized testing standards. The lack of standards results in different testing procedures in each country, which in turn create various impositions, bans, and other problems hampering the flow of goods among SAARC countries. These problems are preventable with proper dialogue among Member Countries and a commitment to develop a

uniform testing standard ensuring fair movement of goods and services among SAARC member countries.

- The most significant problem in this miscellaneous category most commonly identified by respondents is Government Reluctance about SAFTA, identified by 15% of respondents. Other commonly identified problems include Complexity of Foreign Legal Systems (xx% of responses), then Business People not being Aware of Opportunities Under Trade Agreements (13%), Lack of Mutual Recognition of Professional Qualifications (12%), 11% of respondents are in support of Imposition of National Standards, and Technical and Physical Barriers (9%). The Quality of Foreign Products is the least problematic issue with only 2% of respondents believing it is a problem.
- With respect to immigration-related services, 29.6% of respondents are neutral about Visa Processing Time, 3% are satisfied with such services. With respect to Visa Staff, 37% are neutral about their service, and 44.8% are neutral about Immigration Service at the border. With respect to the overall immigration process, 41.7% of respondents are neutral. On average, about 15% of respondents are satisfied and the same percentage dissatisfied with immigration related services.
- With respect to other trade-related services, 43.8% of respondents are dissatisfied with VAT/Income Tax Offices and 40% are dissatisfied with Trade License Issuing Authority. On the other hand, 40.6% are satisfied with and 43.8% are neutral about with Bank Services, and 53.1% are neutral about Import/Export Licensing Issuing. Neutrality among respondents stands at 56.3% toward the Local Chambers of Commerce, 53.15% about Port Services, 50% about Transportation Services, and 40.6% neutral toward Trade Related Brokers.
- Sixty-nine percent (69%) of respondents believe that Lack of Harmonization of Regulations Among Different Regions is not a problem faced in accessing the markets of other partners.

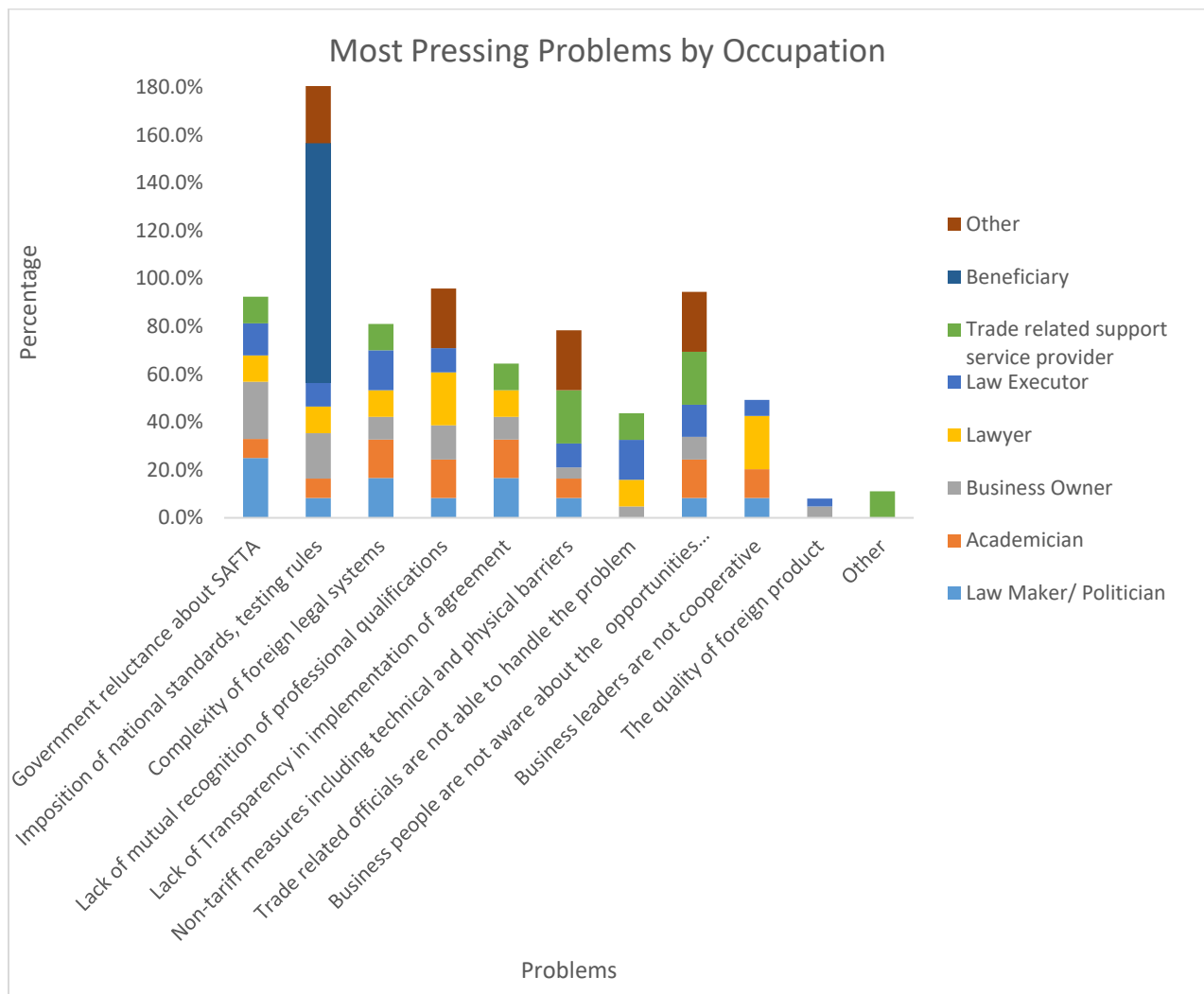
- With respect to differences in regulatory standards among SAARC countries, 35.7% of respondents believe that Lack of Harmonization of Regulators Among Different Regions presents a barrier to trade. However, 64.3% believe that this is not a barrier to trade. Moreover, 71.4% believe the Free Trade Agreement in South Asia Makes Trading Across Borders Easier.

5.2.3.7. Other Trade Problems with Greatest Impact by Country

- Among respondents who identify the category of Government Reluctance about SAFTA, Afghanistan has the maximum share of the problem at 28.6% followed by Pakistan at 22.2%.
- When considering Imposition of National Standard and Testing Rules Bhutan and Sri Lanka are the most frequently identified as resistant at 25% of respondents and Nepal at 22.2%. Additionally, Bhutan and Sri Lanka pose barriers arising from the Lack of Mutual Recognition of Professional Qualifications according to 25% of respondents.
- Bangladesh faces the greatest Complexity of Foreign Legal Systems, a barrier there identified by 19.4% of respondents.
- Sri Lanka faces the most Non-Tariff Measures, including technical and physical barriers, identified by 25% of Respondents.
- Business people not Aware about the Opportunities Exist Under Free Trade Agreement is most prevalent 100% of respondent's resident in the Maldives identified this as a barrier in Maldives. Bhutan and Sri Lankas at 25%, and India, identified by 21.1%.
- 25% of all respondents said that Business Leaders in Bhutan are not cooperative.

5.2.3.8. Most Pressing Problems by Occupation

FIGURE 5: 8 MOST PRESSING PROBLEMS BY OCCUPATION



- Among Law Maker respondents, 25% face the problem of Government Reluctance about SAFTA. This is a greater problem for Law Makers than any other occupation, with a close second among Business Owners, 23.8% of whom reported this difficulty.
- Among Academicians, 16% face the problem of Complexity of Foreign Legal Systems, surpassed only by Law Executors, 16.7% of whom report facing this barrier.
- Among Lawyers, 22.2% face the problem of Business Leaders are not Cooperative, the most in any occupation.

- Law Executors most frequently face the problems of in Complexity of Foreign Legal Systems and Trade Related Officials are not able to Handle the Problem, each category reported by 16.7% of Law Executor respondents.

SAFTA Article 7 laid a two-stage tariff reduction program to achieve a tariff regime of below 5% for India, Pakistan, and Sri Lanka by 2015, and for the remaining Member States by 2018.⁴⁰¹ Member States have made inadequate progress toward effecting these stipulated tariff reduction programs.⁴⁰² Also, there have been reservations that free trade is unattainable even with the full implementation of the proposed tariff reduction program because the Contracting States are insisting upon retaining a long list of exceptional sensitive products in efforts to shield their specific economic sectors from SAFTA's duty exemption.⁴⁰³

⁴⁰¹ Divesh Kaul, *Eliminating Trade Barriers through Preferential Trade Agreements: Perspectives from South Asia*, (2017).

⁴⁰² *Intra-Regional FDI and Economic Integration in South Asia: Trends, Patterns and Prospects*. (February 2013).

⁴⁰³ *Id.* at.

5.2.3.9. Visa Related Service

FIGURE 5: 9 VISA RELATED SERVICE

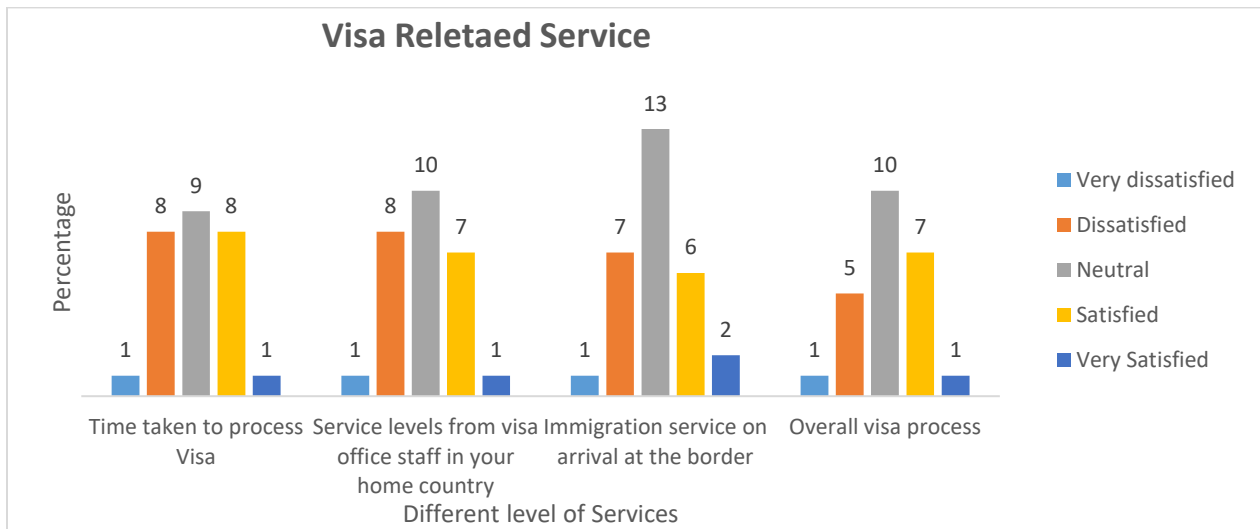


Figure 5:9 shows what survey respondents think about the visa processing system within SAARC Member Countries. Respondents were questioned about their satisfaction in four different service categories: time to process visa, service levels from visa office staff in Home country, immigration services on arrival at the border, and overall visa process. This graph shows that people are somewhat neutral when it comes to the Overall Visa Process of SAARC Member Countries. However, the opinions relating to Time Taken to Process Visa vary significantly, as an equal number of respondents think it is Satisfactory and Dissatisfactory, perhaps implying inconsistency in processing time among Member Countries. Service Levels from Visa Office Staff in Your Home Country shows similar results, as does the Immigration Services on Arrival at the Border category.

5.2.3.10. Respondents’ opinions about implementation of SAFTA Article 7 requirements

Article 7 of SAFTA is important because there Contracting States agreed to consider, other measures to support and complement SAFTA for mutual benefit, in addition to SAFTA’s other trade facilitation measures.

TABLE 5: 4 RESPONDENTS OPINIONS ABOUT THE IMPLEMENTATION OF SAFTA ARTICLE 7 REQUIREMENTS

Key Elements of SAFTA Article 7	VD	D	N	S	VS
Harmonization of standards, reciprocal recognition of tests and accreditation of testing laboratories	5	30	25	30	10
Certification of products by a manufacturing country	5	25	20	45	5
Simplification and harmonization of customs clearance procedure	10	25	30	25	10
Harmonization of national customs classification based on HS coding system	5	25	30	40	0
Customs cooperation among member countries to resolve disputes at customs entry points	10	25	20	40	5
Simplification and harmonization among member countries on import licensing and registration procedures	10	30	30	25	5
Simplification among member countries of banking procedures for import financing	5	25	30	40	0
Transit facilities for efficient intra-SAARC trade	15	30	20	30	5
Removal of barriers to intra-SAARC investments	20	25	30	20	5
Macroeconomic consultations	11	21	42.	26	0
Rules for fair competition and the promotion of venture capital	15	40	20	25	0
Development of communication systems and transport infrastructure	15	25	30	25	5

(Note: VD=Very Dissatisfied; S=Satisfied; N=Neutral; S=Satisfied; VS=Very Satisfied)

Table 5:4 shows, most of the item respondents are 25% (around) in between dissatisfied-neutral-satisfied. This is also upsetting Very few respondents are in-between very dissatisfied or very satisfied. With respect to one of the important Article 7 requirements—harmonization of standards, reciprocal recognition of tests and accreditation of testing laboratories—30 percent are satisfied and same percentage dissatisfied, 5 percent are highly dissatisfied, 10 percent are very satisfied, and 25 Percent Respondents are neutral.

With respect to another important element of Article 7, simplification and harmonization of customs clearance procedure 25% of all respondents are satisfied and the same percentage dissatisfied, 30% are neutral and 10% each are highly satisfied and highly dissatisfied. All eight SAARC Member Countries are the member of the World Customs Organization,⁴⁰⁴ so most of the customs procedures are similar within the Member Countries. Respondents answered survey questions regarding satisfaction with “Harmonization of national customs classification based on HS coding system” and “Customs cooperation among member countries to resolve disputes at customs entry points,” and 40% are satisfied and 25% dissatisfied with these efforts, whereas almost 25% of respondents are neutral.

One of the more significant dynamics for free trade effective are Simplification and harmonization among member countries on import licensing and registration procedures; and Simplification among member countries of banking procedures for import financing. Among the respondents 30% are neutral, 30% are satisfied for licensing and registration procedures.

However, 40% respondents are satisfied, and no one is highly satisfied besides 10% are highly dissatisfied with banking procedure. In their consideration of “Transit facilities for efficient intra-SAARC trade” 15% of respondents are highly dissatisfied, 30% are either satisfied or dissatisfied, only 5% are highly satisfied, and 20% are neutral. With respect to “Removal of barriers to intra-SAARC investments,” 20% of respondents are highly dissatisfied and same percentage satisfied, 30% of respondents are neutral, and only 5% are highly satisfied.

⁴⁰⁴ See more at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>

5.2.3.11. Experience with trade support organizations

FIGURE 5: 10 EXPERIENCE WITH TRADE SUPPORT ORGANIZATIONS



Figure 5:10 depicts the respondents' experience with the various stakeholders related to trade and ancillary services. Respondents' high dissatisfaction with organizations related to issuing license and collecting VAT/income tax is alarming. By contrast, the only definitively satisfactory experience is related to banks, which are overwhelmingly privatized in this region, implying relative state inefficiency when it comes to providing trade-related services.

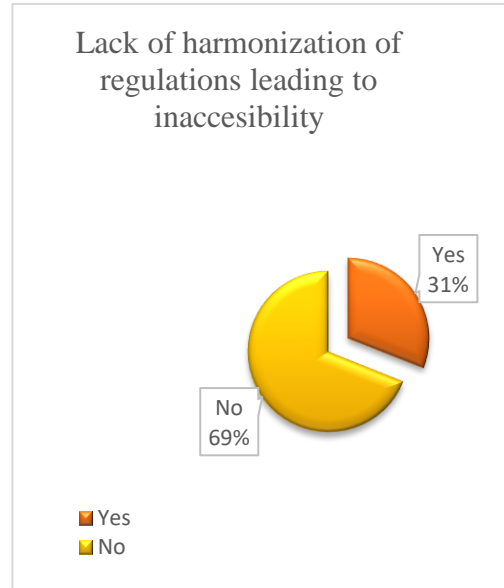
Respondents' attitudes toward services related to container and transport are generally neutral.

5.2.3.12. SAFTA Regulatory Harmonization

5.2.3.12.1. Lack of harmonization of regulations leading to inaccessibility

On the issue of lack of regulatory harmonization (e.g., maintenance of separate regulations by each member country in addition to federal regulations), 69% of respondents believe this factor is not hampering accessibility to markets. This implies that the regulations in place are beneficial to keep the markets competitive and ensure quality products enter the market after going through the official channels, tax payments, and payment of other state and federal fees.

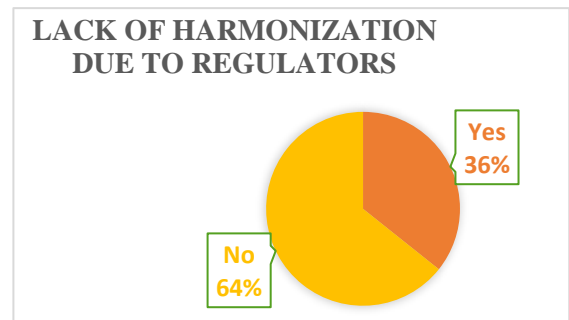
FIGURE 5: 11 SAFTA REGULATORY HARMONIZATION



5.2.3.12.2. Lack of harmonization due to regulators

When surveyed for the cause of lack of regulatory harmonization, the majority of the respondents (64%) believes that it is not due to regulators, thus implying other root causes for the lack of harmonization, which results in the application of different standards in the sale of goods and services among different SAARC countries.

FIGURE 5: 12 HARMONIZATION DUE TO REGULATORS



5.23.13. Trade Related Religious Issues

5.2.3.13.1 Trade barriers based on religion by occupation

FIGURE 5: 13 TRADE BARRIERS BASED ON RELIGION BY OCCUPATION

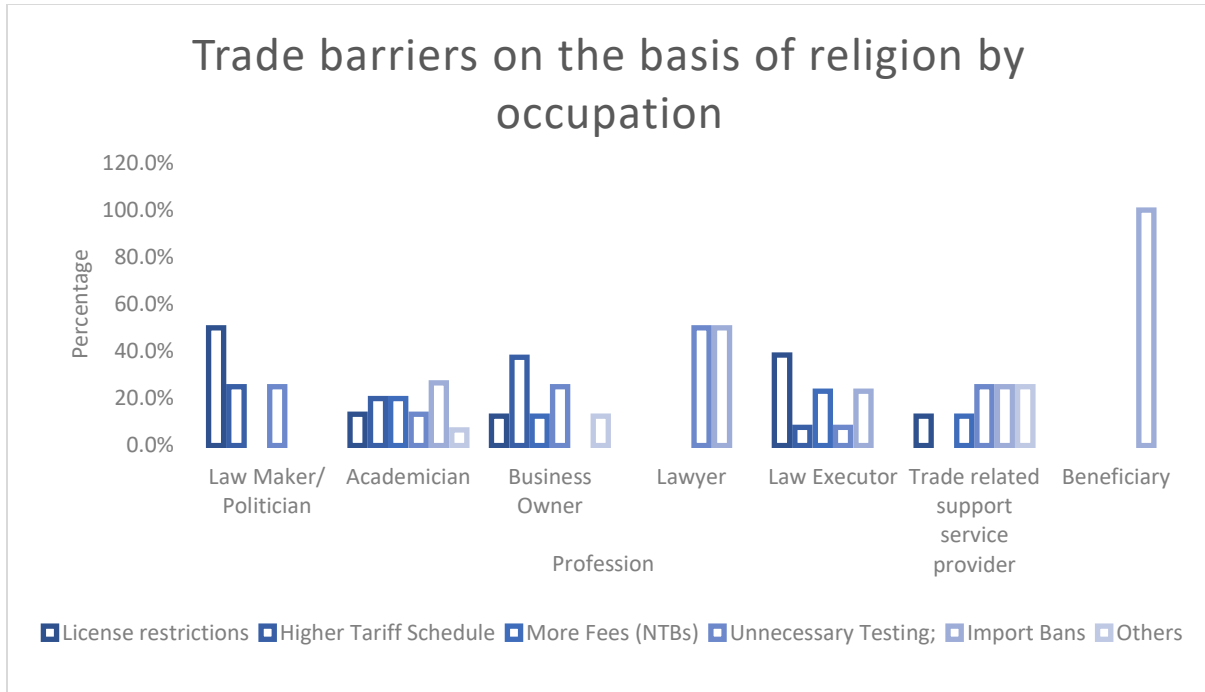


Figure 5:13 depicts Trade Barriers based on religion by occupation. Significant observations include:

- License Restrictions account for 50% of the trade barriers faced by Law Makers. Additionally, they account for 38.5% of the trade barriers faced by Law Executors.
- Higher Tariff Schedules account for 37.5% of the trade barriers faced by Business Owners.
- Import Bans constitute 100% of the trade barriers faced by Beneficiaries and 50% of the trade barriers experienced by Lawyers. Fifty percent (50%) of respondent Lawyers also face Unnecessary Testing. Academicians face an array of trade barriers, including predominantly Import Bans at 26.7% of Academician respondents, Trade Related Issues at 25%, and Unnecessary Testing at 25%.

5.2.3.13.2. Trade Barriers Based on Religion by Country

FIGURE 5: 14 TRADE BARRIERS BASED ON RELIGION BY COUNTRY

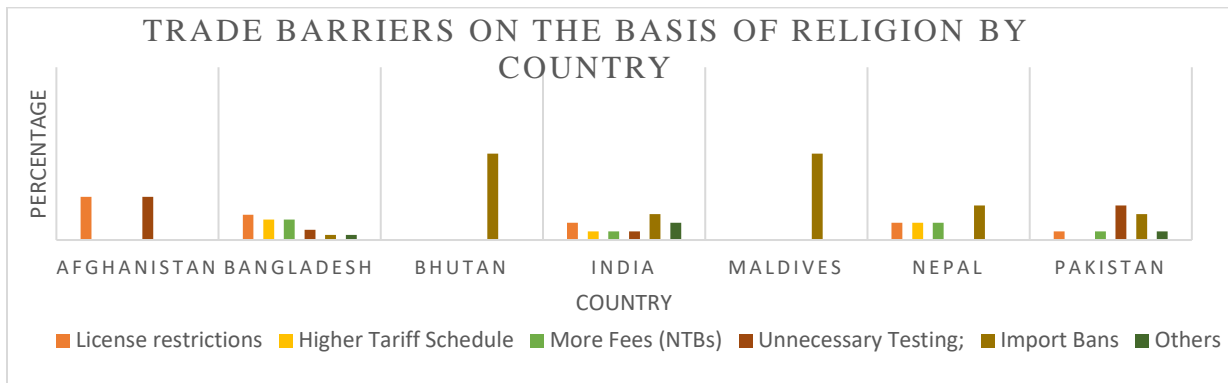


Figure 5:14 depicts trade barriers based on religion by country. According to respondents:

- Afghanistan poses the most frequently identified barriers by religion in License Restrictions at 50% and Unnecessary Testing at 50% of respondents.
- Bangladesh poses religion-based License Restrictions, according to 29.4% of respondents.
- The religion-based trade barrier most frequently identified by respondents is Import Bans, with 100% of respondents identifying such barriers in Bhutan and Maldives, Nepal at 40%, and India at 30%.
- Pakistan poses significant barriers by Unnecessary testing, identified by 40% of respondents.

5.2.3.13.3. Trade Barriers Due to Religion by Respondents

FIGURE 5: 15 TRADE BARRIERS DUE TO RELIGION BY RESPONDENTS

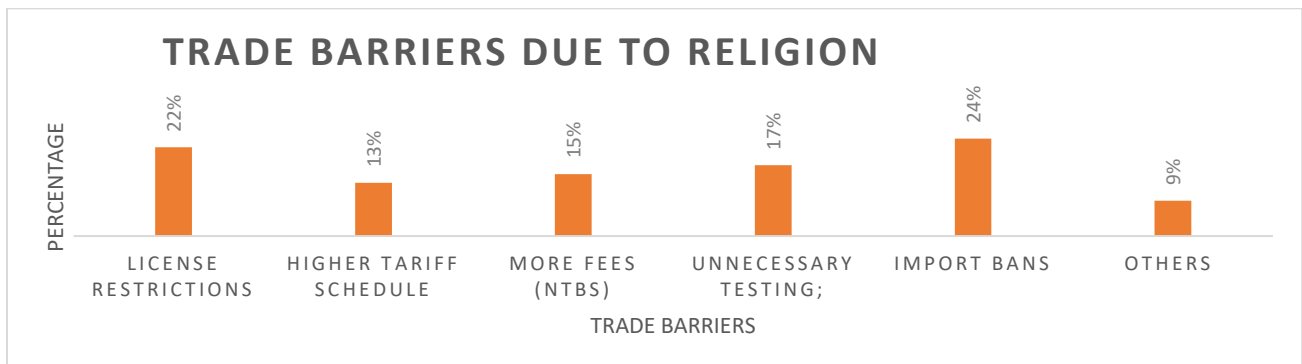
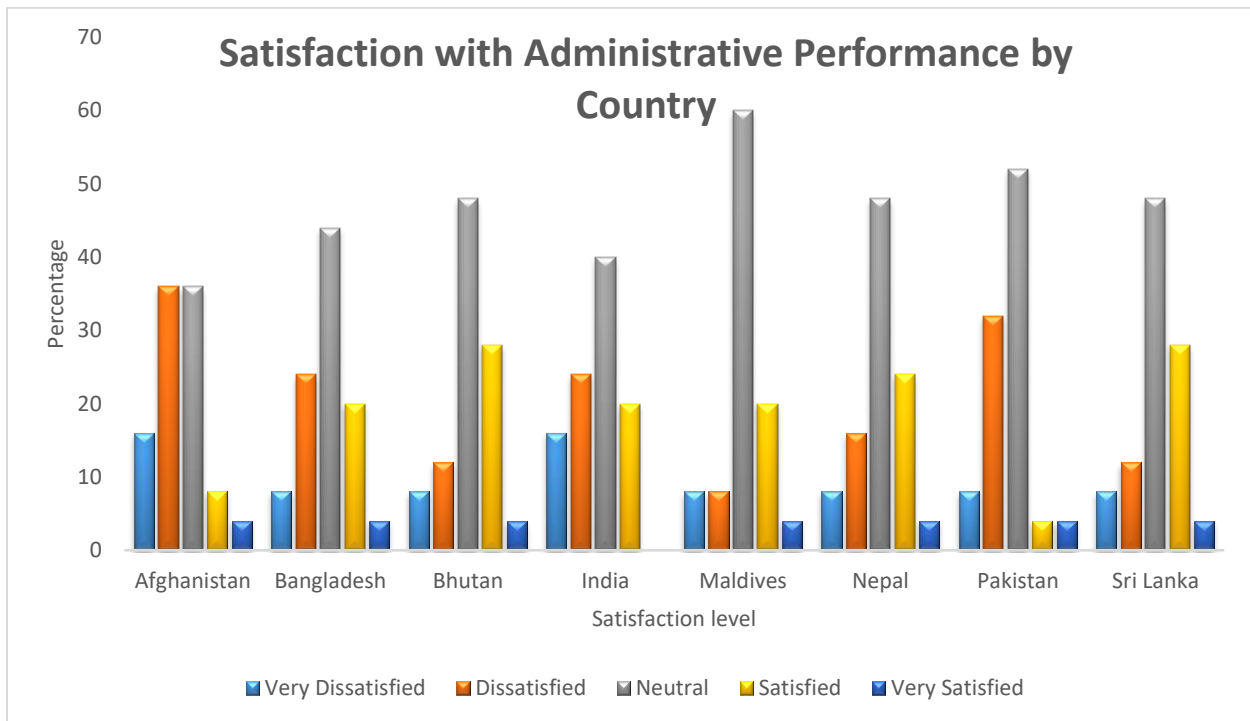


Figure 5:15 depicts restrictions respondents have experienced due to religion. The restriction reported by the most respondents is Import Bans at 24%, License Restrictions 22%, NTBs 15%, Higher Tariff 13% and Others 9%.

5.2.3.14. SAFTA Policy and Support Services

5.2.3.14.1. Satisfaction with Administrative Performance by Country

FIGURE 5: 16 SATISFACTION WITH ADMINISTRATIVE PERFORMANCE BY COUNTRY



- Sixteen percent (16%) of respondents from Afghanistan and India are very dissatisfied with SAARC countries’ administrative performance. In Afghanistan, 36% are dissatisfied, 36% are neutral, 8% are satisfied, and 4% are very satisfied. Among respondents from each nation, only 4% are very satisfied with the administrative performance and 8% are very dissatisfied with the administrative performance, except India and Afghanistan. Apart from Afghanistan, 40-60% of respondents are neutral about their opinions regarding performance. Maldives has the greatest number of neutral respondents.

- Economic benefits are the greatest concern taken in to consideration before entering a FTA as reported as maximum by 26% of respondents.
- Twenty-three percent (23%) of respondents believe that the greatest concern to be considered before entering an RTA/FTA is the Size of the Trade Partner, 13% each believe it is the Neighboring Country and Relevant Culture and Practice, 12% focus on Complementarities of Products, 8% focus on the Same Membership of International Organizations, and 5% believe it is whether the trade partner has a Democratic Political Government.

5.2.3.14.2. Opinions Regarding Fulfillment of SAFTA Objectives

FIGURE 5: 17 OPINIONS REGARDING FULFILLING SAFTA OBJECTIVES

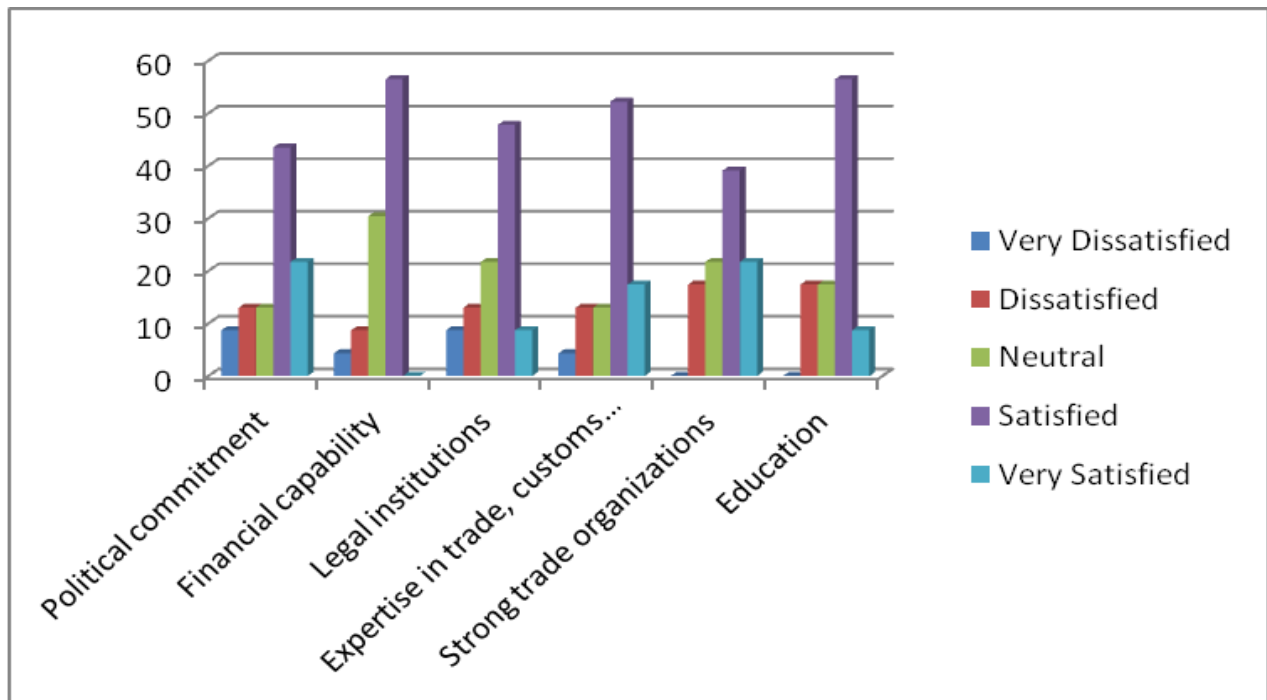


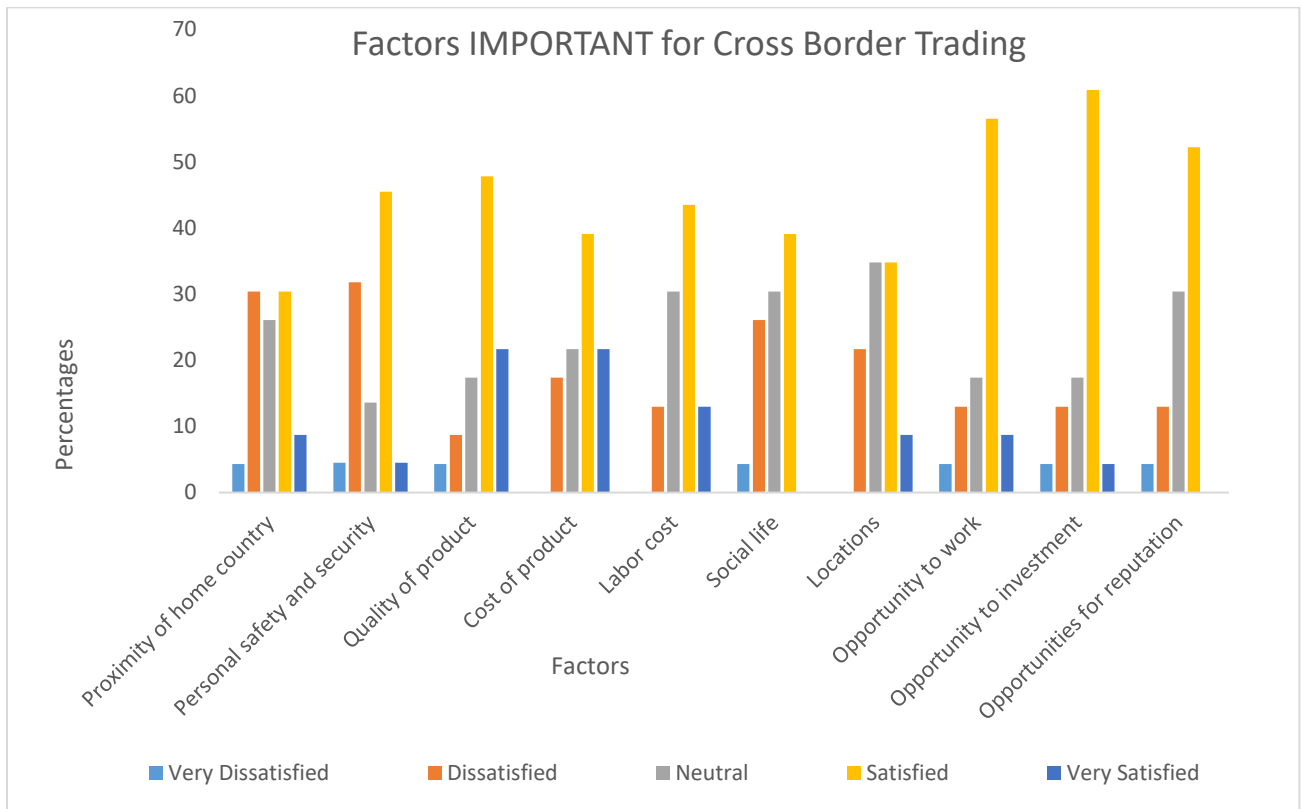
Figure 5:17 illustrates the respondents' opinions regarding fulfillment of SAFTA objectives.

- ✓ This chart shows that the respondents are satisfied in all sectors especially with Financial Capabilities and Education at 56.5%. All the categories show that 39% or more of respondents are satisfied across all SAFTA objectives.

- ✓ No one is very satisfied with the fulfilment of Financial Capability objectives, or very dissatisfied with the fulfillment of Strong Trade Organizations and Education objectives. However, overall, they are dissatisfied about them 8.7%, 17.4% and 17.4% respectively. An average of 20% of the respondents are neutral about all the categories.
- ✓ Respondents registered the highest level of dissatisfaction regarding Article 7 in Removal of Barriers to Intra-SAARC Investments. Twenty percent (20%) of respondents believe removal was wrong.
- ✓ Fifteen percent (15%) of respondents are very dissatisfied with progress in the subcategories of Transit Facilities and Rules for Fair Competition and the Promotion of Venture Capital, Development of Communication Systems, and Transport Infrastructure.
- ✓ On average respondents are dissatisfied with all the categories at 25%. A maximum of 42.1% are neutral about progress with Macroeconomic Consultations.
- ✓ A maximum of 45% are satisfied with progress in Certification of Products by a Manufacturing Country.
- ✓ Only an average of 5% are very satisfied with the categories of progress surveyed.

5.2.3.14.3. Opinions Regarding Important Factors for Cross Border Trading

FIGURE 5: 18 OPINIONS REGARDING IMPORTANT FACTORS FOR CROSS BORDER TRADING



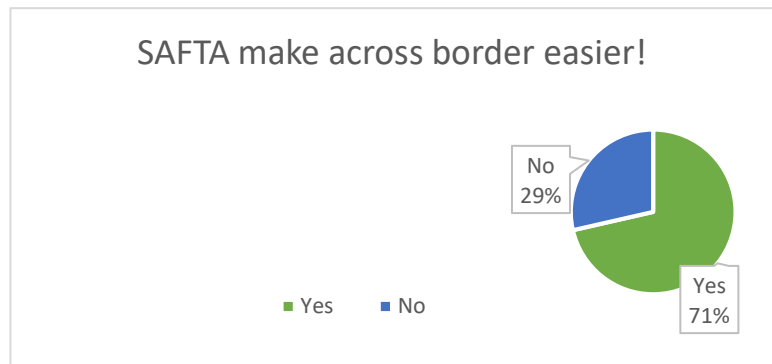
- Overall the respondents are satisfied with the factors important to enable cross border trading. They are the most satisfied with Opportunity to Work at 56.6% of respondents, Opportunity for Invest at 60.8%, and Opportunities for Reputation at 52.2%.
- They are largely dissatisfied with Proximity of Home Country at 30.4% of respondents and Personal Safety and Security at 31.8%. No one is very dissatisfied with Cost of Product, Labor Cost, and Location, or very satisfied with Social Life, and Opportunities for Reputation.
- Law Makers/have 40% experience Imports, 40% in Government Service, and 20% in Legislation of SAFTA. They have none in all the other categories.

- Academicians have 8% experience in Imports, Exports, Government Services, Trade Operations, and Legislations of SAFTA in the last 12 months. Additionally, 33% Participated with SAFTA related issues and 25% with others. No academicians had experience with FDI.
- Business Owners have 44% experience in Exports.
- The maximum Law Executors have experienced with Government Services 38%.
- 27% of Trade related support services has experienced in Government Services and Trade Operations.
- 100% of Beneficiaries have experience in Export.
- 100% of Other have experience in Participation with SAFTA related businesses.

5.2.3.15. SAFTA make across border easier?

As for the overall impact of SAFTA in making cross border trade easier 71% respondents believe it plays a positive role creating easier cross border trade.

FIGURE 5: 19 RESPONSE OF ACROSS BORDER ISSUES



5.2.3.16. Priorities Ought to Govern FTA by Occupation:

FIGURE 5: 20 PRIORITIES OUGHT TO GOVERN FTA BY OCCUPATION

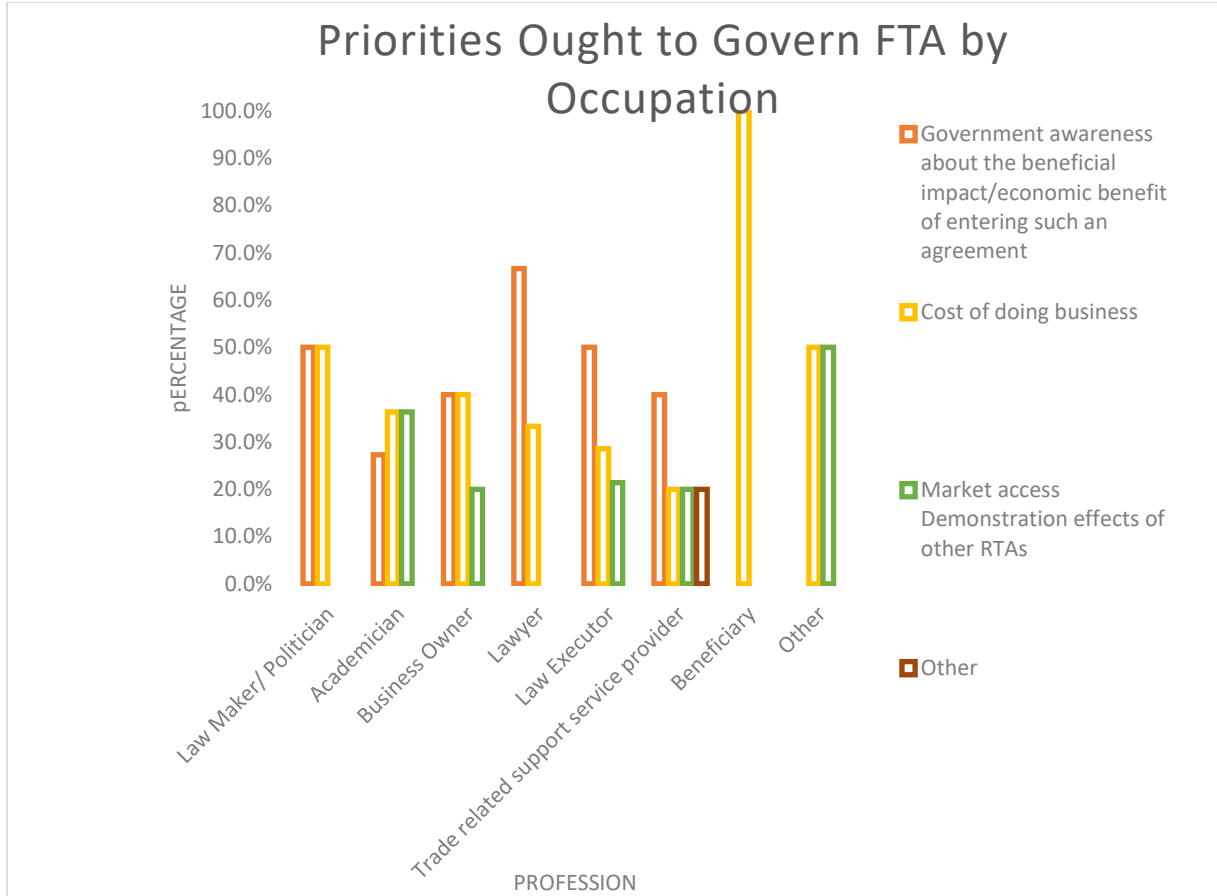


Figure 5: 20 shows respondent’s opinions about what Priorities Ought to Govern FTA by occupation, identifying the highest priorities for each occupation. For instance, Law Makers identify Government Awareness about the Beneficial Impact/Economic Benefit of Entering Such an Agreement and the Cost of Doing Business as equally important (50%) priorities to govern the FTA. The other categories (Market access demonstration effects of other RTAs and others) are not priorities for Law Makers. Beneficiaries prioritize the Cost of Doing Business as the only important priority.

5.2.3.17. Priorities ought to govern FTA by Country:

FIGURE 5: 21 PRIORITIES OUGHT TO GOVERN FTA BY COUNTRY

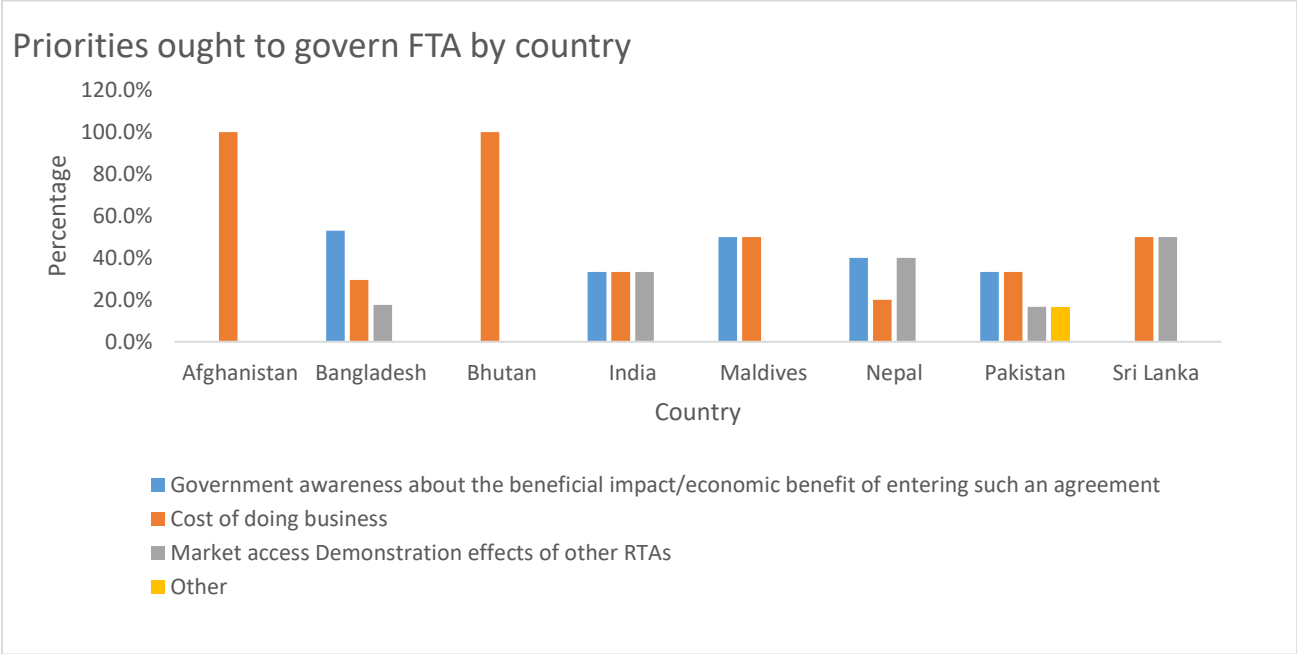


Figure 5:21 depicts priorities that respondents believe ought to govern FTAs by Country.

5.2.3.18. Outlook for SAFTA:

- 92.3% of respondents believe that barrier removal will impact cross-border purchases and sales, whereas 7.7% believe nothing will change.

- 84.6% of respondents believe that price competitiveness will increase on the removal of these barriers and 7.7% believe there will be no change or removal of these barriers would reduce price competition.
- 73.1% of respondents believe that SAARC currency is important for better free trade and 26.9% believe it is not.
- 92.3% believe that SAFTA can boost overall economic growth and the other 7.7% believe otherwise.

5.2.3.18.1. Outlook for SAFTA by Occupation,

- Law Makers have the most experience in trade Imports within the last 12 months at 40% of respondents and Beneficiaries and Others have the least or no experience.
- Beneficiaries have the most experience in trade Exports at 100% of respondents followed by 44% of Business Owner respondents.
- Only Law Executors at 10% of respondents and Trade Related Occupants at 9% have experience in FDI within the last 12 months.
- Law Makers have the most experience in Government Services at 40% of respondents followed by 38% of Law Executors, 17% of Trade-Related Businesses, 11% of Business Owners, and 8% of Academicians. Lawyers, Beneficiaries, and Others have no experience in Government Services.
- Trade-Related businesses have the most experience in Trade Operations at 27% of respondents, followed by 22% of Business Owners, 20% of Lawyers, and 8% of Academicians. Law Makers, Law Executors, Beneficiaries, and Others have no experience in Trade Operations.

- Law Makers have the most experience in Legislation of SAFTA at 20% of respondents followed by 11% of Business Owners and 8% of Academicians. All other occupations have no experience with Legislation of SAFTA in the past 12 months.
- Only one respondent in “Other” had 100% of experience in Participation with SAFTA Related Issues followed by 33% of Academicians and 7% of Law Executors at 7%. No other occupations have experience with Participation with SAFTA Related Issues.

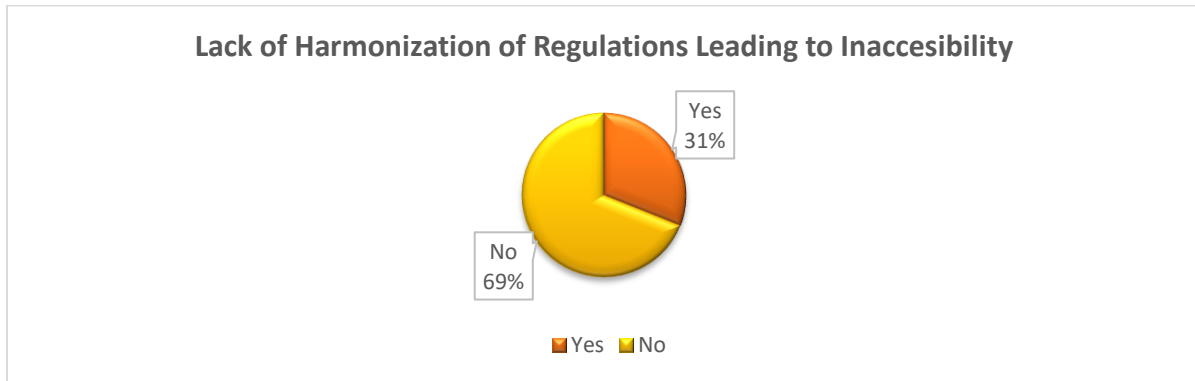
5.2.3.18.2. Outlook for SAFTA by Country

- Fifty percent (50%) of respondents from Afghanistan has been involved with Imports and 50% have been involved in Government Services under SAFTA.
- Among respondents from Bangladesh, 26% have been involved in Exports, 23% in Government Services, 15% in Imports, 10% in FDI, 8% in Trade Operations, 8% in Participation with SAFTA Related Issues, and 3% in Legislation of SAFTA.
- Among respondents from Bhutan, 50% have experience in Exports, 25% each in Imports and Government Services, and no other reported experience.
- Among respondents from India 22% have experience in each of Exports and Participation with SAFTA Related Issues, and 11% each in Imports, Trade Operations, and Legislation of SAFTA.
- The experience of respondents from Maldives is entirely (100%) in Government Services in the past 12 months.
- Respondents from Nepal have experience 33% each in Imports, Government Services, and Other sectors.
- Pakistan has experienced 38% in Government Services, 25% in Imports and Trade Operations, and 13 % in Exports.

- The experience of respondents from Sri Lanka is entirely (100%) in Participation with SAFTA Related Issues.

5.2.3.19. Lack of Harmonization of Regulations Leading to Inaccessibility

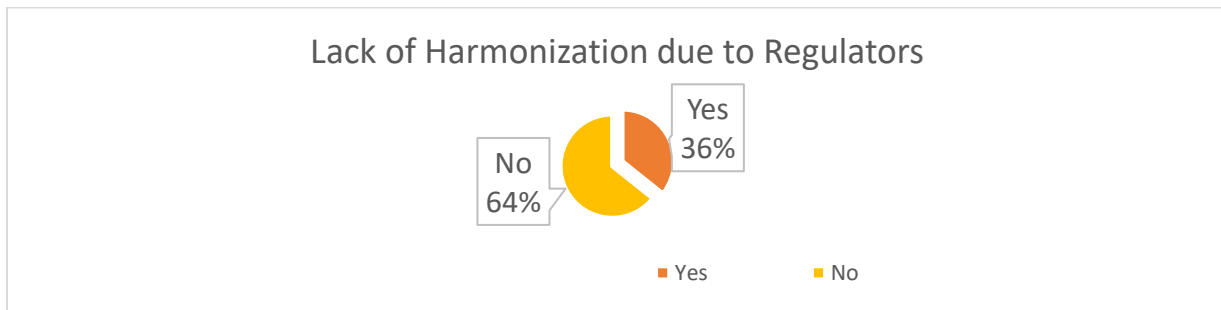
FIGURE 5: 22 RESPONDENTS RESPONSE ACCESSIBILITY OF HARMONIZATION OF REGULATIONS



Regarding harmonization, each member country has separate national regulations in addition to federal. However, 69% of respondents believe these national regulations do not hamper accessibility to markets. This implies that the regulations in place are beneficial to keep the markets competitive and ensure quality products entering the market after going through the official channels and payments of tax and other state and federal stipulated fees.

5.2.3.20. Lack of Harmonization due to Regulators

FIGURE 5: 23 HARMONIZATION DUE TO REGULATORS



When asked about the cause of lack of harmonization in regulations, 64% of respondents believe that regulators are not responsible, thus, implying other root causes for lack of harmonization resulting in differing standards across different countries.

5.2.3.21. Considerations before entering an FTA by Occupation:

FIGURE 5: 24 CONSIDERATIONS OF ENTERING AN RTA/FTA BY OCCUPATION

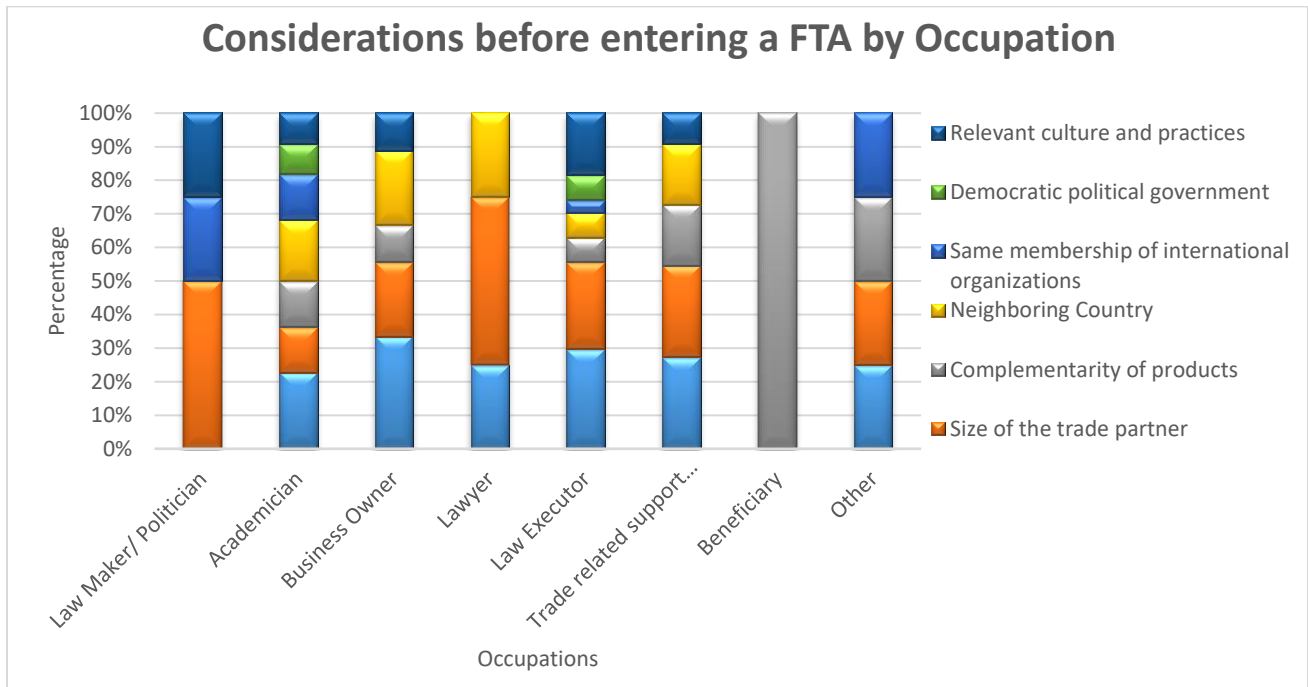


Figure 5: 24 shows respondents' considerations before entering a RTA/FTA by Occupation. Like the separately colored portions of each bar indicate the level of consideration per occupation. For

instance, Law Makers give 50% of their consideration to the Size of the Trade Partner before entering a RTA whereas Academicians' give 25% of their consideration to this factor.

5.2.3.22. Considerations before entering a FTA by Country

FIGURE 5: 25 CONSIDERATIONS BEFORE ENTERING A FTA BY COUNTRY

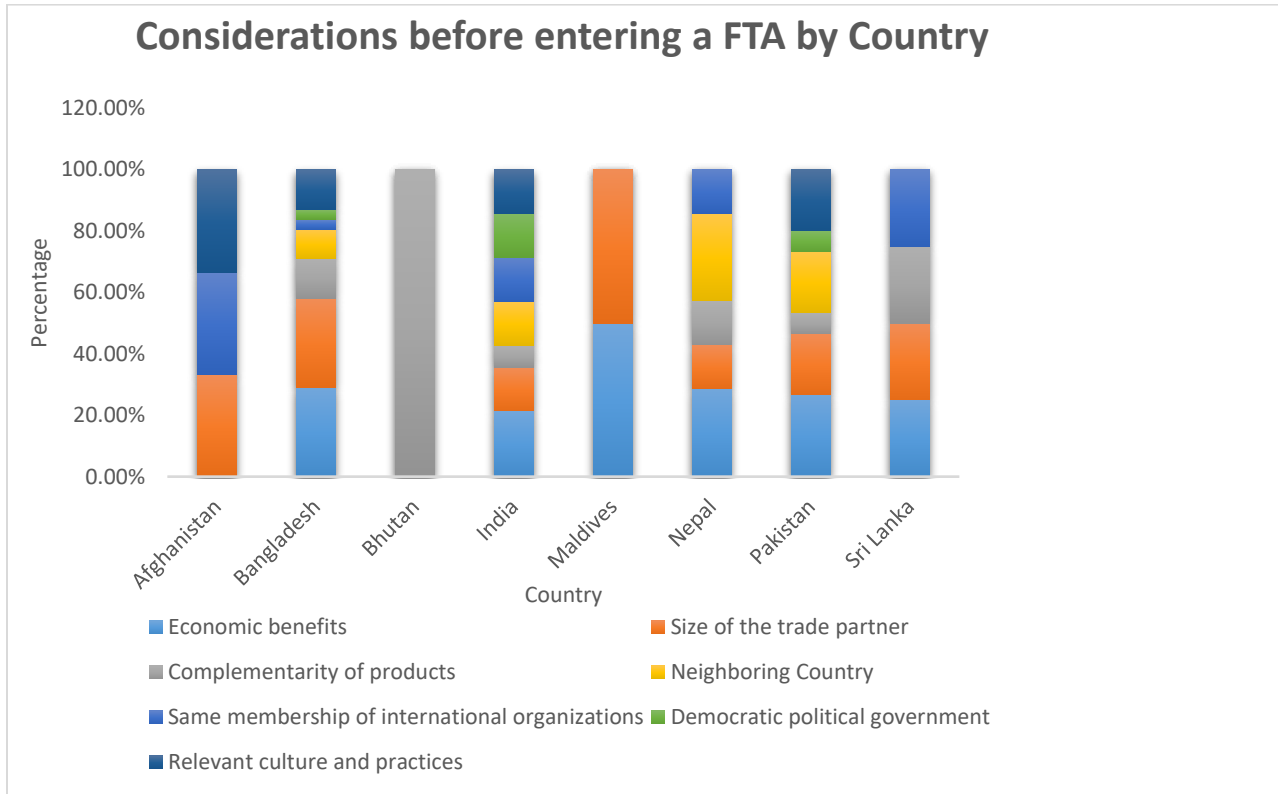


Figure 5: 25 shows respondents' Considerations before entering a RTA/FTA by Country. Like the previous figures, separately colored portions of each bar indicate the level of priority countries give each factor when choosing a RTA/FTA. For instance, Economic Benefits are almost every country's major concern when entering a RTA/FTA. It is the highest concern of Maldives at 50% compared to other countries.

5.2.4. **Secondary Data Analysis:**

In addition to primary resources, this study utilizes a wide range of secondary resources. The notable secondary sources are published trade data/reports from SAARC and about SAFTA,

business community reports written by trade experts and concerned officials, GATT Article XXIV Schedule of Commitments in the Free Trade Agreements, and published statistics from WB, ADB, UNCTAD, WTO, etc. Some secondary materials were retrieved when conducting interviews. A critical analysis of the wide range of information facilitated corroboration and more precise analysis of other evidence and data retrieved during research, interviewing, and focus group discussions.

5.2.4.1.Recent Trade Outlook

South Asian GDP growth is expected to accelerate to 7.2% in 2018, after expanding slightly lower than expected 6.8% in 2016.⁴⁰⁵ World Bank South Asia Region Chief Economist Martin Rama said that Member States should emphasize encouraging economic growth to maximize export opportunity.⁴⁰⁶

TABLE 5: 5 GDP GROWTH OF SOUTH ASIAN COUNTRIES

Real GDP Growth	2014	2015	2016 (est)	2017 (f)	2018 (f)	2019 (f)
Afghanistan (CY)	1.3	0.8	1.2	2.4	3.4	3.1
Bangladesh (FY)	6.1	6.6	7.1	6.8	6.4	6.7
Bhutan (CY)	5.7	6.5	6.8	6.8	7.7	10.5
India (FY)	7.2	7.9	6.8	7.2	7.5	7.7
Maldives (CY)	6.0	2.8	4.1	4.5	4.6	4.6
Nepal (FY)	6.0	2.7	0.6	6.0	5.5	4.5
Pakistan (FY, at factor cost)	4.1	4.0	4.7	5.2	5.5	5.8
Sri Lanka (CY)	5.0	4.8	4.4	4.7	5.0	5.1

(Legend: CY=Calendar Year; FY=Fiscal Year; est. = estimated, f = forecast *Bangladesh 2016 Rate Actual) Source: World Bank⁴⁰⁷

⁴⁰⁵ See more at <http://www.worldbank.org/en/news/press-release/2017/04/16/south-asia-could-potentially-benefit-from-globalization-backlash>

⁴⁰⁶ Id. At

⁴⁰⁷ Id. At.

The World Bank’s report confirms that South Asia remains the fastest-growing region in the world while gradually widening its lead relative to East Asia. Regional GDP growth is expected to rise from 6.7% in 2016 to 6.8% in 2017 and 7.1% in 2018.⁴⁰⁸ Table 5-3 is a comparative analysis of South Asian Countries’ GDP growth. This analysis shows that Afghanistan’s GDP has grown steadily since 2016. Additionally, India and Nepal demonstrate good GDP growth prospects.

TABLE 5: 6 TOTAL TRADE VOLUME AND TOP TEN SOUTH ASIA TRADE PARTNERS

2016 SAARC, Total World Trade (Value Millions USD) ⁴⁰⁹											
Imports				Exports				Total Trade			
	Partner	Value	% World		Partner	Value	% World		Partner	Value	% World
	World	456,155	100		World	299,372	100		World	755,527	100
1	China	84,602	18.5	1	EU 28	67,800	22.6	1	EU	118,423	15.7
2	EU	50,622	11.1	2	USA	51,669	17.3	2	China	96,191	12.7
3	UAE	28,295	6.2	3	UAE	31,956	10.7	3	U.S.	75,943	10.1
4	U.S.	24,275	5.3	4	HK	13,913	4.6	4	UAE	60,253	8
5	KSA	22,437	4.9	5	China	11,589	3.9	5	KSA	28,108	3.7
6	Indonesia	16,958	3.7	6	Sin	7,876	2.6	6	HK	22,278	2.9
7	Switzerland	15,750	3.5	7	Vietnam	6,337	2.1	7	Indo	20,272	2.7
8	Japan	15,084	3.3	8	KSA	5,671	1.9	8	Japan	19,879	2.6
9	S. Korea	14,575	3.2	9	Turkey	5,394	1.8	9	Sin	19,542	2.6
10	Malaysia	12,291	2.7	10	Japan	4,795	1.6	10	S. Korea	18,563	2.5

Legend: KSA=Kingdom of Saudi Arabia; HK=Hong Kong; S. Korea=South Korea; UAE=United Arab Emirates; Sin= Singapore; EU=European Union; U.S. =United States of America

⁴⁰⁸ Id. At.

⁴⁰⁹European Union, Trade in goods with SAARC (South Asian Association For Regional Cooperation). (2017).

Table 5: 6 shows SAARC’s highest total trade is with the EU at 15.7%, followed by China at 12.7%, and the U.S. at 10.1%. The largest percentage of imports to the region comes from China at 18.5%. The EU receives the highest percentage of exports from the region at 22.6%. The top exporting and importing partners include UAE, KSA, Japan, Singapore, South Korea, Indonesia, Hong Kong, Vietnam, and Switzerland.

FIGURE 5: 26 COUNTRY SHARES % OF INTRA-SAARC IMPORTS AND EXPORTS, 2011⁴¹⁰

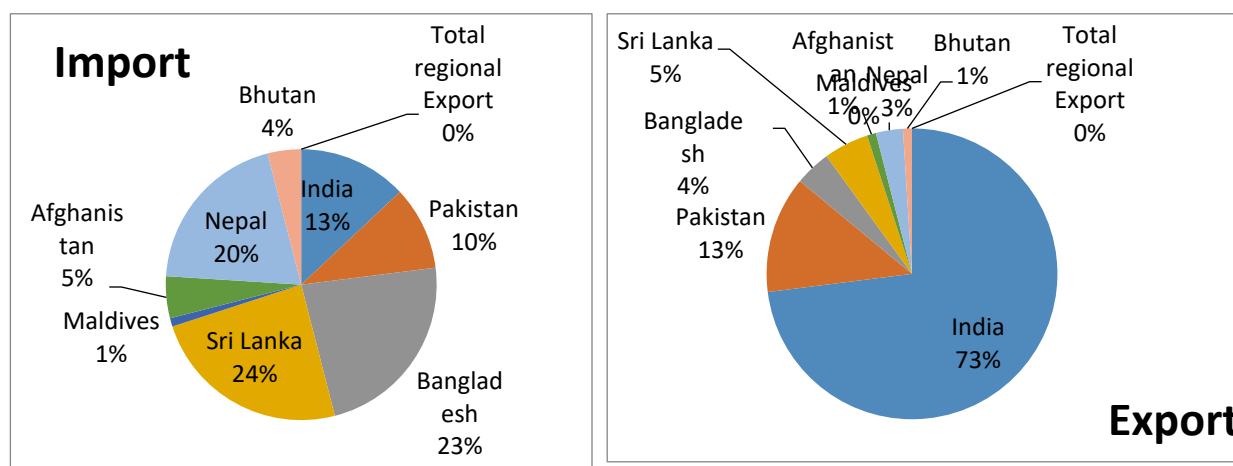


Figure 5: 26 illustrates SAARC countries’ market shares within SAARC in 2011. This figure depicts each SAARC country’s relative importance in exports and imports within the intra-regional bloc. From the data, India has 73% of overall exports and 13% of imports within the region.⁴¹¹ Sri Lanka has 24% of overall intra-regional imports and 5% of intra-regional exports. Bangladesh has 4% of overall exports within the bloc. Other countries, such as Afghanistan, Bhutan, and Maldives have the less than 1% of the exports and between 1-5% of intra-regional imports within the bloc.⁴¹²

⁴¹⁰Next Steps to South Asian Economic Union: A Study on Regional Economic Integration (Phase II) Commissioned by the SAARC Secretariat. (2014).

⁴¹¹ Id. at.

⁴¹² Id. At.

TABLE 5: 7 SOUTH ASIA INTRA-REGIONAL TRADE

Row Labels	Column Labels										
	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka	Total Intra regional Export	Total export	Regional export as % of country's total export
Afghanistan		0	0	70,438	0	0	180,650	0	251,088	375,851	67
Bangladesh	1,227		3,658	579,125	925	19,385	82,734	24,348	711,403	33,098,384	2
Bhutan	0	26,403		343,018	0	1,639	0	0	371,060	452,963	82
India	504,566	3,405,516	21,9077		118,293	2,559,910	1,678,131	4,452,043	12,937,535	301,483,250	4
Maldives	0	0	0	1,773		0	0	9,755	11,529	83,279	14
Nepal	117	26,037	3,209	614,379	22		2,641	208	646,613	907,634	71
Pakistan	2,656,391	946,700	0	272,495	5,477	1,275		347,708	4,230,045	25,140,082	17
Sri Lanka	3,075	46,308	112	521,264	55,204	642	75,231		701,837	10,011,282	7
Total exports		19,861,109	371,552,724	5							
Total intra-regional imports	3,165,376	4,450,963	226,057	2,402,493	179,922	2,582,850	2,019,387	4,834,062	19,861,109		
Total Imports	6,390,311	39,190,326	1,051,747	462,402,791	1,411,701	5,915,923	43,542,006	19,696,480	579,601,286		
Regional imports as % of country's total imports	50	11	21	1	13	44	5	25	3		

Source: Data compiled from WITS and calculated for 2011.

Table 5: 7 contains regional exports as a percentage of a country's total exports. In Bhutan, regional exports are 82% of total exports. In Bangladesh, regional exports are 2% and in India 4% of total exports. Regional exports constitute 67% of Afghanistan's trade and 71% of Nepal's trade. In Afghanistan and Nepal, SAARC country imports are 50% and 44% respectively.⁴¹³ Whereas, in India SAARC countries account for 1% of total imports. India is not dependent on the intra-regional trade. Similarly, only 5% of Pakistan's imports come from SAARC countries. The percentage varies among countries depending on trade facilities openness and market size. India makes 65% of regional trade exports, Pakistan makes 21%, and Afghanistan and Maldives make only 1%. Sri Lanka receives 24% of the intra-regional imports and Bangladesh 22%. Additionally, Bhutan and Maldives receive only 1% of SAARC countries total imports.

⁴¹³ADB. 2014.

Despite diverse results, intra-regional trade facilities are important to LDCs as external merchandise sources. According to Table 5: 5, regional trade is the bulk portion of global trade for three LDCs (Afghanistan, Bhutan, and Nepal). This means that the intra-regional mechanisms are facilitating and promoting intra-regional trade among SAARC countries. However, Bangladesh and Maldives are not dependent on regional trade because both countries export a major portion of their merchandise outside of SAARC countries. Further, India and Pakistan lack significant amounts of SAARC regional trade. However, Sri Lanka, a developing country, has strong trade within SARRC region at 17.33%. The region's LDCs intra-regional trade shares do not portray their overall business trends. For example, Bangladesh contributes 14.3% of regional trade, which is second after India at 39.01%. However, it is the largest regional importer at approximately 4 billion USD in 2008. Moreover, it has a 25% share of total inter-regional imports.⁴¹⁴

⁴¹⁴UNDP, Integration of Least Developed Countries into South Asian Free Trade Agreement: A Human Development Perspective, (December 2011 © UNDP).

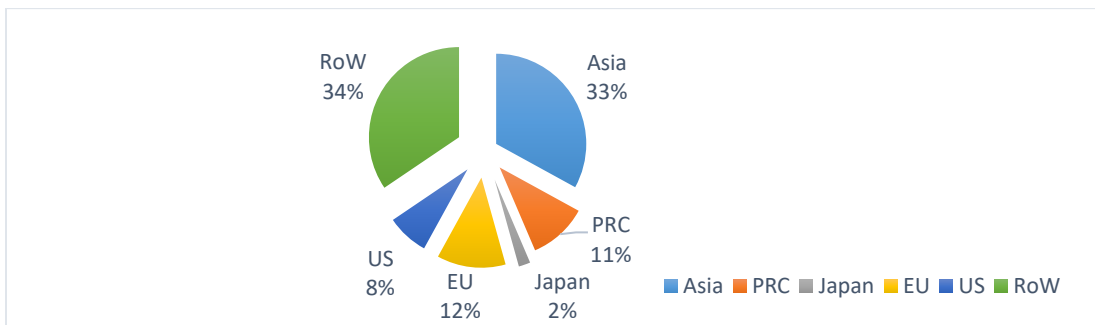
5.2.4.2. The Intra-Regional Trade within South Asia

FIGURE 5: 27 INTRA-REGIONAL TRADE WITHIN SOUTH ASIA



Asia is the least integrated region in the world, dwarfed by East Asia's 35% and Europe's 60%. Asian⁴¹⁵ intra-regional trade at less than 5% of total trade; South

FIGURE 5: 28 MERCHANDISE EXPORTS OF REGIONAL RTAs BY DESTINATION IN 2015 (SHARE %)



⁴¹⁵ See more at: <http://www.worldbank.org/en/news/infographic/2016/05/24/the-potential-of-intra-regional-trade-for-south-asia>

Figure 5:28 depicts merchandise exports of SAARC RTAs by destination,⁴¹⁶ in 2015 (Share %). SAARC total merchandise exports share is 12% in EU, 11% in PRC, 8% in U.S., 2% in Japan, 34% in Rest of the World, and 33% in Asia (only 5% is in South Asia) in 2015.

FIGURE 5: 29 (WORLD) MERCHANDISE EXPORTS OF RTAs BY DESTINATION IN 2015 (SHARE %)

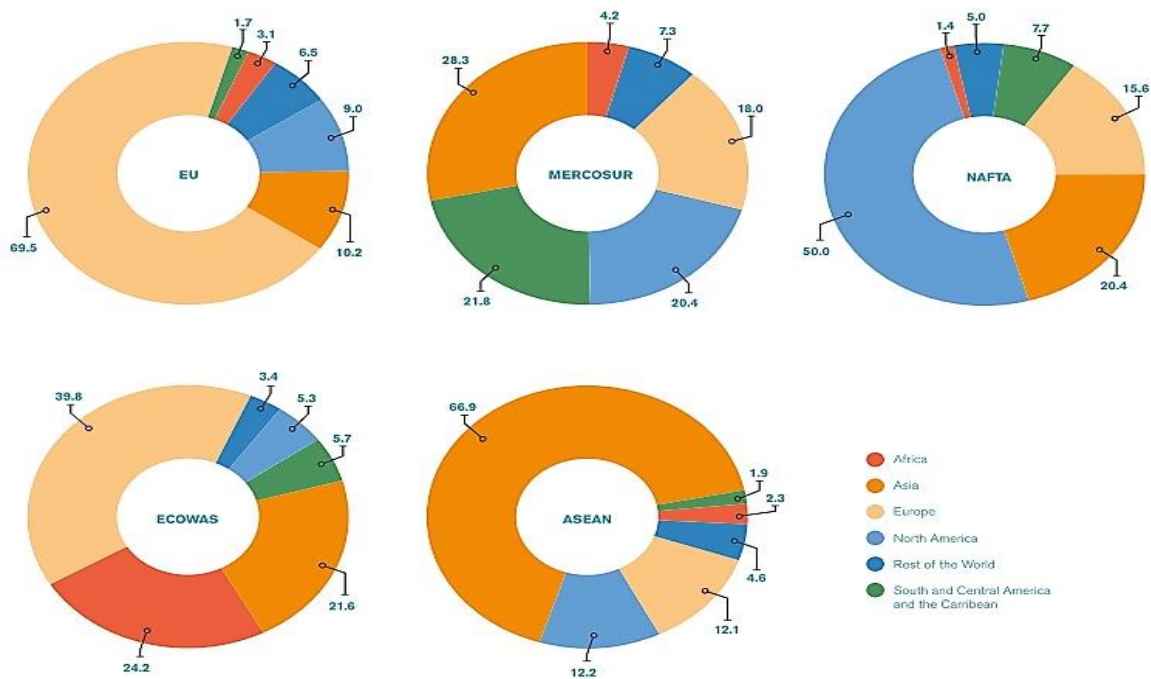


Figure 5: 29 shows that in 2015, within RTAs merchandise exports, intra-area trade shares are 70 % EU, 50% NAFTA and, 67% ASEAN, whereas, South Asian region intra-area trade is less than 5% of total trade volume.⁴¹⁷

5.2.4.3. Comparison with South Asian and Others Progress regarding; FDI and NTBs

Attracting foreign direct investment (FDI) is a challenge for any region. Creating an investment friendly environment encourages private investment, and are key to strong economic growth and rapid poverty reduction. A decent investment climate is important in fostering

⁴¹⁶ Rest of the World includes Commonwealth of Independent States including associate and former member states, Middle East, and NES.

⁴¹⁷ See more at: WTO, World Trade Statistical Review 2017, (2017).

productive private domestic or foreign investments.⁴¹⁸ Asia remains the world's top destination for foreign direct investment, attracting 527 billion USD in 2015, an increase of 9.0% over 2014.⁴¹⁹ Global FDI increased to a record 1.8 trillion USD in 2015, with nearly 30% going to the region.⁴²⁰

5.2.4.4. Foreign Direct Investment

The data suggest that South Asia has significant untapped trade potential. The prediction is that a 30% increase in annual growth of intra-regional trade would boost up to 100 billion USD in the next five years.⁴²¹ Presently, annual intra-regional trade is 28 billion USD. Further, the expectation is that intraregional trade would increase from 5% to 10% of total trade.⁴²² This is an ambitious target but is achievable if we consider low base, artificial barriers to trade, and informal trade. Statistics reveal that this region falls below its trade potential and investment opportunities,⁴²³ but gains from a more integrated South Asia (addressing tariffs, non-tariff barriers, and trade costs) are nonetheless substantial.⁴²⁴ Table 5-6 indicates that amongst all regions, South Asia is receiving the least amount of FDI inflows. In 2012, South Asia received a

⁴¹⁸ ASIAN ECONOMIC INTEGRATION REPORT

WHAT DRIVES FOREIGN DIRECT INVESTMENT IN ASIA AND THE PACIFIC? (2016).

⁴¹⁹ Trade and Investment: ASIAN ECONOMIC INTEGRATION

REPORT 2016 HIGHLIGHTS. (2016);BANK. 2016.

⁴²⁰ BANK. 2016.

⁴²¹Prabir De and Mustafizur Rahman, Regional Integration in South Asia (Knowledge World (KW) Publishers Pvt. Ltd 2017).

⁴²²Id. At.

⁴²³Prabir De and Mustafizur Rahman, Regional Integration in South Asia (Knowledge World (KW) Publishers Pvt. Ltd 2017).

⁴²⁴ These studies include Ahmed and Ghani (2007), Ahmed, Kelegama, and Ghani (2010), and Raihan (2014).

FDI inflow of 28.6 billion USD, India's share of which amounted to 25.5 billion USD. This equals 89% of total FDI inflows of this region.⁴²⁵

TABLE 5: 8 FDI INFLOW IN SOUTH ASIA (MILLION USD AT CURRENT PRICES) ⁴²⁶

<i>FDI inflow in South Asia (Million USD at current prices)</i>										
<i>Country/year</i>	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<i>Afghanistan</i>	271	238	189	94	76	211	83	94	69	54
<i>Bangladesh</i>	845	792	666	1086	700	913	1136	1293	1599	1551
<i>Bhutan</i>	6	72	40	10	26	76	29	49	14	32
<i>India</i>	7622	20328	25350	47102	35634	27417	36190	24196	28199	34582
<i>Maldives</i>	73	95	132	181	158	216	424	228	361	333
<i>Nepal</i>	2	-7	6	1	39	87	95	92	71	30
<i>Pakistan</i>	2201	4273	5590	5438	2338	2022	1162	859	1333	1865
<i>Sri Lanka</i>	272	480	603	752	404	478	956	941	933	894
<i>Total</i>	11292	26271	32576	54664	39375	31420	40075	27752	32579	39341

⁴²⁵Moazzem; Khandakar G 2013. Regional Investment Cooperation in South Asia: Policy Issues. Commonwealth Secretariat. March 2013

⁴²⁶ Date usage here: Economics and Environment (SAWTEE) South Asia Watch on Trade, A Dialogue on Trade and development in South Asia Trade-Insight, TRADE INSIGHT VOL. 12, No. 2, 2016 (2016) and Source: UNCTAD stat, Aug 2016

FIGURE 5: 30 FDI INFLOW IN SOUTH ASIA: 2005-14 (MILLION USD, SHARE)⁴²⁷

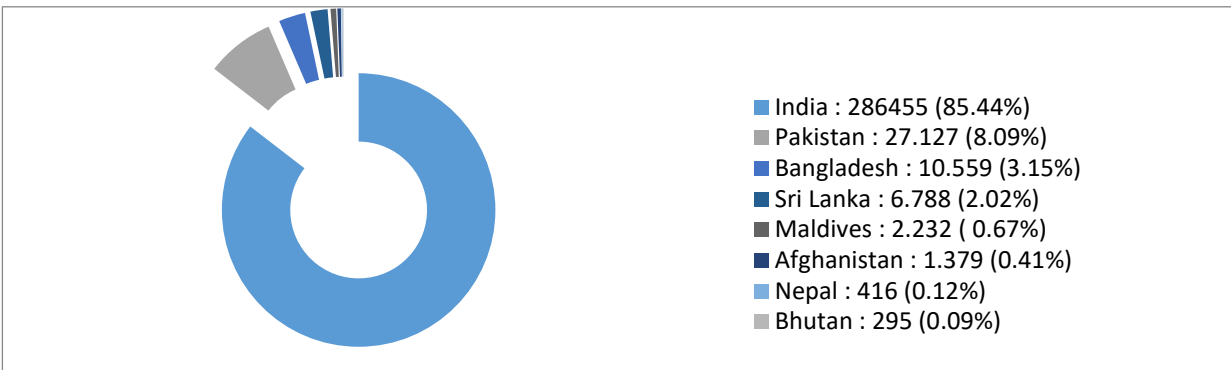


Figure 5: 30 portrays FDI inflows in the South Asian region in 2005-14. It indicates that India attracted more than 85% of FDI inflows and the other seven countries combined attracted 15%. Amongst the other countries, Maldives, Afghanistan, Nepal, and Bhutan attracted less than 1% of overall FDI inflow. The second highest FDI inflow was Pakistan at 8% and Bangladesh at 3%.

Boosting FDI is a concrete method of furthering regional integration. India is successful in attracting significant amount of FDI, but the other SAARC countries lack progress in attracting FDI. For example, the United Nations Conference on Trade and Development 2015 report⁴²⁸ revealed that in 2014 South Asia only attracted 3.4% of global FDI inflows. This figure is poor in comparison to other regions. For example, the EU attracted 23.5% of global FDI inflows, while Latin America and Caribbean attracted 13%.

The South Asian countries are unable to attract a considerable amount of FDI inflows for several reasons. First, South Asia's ranking in the 'ease of doing business' is very poor.

⁴²⁷Id. at and Source: UNCTAD Stats, Aug 2016.

⁴²⁸ United Nations Conference on Trade and Development 2015 report:
http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

According to the World Bank Doing Business Report 2016 South Asia ranks 128 out of 189.⁴²⁹

However, the EUs ranking is 31 and the East Asia Pacific ranking is 89. These rankings correlate with FDI inflows.

TABLE 5: 9 RANKING OF DOING BUSINESS IN SOUTH ASIA⁴³⁰

Country & Indicators	Afgha nistan	Bangl adesh	Bhu tan	India	Maldi ves	Nep al	Pakist an	Sri Lanka
Ease of doing business	177	174	71	130	128	99	138	107
Starting business	34	117	91	155	48	105	122	98
Construction permit dealings	185	118	79	183	41	78	61	77
Getting electricity	156	189	50	70	141	131	157	81
Registering property	184	185	51	138	171	72	137	153
Getting credit	97	133	79	42	126	133	133	97
Protecting investor	189	88	115	8	134	57	25	49
Paying taxes	89	86	28	157	128	124	171	158
Trading across borders	174	172	21	133	137	60	169	90
Enforcing contracts	172	188	50	178	95	152	151	161
Resolving insolvency	160	155	189	136	135	86	94	78

Another factor in the region’s low FDI attraction is the complicated and restrictive regional regulatory framework. In this region, to start a business the owner must comply with

⁴²⁹ World Bank’s Doing Business Report 2016: <http://www.doingbusiness.org/>

⁴³⁰ See more at: http://www.doingbusiness.org/~/_media/GIAWB/Doing%20Business/ Documents/Annual-Reports/English/ DB16-Full-Report.pdf, Ranking among world in 2016

many regulations. Furthermore, transparency is lacking in legal issues. Excessive documentation requirements hinder investments in South Asia.⁴³¹ Further, political unrest and the lack of law and order is a factor compromising private enterprises' safety and security. In this region, the situation is so acute that countries impose travel advisory warnings for many locations. Finally, lacking infrastructure is another factor causing low FDI inflows.⁴³²

TABLE 5: 10 POINT OF INFRASTRUCTURE FOR BUSINESS IN 2014⁴³³

Countries	Logistic Performance Index Score (1=Low, 5=High)	Customs Score	Infrastructure Score
Afghanistan	2.07	2.16	1.82
Bangladesh	2.56	2.09	2.11
Bhutan	2.29	2.09	2.18
India	3.08	2.72	2.88
Maldives	2.75	2.95	2.56
Nepal	2.59	2.31	2.26
Pakistan	2.83	2.84	2.67
Sri Lanka	2.70	2.56	2.23

Enhanced export earnings and foreign investment inflows have an impact on the country's external resource balance. Logistics Performance Index (LPI) scores are based on the retrospective measurements: Efficiency of border control and customs process; Transport and

⁴³¹South Asia Watch on Trade, TRADE INSIGHT VOL. 12, No. 2, 2016, (2016).

⁴³²COMSATS Saima Nawaz, and Nasir Iqbal, BISP, FDI key to the future of South Asian regional integration, EAST ASIA FORUM (11th May, 2016).

⁴³³ See more at: <http://lpi.worldbank.org/international/scorecard/column/254/C/LKA/2014#chartarea> and The logistic, customs and Infrastructure score for Business (World Development Indicators)

trade-related infrastructure; Competitively priced shipments; Ability to track and trace consignments; and Timeliness of shipments. The computation of regional aggregates uses total trade as volumes.⁴³⁴ However, a number of factors such as the economy's size, variation, economic policies overall texture, infrastructural facilities, cross-border facilities, and political factors differentiate investment flows.⁴³⁵ Achieving an effective integrated regional market would facilitate investment creation on a large scale at both the intra-regional and extra-regional levels. South Asian countries should effectively promote FDI as part of their regional cooperation scheme.

5.2.4.5. Non-Tariff Barriers:

According to Isabel Guerrero, Vice President, South Asia Region, World Bank, "reducing regional trade barriers could result in a 17% increase in GDP for Bangladesh and Sri Lanka, a 15% increase for India, and a 5% increase for Pakistan by 2020."⁴³⁶ Theoretically, South Asian countries are enthusiastic about global and regional trade agreements. As a result, they formulated various regional agreements like SAFTA and international organization such as WTO. Despite the intentions and requirements of these pro-trade commitments, the SAARC countries fail to live up to free trade expectations. Although they agree on broader regulation objectives, they implement them at various levels. The region produces procedural hurdles in the form of NTBs on overdrive limiting trade potential in South Asian countries.

Moreover, LDCs in this region overly depend on exports and are therefore vulnerable to external shocks beyond their control. For example, Bangladesh relies heavily on exporting readymade garments, Maldives relies on fish merchandising and tourism, and Bhutan relies on

⁴³⁴ ADB, Asian Economic Integration Report 2016: Statistical Appendix (2016).

⁴³⁵ Sobhan, 2004

⁴³⁶ What If Trade Barriers Were Reduced in South Asia. (2012).

electricity supplies. Furthermore, both Nepal and Bhutan are extremely dependent on India for imports and exports. This places them in a vulnerable position. For example, any Indian market economic shock will have a severe effect on the other countries' economy because of their dependence. Diversification of business—products, services, and trading partners—can cure this problem. However, none of these countries shows promising signs of business diversification.⁴³⁷

Previously mentioned non-tariff barriers such as lack of streamlining and harmonizing custom procedures, lack of infrastructure facilities, poor border point conditions, and protocols do not account for the political economy dynamics that generate the most persistent NTBs. The first set of NTBs negatively affecting trade is the lack of arrangements for the free flow of persons and finances within the region. Security concerns are one of the main factors behind this. Nonetheless, the governments have not devised a clear framework nor placed confidence in their own banks and border agencies to accommodate legitimate business transactions and visa applications. People cannot engage in free trade if they cannot meet and move freely.⁴³⁸

⁴³⁷ Id. At.

⁴³⁸Sagar Prasai, Real-World Problems of South Asian Integration (The Asia Foundation February 26, 2014).

TABLE 5: 11 COST TO EXPORT AND IMPORTS (USD PER CONTAINER) ⁴³⁹

Country /Year	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
Afghanistan	3545	3545	3545	4645	5045	3830	3830	3830	5180	5680
Bangladesh	1070	1115	1175	1203	1281	1305	1370	1430	1437	1515
Bhutan	2230	2230	2230	2230	2230	2505	2505	2330	2330	2330
India	1005	1045	1332	1332	1332	1105	1150	1200	1462	1462
Maldives	1550	1550	1623	1625	1625	1526	1526	1526	1610	1610
Nepal	1960	1960	2295	2295	2545	2095	2095	2095	2400	2650
Pakistan	611	660	765	765	765	680	705	705	1005	1005
Sri Lanka	590	590	595	595	560	695	725	725	725	690

⁴³⁹South Asia Watch on Trade, TRADE INSIGHT VOL. 12, No. 2, 2016, (2016).

TABLE 5: 12 TIME TO EXPORT AND IMPORT (DAYS) IN 2010-2014⁴⁴⁰

Time to export and import (days)												
Country	Time to export	2010	2011	2012	2013	2014	Time to import	2010	2011	2012	2013	2014
Afghanistan		74	74	74	81	86		77	77	77	85	91
Bangladesh		29	29	29	28.6	28.3		37	37	37	37.6	33.6
Bhutan		38	38	38	38	38		37	37	37	37	37
India		17	16	16	17.1	17.1		20	20	20	21.1	21.1
Maldives		21	21	21	21	21		22	22	22	22	22
Nepal		41	41	41	42	40		35	35	35	39	39
Pakistan		21	21	21	21.7	20.7		18	18	18	19.4	18.4
Sri Lanka		21	21	20	20	16		19	19	19	17	13

The time to export/import data measures the number of days required to export/import by ocean transport, including the document processing required to complete the transaction. It covers time used for documentation requirements, procedures at customs and other regulatory agencies, and the time of inland transport between the largest business city and the main port used by traders. Regional aggregates are weighted averages based on total exports or imports.

Average Time to Export and Import (hours)⁴⁴¹ rest of the Asia (accessed October 2016)

⁴⁴⁰ See more at: <http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.IMP.COST.CD&country> and Source: World Development Indicators

⁴⁴¹ ADB Calculations using data World Bank. Doing Business Data. See more at <http://www.doingbusiness.org/data>

TABLE 5: 13 AVERAGE TIME TO EXPORT AND IMPORT (HOURS) REST OF THE ASIA⁴⁴²

Region/ Year (Serial)	Export 2015	Import 2015	Export 2016	Import 2016
Central Asia	209	80	203	77
East Asia	37	92	37	92
South Asia	158	331	152	324
Southeast Asia	74	112	68	107
The Pacific	136	153	136	153
Oceania	43	41	43	41
Asia	53	117	51	115
Developing Asia	55	124	53	122

Table 5:13 indicates the cost and time of imports and exports in this region. It shows that importing and exporting products in and out of Afghanistan is the most costly and takes the most amount of time. The cost in Bhutan is also relatively high. Table 5-10 indicates that as of 2016, South Asia takes the longest period to export and import in Asia at 152 days and 324 days, respectively. This is much higher than the other regions of Asia.

⁴⁴²ADB, Asian Economic Integration Report 2016: Statistical Appendix. 2016 and accessed October 2016.

TABLE 5: 14 SHARE OF VARIOUS NTBs IN ALL NTBs IMPOSED BY SOUTH ASIAN COUNTRIES⁴⁴³

Non-tariff measures	Share (%)
SPS, TBT and other related measures	86.3
Tariff quotas	9.8
Anti-dumping measures	7.4
License requirements	5.2
Countervailing measures	1.2

Table 5-14 In the above table shows (Source: Rahman, 2010), based on ADB/UNCTAD, 2008. Note: The shares do not add up to 100 percent because some products face multiple NTBs. SPS= sanitary and phytosanitary; TBT= technical barriers to trade.

To improve the regional integration as depicted in this study South Asian countries must take positive steps to harmonize their regulatory frameworks with the region's LDCs in mind. Human resources development is a crucial element these countries should consider. Adopting a three-tier strategic approach can help these countries to reach their desired goal. First, eradicate all market access barriers and expand the ambit of SAFTA. Second, developing countries should construe their sensitive lists very narrowly and remove NTBs on the LDCs and SMEs export products. Third, it is necessary to promote and encourage the development of infrastructure and the free flow of human capital. These countries need to impose efficient transit facilities and trade facilitation, and concentrate on research, development, and innovation to benefit fully from SAFTA. Lastly, the expansion of SAFTA ambit is necessary to include issues like liberalization

⁴⁴³UNDP, (December 2011 © UNDP).

of services and protection and promotion of investment. These issues are vital for desired economic integration of this region.⁴⁴⁴

⁴⁴⁴Id. at.

Chapter 6: SAFTA Gaps and Realizations

6.1. Introduction

SAARC was created to neutralize the deep-rooted mistrust and asymmetries between the South Asian countries. The main objective of SAARC was to promote effective cooperation between the member states. SAARC established a basic institutional framework of conceptualizing and implementing programs that are of regional significance. These cooperative arrangements also encourage the member countries to formulate common positions on vital economic and social issues at global platform. Since its inception, SAARC has been gradually developing in conjunction with UN and other regional organizations. But ironically, the development of SAARC has been symbolic rather than substantive. The main obstacle of SAARC is its institutional character. Bilateral problems and unwillingness of the political parties to integrate are also major problems in this region. This creates a gulf of difference between adoption of broader policies at the highest political levels and implementation of them at the root level. This gulf means most of the measures taken by SAARC lack practical effectiveness. Moreover, SAARC Secretariat and other Regional Centers have not taken any proactive actions so that similar to their counterparts like the ASEAN. If these basic flaws are not addressed and cured, it is then the objective of regional integration through SAARC will remain a distant dream.⁴⁴⁵

6.2. Practical Achievements of SAFTA

Economic cooperation among countries is imperative in the modern world and especially in the South Asian region. This is mainly because most of the people in this region are poor.

⁴⁴⁵ Naeem U. Hasan is a seasoned diplomat from Pakistan. He was the sixth secretary general of the South Asian Association for Regional Cooperation where he served from 1996 to 1998, Destination Unknown, THE GATEWAY HOUSE (November 2014).

Therefore, free flow of trade would not only increase growth but also create job opportunities. In this regard, FTA can play a crucial role in opening the market and attracting more FDI. But the performances of all the FTA have not been equal. This is mainly because countries may customize comprehensive and ambitious agreements and other types of deals depending on their particular markets and demands. The dynamic gains from the trade agreements have the potential to liberalize trade in services and attract FDI not achievable through traditional comparative advantage theory.

So far, SAARC has secured a modest achievement. It provides a basic institutional framework for regional cooperation by furthering free trade between SAARC countries. This desire was prominent in 2006 when SAFTA replaced SAPTA. Since 2006, SAFTA has contributed significantly to the free trade in the region, which has reached the \$ 1.2 billion mark. But it remains below its potential. SAARC Agreement on Trade in Services (SATIS) of 2011 has been a significant leap towards broadening the scope of regional trade. SAARC declared the 2010-2020 decade as the Decade of the Intra-Regional Connectivity. Moreover, the new South Asian University, established in New Delhi, India, plays an important role in regional integration. The university proposed the creation of a South Asian Forum for exchange of ideas on the future development in South Asia. This proposal is widely accepted.⁴⁴⁶

Planning and creating the trade policies and framework will not automatically bring success in SAARC countries. To achieve the fullest benefits of SAARC, the member countries need to ensure economic cooperation through the FTAs in a broader context and to promote competition in the market by facilitating business, reducing costs of trade, enhancing connectivity via hard

⁴⁴⁶ Former High Commissioner/Ambassador of India to South Africa Rajiv Kumar Bhatia, Lesotho, Mexico, Kenya and Myanmar., *South Asia's Destiny: Conflict or Cooperation?*, Vol. 6, No. 2 INDIAN FOREIGN AFFAIRS JOURNAL 164(April-June 2011).

and soft infrastructure, increasing the skills of the workforce, promoting entrepreneurship, innovation, and other efforts. Strengthening social safety nets to mitigate short-term adjustment costs may be part of the strategy. FTAs under GATT Article XXIV and the Enabling Clause reduce tariff rates by 2.1% and 1.5 % respectively. In NTBs, the impact is around 6.6% and 5.7%. It appears that membership of the WTO does not itself have any impact on the reduction of tariff but does play a vital role in reducing NTBs.⁴⁴⁷

Trade agreements ensure free movement of goods that enable the consumers to have better access to the products of the other countries at a cheaper rate. This boosts consumer surplus and facilitates consumer activity that has an impact on the economies of scale as the countries attract a better share of the market in the free trade zone. Domestic consumers will suffer from the tide of the trade diversion as they will be vulnerable to losing out on importing cheaper goods from non-members. Since they will have to import costly goods from the members of the trade bloc their consumer surplus will decline significantly. More significantly, such actions may also result in trade war with non-members that will make it more difficult from the domestic consumers to import niche products from the non-member states.

There is no concrete evidence suggesting that preferential trade agreements benefit the member states. Their successful outcome requires proper design and implementation. Ultimate success depends on breadth, depth, and timing of the provisions. These three variables dictate the economic benefits of an FTA. For example, an FTA will be ineffective if it is narrow in coverage, 2) shallow in barrier reductions and 3) slow in phasing out barriers.⁴⁴⁸ If an FTA cannot achieve both long term and short term economic benefits it will not achieve sustainable

⁴⁴⁷ How Do Free Trade Agreements Reduce Tariff Rates and Non-Tariff Barriers? (2014).

⁴⁴⁸ Raj Bhala, et al., Economic Aspects of FTAs, in INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK (2015).

growth, i.e., generate a healthy economic flow. Further, issues like politics and national security have a lasting effect on FTAs.⁴⁴⁹

Professor Bhagwati, a prominent author on international economics and former external WTO advisor, observed that very few predicted that Article XXIV exception would be used in wide circumstances.⁴⁵⁰ The thought was that leaning towards free trade and extending it to nearly all the commodities would discourage resorting to Article XXIV exception.⁴⁵¹

Prominent trade law scholar, Professor Raj Bhala, promotes a three-tier process of competitive liberalization by moving as aggressively as possible toward the end of global free trade by simultaneously pursuing trade liberalization at multilateral, regional, and bilateral levels.⁴⁵² Bhala denies such terms as “complimentary liberalization” and “parallel liberalization.”⁴⁵³ He further identifies the benefits of FTAs as achieving domestic policy reforms, increasing multilateral bargaining power, developing strategic linkage, increasing political stakes in multilateral negotiations, and enhancing security.⁴⁵⁴

SAFTA Article 7 made provisions for two-stage tariff reduction program to achieve a tariff reduction of 5% for India, Pakistan, and Sri Lanka by 2015 and for the remaining Member States by 2018.⁴⁵⁵ However, it is possible that free trade cannot be achieved even after reducing

⁴⁴⁹ Id. at.

⁴⁵⁰ JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM- HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (New York: Oxford University Press, 2. 2008)

⁴⁵¹ Id. at.

⁴⁵² Raj Bhala, *Competitive Liberalization, Competitive Imperialism, and Intellectual Property*, 28 *LIVERPOOL L. REV.* 77, 78 (2007).

⁴⁵³ Id. At.

⁴⁵⁴ John Whalley, *Why Do Countries Seek Regional Trade Agreements?* 14-34 (Nat'l Bureau of Econ. Research, Working Paper No. 5552, 1996); BHAGWATI, *supra* note 39, at 40-47.

⁴⁵⁵ Athukorala, *supra* note 241, at 9

tariff barriers. This achievement requires countries to work hand-in-hand keeping in mind the primacy of the economic integration by promoting effective cooperation. SAFTA measurement should consider its trade generating capacities. The basic structure for effective integration is there; it is now a matter for effective implementation. For proper implementation, integration of both economic factors, such as trade facilitation and infrastructure development, and non-economic factors, such as political will and stability and building confidence, is necessary. The member states should embrace integration as part of the evolving process of development to achieve the goal of economic union. Despite the challenges, the South Asian countries have immense potential for deeper integration with the global economy. SAFTA provides the platform for such integration.⁴⁵⁶

The South Asian countries are in close geographic proximity. However, there is uneven growth in this region. This is mainly because of the inward-looking policies of the government, political strife, conflict, and ideological differences among member countries. Economic growth rose to 6.9% in 2015, up to 6.7 % in 2014, and remained at 6.7% in 2016. Growth is predicted to accelerate to 6.8% in 2017 and to 7.1% in 2018. India is the leading and largest emerging market economy in the South Asia.⁴⁵⁷

6.3. Challenges in South Asian trade

Statistics of the Asian Development Bank reveal that South Asian intra-regional trade rose from 2% since 1967, but it remains below 6%. South Asia's intra-region trade vis-à-vis its

⁴⁵⁶ ADB. 2013. Regional Cooperation and Integration in a Changing World. Manila: ADB. Moinuddin, M. 2013. Fulfilling the Promises of South Asian Integration: A Gravity Estimation. ADBI Working Paper Series. No. 415. Tokyo: Asian Development Bank Institute.

⁴⁵⁷ World bank group analysis; see more at <http://www.worldbank.org/en/region/sar/overview>

global trade rose from 4.55% in 2010 to 5.58% in 2015.⁴⁵⁸ On the other hand, the ASEAN boasts an impressive intra-regional trade figure of approximately 24% (between 24.64% in 2010 to 23.56% in 2015) of its total trade with the rest of the world.⁴⁵⁹ Statistics indicate that trade within the South Asian countries is increasing slowly but steadily. South Asia's intra-regional trade increased from 2.7% in 1990 to 4.3% in 2011. For example, in 2011, SAARC's intra-regional trade was only 4.3%, whereas the corresponding figures for ASEAN and ASEAN +3 were 26% and 39% respectively.⁴⁶⁰ Various factors are affect the level of intra-regional trade. Some of the notable ones follow:

6.3.1. Lack of trusts & Mind set of political leaders

Political willingness of the governments can significantly contribute to the inclusive growth in South Asia.⁴⁶¹ Strong regional connectivity is central in ensuring food security, job creation, better nutrition, education, skill development, and sanitation.⁴⁶² Significant imbalance of power is pre-dominant in this region. For example, India is the dominant economy in this region, creating suspicion and mistrust amongst the other countries of this region and retarding cooperation amongst the members. In SAARC, this process resulted in many distortions such as

⁴⁵⁸ Data generated from Integration Indicators, ASIA REGIONAL INTEGRATION CTR.

[ARIC], ASIAN DEV. BANK, <https://aric.adb.org> (last visited Apr. 3, 2017) [hereinafter Indicators, ARIC].

⁴⁵⁹ Id. At.

⁴⁶⁰ <https://www.asiathways-adbi.org/2013/08/economic-integration-and-trade-liberalization-in-south-asia/>

⁴⁶¹ FE Report, Trust deficit major hurdle to regional integration | FIRST PAGE | The Financialexpress-bd(2014), available at <http://www.thefinancialexpress-bd.com/2014/08/31/53521/print>.

⁴⁶² Id. at.

avoiding the trade with India, discouraging FDI from India, unwillingness to work together to resolve regional issues, externalizing bilateral trade, and regional issues.⁴⁶³

Continuity of these factors may significantly hinder regional cooperation and economic integration. This is mainly because the main purpose of cooperation and regional integration is to align the economic structures of the member states, which would, in turn, result in further interdependence with India. Because of the fear and mistrust of India the smaller SAARC countries will carry out business very cautiously when it comes to India.⁴⁶⁴ Professor Emeritus TN Srinivasan of Yale University observed that both India and Pakistan are trading heavily with UAE but are practically avoiding each other. Regional trade by India and Pakistan with other SAARC member countries are also very low. However, bilateral trade would have enhanced the GDP of both the countries.⁴⁶⁵ Their animosity and the long sensitive lists are damaging the economy of the Least Developed Countries (LDCs). Moreover, there are also several non-tariff barriers that are affecting regional trade. This paper succinctly pointed out these factors.⁴⁶⁶

6.3.2. High level of informal border trade

A significant amount of trade between the countries in this region are due to the informal trade. This is mainly because most of the countries share long, porous borders and their history, language, and culture of geographically proximate communities tends to blur across politically drawn boundaries in ways that facilitate informal trade regardless of formal ties between neighboring countries. UNESCAP's analysis of inter-regional trade does not give the actual

⁴⁶³ ADB, ADB Working Paper Series on Regional Economic Integration, THE POLITICAL ECONOMY OF REGIONAL COOPERATION IN SOUTH ASIA (July 2010).

⁴⁶⁴ Id. at.

⁴⁶⁵ Report. 2014.

⁴⁶⁶ FE report (2014)

picture because it does not mention the informal exchange made by the entrepreneurial communities in the frontiers.⁴⁶⁷

Informal trade has been a common phenomenon in the South Asian countries, especially between India and its neighbors. To date there has been no quantitative study analyzing it. However, there have been some qualitative studies that estimated the informal trade between India and Bangladesh to be approximately 75% of the formal trade between the countries, and mainly India's export to Bangladesh.⁴⁶⁸ Further, informal trade over the India-Sri Lanka border and the India-Nepal border is 33% and 100% respectively of the formal trade.⁴⁶⁹ SAFTA is predicted to divert informal trade into formal channels, and stimulate the diversion with other factors playing an important role to achieve this success.⁴⁷⁰

6.3.3. High Intra-Regional Trade Cost

The South Asian region is known for high trade costs. The trade cost is usually around 114% of export goods value.⁴⁷¹ Whereas, South Asian countries trade cost the with U.S. is 109% despite of the distance between them and the U.S. Trade between Member States has become more expensive and less competitive compared to trade costs with distant partners.⁴⁷²

⁴⁶⁷ Unlocking the Potential of Regional Economic Cooperation and Integration in South Asia Potential, Challenges and the Way Forward. (2017).

⁴⁶⁸ Raihan, S. (2008), 'SAFTA and the Bangladesh Economy: Assessments of Potential Implications', Discussion Paper No. 2, Dhaka: South Asian Network on Economic Modeling.

⁴⁶⁹ Taneja, N., M. Sarvananthan, B. K. Karmacharya and S. Pohit (2004), 'India's Informal Trade with Sri Lanka and Nepal: An Estimation', South Asia Economic Journal, Vol. 5, No. 1, pp. 27-54.

⁴⁷⁰ Sharif M. Hossain, South Asian Free Trade Area: Implications for Bangladesh, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC (July 2009).

⁴⁷¹ UNESCAP. 2017.

⁴⁷² Id. At.

Further, intra-regional trade in the ASEAN is 40% lower than intra-SAARC trade costs.⁴⁷³ The lack of fast-track land transportation service is one of the aggravating factors increasing trade costs in this region. Another important factor is the trade imbalance between India and other smaller SAARC countries. These countries find it difficult to supply the products that would be of interest to the India's market economy. Furthermore, the productive capacities of the smaller SAARC countries have significantly declined because of the technical complexities and variety in comparison with the global market.

6.3.4. Parallel Trading Arrangements (Multilateral Versus Bilateral Agreements)

SAFTA countries have entered into various bilateral, sub-regional, and trans-regional trading arrangements among themselves, and at present the region has become a "spaghetti bowl" of such arrangements.⁴⁷⁴ India has bilateral trading arrangements with Sri Lanka, Bhutan, and Nepal. Bangladesh is trying to establish bilateral arrangements with India, Pakistan, and Sri Lanka. Further, there are ongoing bilateral negotiations between Sri Lanka and Pakistan. Moreover, in 1997 Bangladesh, Bhutan, India, and Nepal formed the South Asian Growth Quadrangle (SAGQ) to promote trade, investment, transport, and communication between the member states.⁴⁷⁵

⁴⁷³ Id. at.

⁴⁷⁴ Wickramasinghe, U. (2006), 'Operationalizing SAFTA: Issues and Options', in South Asian Yearbook on Trade and Development, New Delhi: Center for Trade and Development, pp. 389-441.

⁴⁷⁵ Dash, K. C. (2009), 'Towards Free Trade in South Asia: Political and Economic Dimensions', Thunderbird Quarterly, Issue 2, Spring, online edition, available at: http://www.thunderbird.edu/knowledge_netwo-rk/ctrsexcellence/private_equity/newsletter/articles/free_trade_in_south_asia.htm, accessed on: May 15, 2009.

Presently, South Asian countries are focused on bilateral arrangements as opposed to multilateral agreements. This focus prevents them from getting the maximum SAFTA benefits. Trade diversion is a common phenomenon in this region.⁴⁷⁶ Hostility between India and Pakistan hampers trade within this region.⁴⁷⁷ This hostile relationship causes Pakistan to trade with other developing countries like the U.S. and China. Presently, Pakistan has preferential tariff from China and the U.S. on many products. This undermines this region's business opportunities. In this region, smaller countries seek to gain access to large countries markets, like India and Pakistan. Sri-Lanka obtained market access to India through the India Sri-Lanka FTA. Similarly, Sri-Lanka is also in the pipeline to obtain access to the Pakistani market. In this backdrop SAFTA will become marginalized not only to Sri-Lanka but other countries as they enter into bilateral agreements with each other. There is a further issue as to whether bilateral trade arrangements are possible in light of SAFTA. It is possible if members place SAFTA as the starting point of FTAs negotiations. If the FTA is not structured in this manner, it will act in a parallel manner with SAFTA and poses a threat to successful SAFTA implementation. However, most of bilateral arrangement between countries contain provisions reconciled as a starting point of negotiations considering SAFTA.⁴⁷⁸

⁴⁷⁶ New Delhi Akanksha Khullar, SAARC still marred by divisions, EAST ASIA FORUM ECONOMICS, POLITICS AND PUBLIC POLICY IN EAST ASIA AND THE PACIFIC

[HTTP://WWW.EASTASIAFORUM.ORG](http://www.eastasiaforum.org) (4th November, 2015).

⁴⁷⁷ between India and Pakistan, see more at: <http://www.eastasiaforum.org/2015/05/05/pakistan-and-india-should-go-further-than-mfn-to-boost-integration/>

⁴⁷⁸ Weerakoon 2001, p. 14

6.3.5. Weak Physical Infrastructure and Lack of Border Trade Facilitation

Various non-physical barriers hinder trade between South Asian countries and pose great threats to the regional integration. Excessive delays, high costs, documentary uncertainties, complex and un-unified border procedures, lack of information about the border rules are some of the common complexities of the South Asian trade. Unilateral measures cannot solve these problems. To cure these problems there is no alternative to the standardized procedures established bilaterally.⁴⁷⁹ The overall condition of physical infrastructure is poor in this region. The roads are not sufficient, railways and the waterways are not also up to the mark. These conditions increase the transport cost of the trade. In the present fast paced world, freight cost is one of the most important determinants of the competitiveness. Since the South Asian countries cannot minimize the transport costs they benefit less from trade liberalization regionally and internationally. Poor infrastructure increases trade costs and ultimately affects the trade flows.⁴⁸⁰ Inferior infrastructure is one of the major obstacles of South Asia towards regional integration. For example, around 75% of the overall trade between India and Bangladesh is carried through the land transport over roads and bridges that are not wide enough to facilitate smooth movement of the vehicles.⁴⁸¹ Usually the transport costs cover around 10% of the overall logistics costs.⁴⁸² It appears that if the transport cost is increased by 50%, trade decreases by 40%.⁴⁸³ To get the

⁴⁷⁹ UNESCAP. 2017.

⁴⁸⁰ De, P. (2008), 'Transportation Cost and Trade Competitiveness: Empirical Evidence from India', Discussion Paper No. 142, Research and Information System for Developing Countries (RIS).

⁴⁸¹ Bayes, A. (2006), 'Bangladesh-India Trade: Tips from my Travels', The Daily Star, January 24, online edition, available at: <http://thedailystar.net/2006/01/24/d60124020325.htm>, accessed on May 24, 2009.

⁴⁸² Id. At.

⁴⁸³ De, P. (2008, P. 5)

fullest benefits of SAFTA the countries need to provide adequate support to improve the physical infrastructure to ensure that the goods move freely across borders.⁴⁸⁴

Empirical studies identified transaction costs as one of the biggest hurdles of facilitation of cross-border trade amongst SAFTA member states. Upon a meticulous study of the empirical findings it appears that 10% reduction in transaction costs can result in increase of exports by 2%.⁴⁸⁵ To cure these problems the government can set up e-filing of customs documents to streamline greater trade flows.⁴⁸⁶ Further, the countries can take initiatives enhancing border efficiency. One of SAFTA's major limitations is its failure to provide a RTA between countries. Implementation of an RTA could cure the cumbersome, complex, and high cost of border transactions, and help to achieve the member states' trade liberalization goals.⁴⁸⁷

6.3.6. Nonexistent Regional Value Chain (RVC)

Trade in this region is restrictive in nature. This problem becomes more acute when South Asian countries trade between themselves. High trade costs significantly add to the restrictiveness of this region. For example, it is costlier for the members to trade between themselves than to trade with the Latin American countries. Poor trade and transport infrastructure and restrictive rules and regulations of the countries cause the low level of trade in this region.⁴⁸⁸ Lack of a proper RVC network is also a prominent reason as to why this region

⁴⁸⁴ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁴⁸⁵ Prabir De, Why is trade at borders a costly affair in South Asia? An empirical investigation, 19 CONTEMPORARY SOUTH ASIA (2011).

⁴⁸⁶ Id. at.

⁴⁸⁷ Id at.

⁴⁸⁸ These studies include Subramanian and Arnold (2001) and Arnold (2007).

cannot keep pace with the rest of the world. The deficiency of value chains hindered the region from generating stronger gains in exports and employment generation.

6.3.7. Slowdown Regional Foreign Direct Investment (FDI)

Restrictions in trade services have also affected foreign investment inflows in the service sectors.⁴⁸⁹ The restrictive approach affects foreign investment penetration and discourages active competition of small domestic and new firms within the market. It becomes difficult to encourage innovation and create job opportunities in this restrictive environment. Further, it limits investment opportunities especially in technology and network infrastructure. This restrictive nature jeopardizes market productivity and competition. Consequently, it has far reaching impact on infrastructure services relied upon for trade in goods, global value, and digital services.⁴⁹⁰

Trade restrictions translate into investment failure because trade and investments are inter-dependent. Additionally, a restrictive trade approach hinders intra-regional investment and negatively impacts small and medium sized companies investing in this region. Regulatory constraints such as licensing and complex visa requirements also affect intra-regional trade in services.⁴⁹¹

⁴⁸⁹ OECD (forthcoming (b), "Trading Firms and Trading Costs in Services; Firm-Level Analysis", OECD Trade Policy Papers, Paris.

⁴⁹⁰ OECD (forthcoming (b), "Trading Firms and Trading Costs in Services; Firm-Level Analysis", OECD Trade Policy Papers, Paris.

⁴⁹¹ Prabir De and Mustafizur Rahman, Regional Integration in South Asia (Knowledge World (KW) Publishers Pvt. Ltd 2017).

6.3.8. Long Negative list of SAFTA-Review Not Regularly Assessed

Long sensitive lists affect intra-regional trade.⁴⁹² Under SAFTA, the sensitive lists cover approximately 53% of South Asia import products. The sensitive list includes a large market of products. As a result, Member States protect these products. To promote intra-regional trade, Member States must phase out the sensitive lists according to an agreed schedule. Presently, the tariff rate is around 5.5%, and should be timely reduced.⁴⁹³ India has an important role to play in eliminating its sensitive list of products because it has significant impact on other smaller economies trade relations. India leads in trade within the region and any positive movement taken will set precedent for other nations.

A proliferation of statements and declarations without actual implementation limits SAARC progress. This is due to limited cooperation among Member States. Cooperation occurs primarily over previously agreed upon or non-controversial issues. These issues include alleviation of poverty, trade, and economic relations.

Moreover, the poor relationship between India and Pakistan hinders full SAFTA implementation. The mistrust between these countries is a significant factor on trade facilities' failure within these countries. In 2004, SAARC introduced SAFTA-facilitated intra-regional trade. Statistics reveal that intra-SAARC trade makes up less than 5.0% of regional trade and 3.7% of global trade. Under SAFTA, the 'free trade area' operates based on the sensitive list.⁴⁹⁴

⁴⁹² Taneja and Sawhney (2007) and Weerakon and Tehnnakoon (2006), among others, found the sensitive list provisions in SAFTA too stringent, as the sensitive list could cover 20 per cent of tariff lines compared to 10 per cent which was initially proposed.

⁴⁹³ Raihan (2014) suggested sensitive list liberalization based on trade potential, wherein 29 priority sectors have been identified to be common in the sensitive lists of India, Pakistan, Bangladesh and Sri Lanka. Most of the tariff lines protected under sensitive lists relate to textiles, electronic equipment, iron and steel, plastic and rubber products.

⁴⁹⁴ Farhana Syead, Lofty goals of SAARC_ Myths and realities, FINANCIAL EXPRESS, BANGLADESH, July 09, 2014.

Member States tend to create long sensitive products list to shield specific economic sectors from SAFTA exemptions. Furthermore, some countries impose various para-tariffs to counter the contracting state's limited tariff concessions under SAFTA. The sensitive list protection is a proviso of SAFTA's TLP influence on trade.⁴⁹⁵ The sensitive list covers 20% of tariff lines in conjunction with top down tariff reduction mechanisms and other scheduled concessions for developing and least developed economies. This figure means sensitive lists blanket substantial trades falling outside tariff reduction envisaged by SAFTA. Downsizing sensitive lists is necessary for countries to achieve SAFTA's optimum effectiveness.

In addition to downsizing the sensitive lists, countries should focus on increasing trade efforts. The Working Group on Reduction in the Sensitive Lists attempted to narrow SAFTA's sensitive list by 20%.⁴⁹⁶ Some nations are reducing their lists. For example, Maldives reduced its sensitive lists by 78% (reducing tariff lines from 681 to 152), and India reduced its sensitive list for LDCs by 95% (reducing tariff lines from 480 to 25).⁴⁹⁷ The second sensitive list revision began in 2012 with the objective of phasing out tariff lines.⁴⁹⁸ Under this scheme non-LDCs have three years (Sri Lanka has six years), and LDCs have eight years to meticulously revise their sensitive lists. The attempt to revise and reduce the tariff for the sensitive list is an important step towards regional integration.⁴⁹⁹

⁴⁹⁵ Shahid Kardar, *South Asia—Intraregional Cooperation: The Way Forward* 7 (Aug. 2011) (study), <https://www.adb.org/sites/default/files/linked-documents/rcs-south-asia-20112015-oth-02.pdf>.

⁴⁹⁶ Revised Sensitive Lists under SAFTA (Phase II), SAARC, http://www.saarcsec.org/areaofcooperation/detail.php?activity_id=35 (last visited Apr. 3, 2017).

⁴⁹⁷ *Id.* at.

⁴⁹⁸ *Id.* at.

⁴⁹⁹ Divesh Kaul, *Eliminating Trade Barriers through Preferential Trade Agreements: Perspectives from South Asia*, (2017).

According to 2013 statistics, the sensitive list restricts around 53% of imports.⁵⁰⁰ Additionally, some countries impose various para-tariffs to balance SAFTA's tariff concession.⁵⁰¹ All South Asian countries have a product sensitive list. Tariff liberalization is essential for proper SAFTA implementation. SAFTA Article 7.3(b) requires members to revise the sensitive products list every four years. It took four years to complete the first step to reduce the sensitive lists. Members are uncompromising to further reduce the list in the required sectors and degree.⁵⁰²

6.3.9. Non-Tariff Barriers

“Non-tariff barriers present nowadays the most important and dangerous barriers to trade with fragment markets in a more successful way that tariff have ever done.”⁵⁰³ SAARC countries need to work on non-tariff sectors such as sanitary and phytosanitary standards, technical barriers to trade, restrictions on port entry and para-tariffs. Furthermore, SAARC should play an active role dealing with complaints received by SAARC Chamber of Commerce and Industry and other apex authorities. Greater harmonization is necessary in technological fields, especially in the animal and plant products sector. Eliminating NTBs will attract acceptances by importing the exporting country-issued certificates that will reduce the need for further inspection in border areas.⁵⁰⁴

Studies reveal that non-financial tariffs cause greater trade hindrance than financial ones. Non-financial tariffs account for around 67% of trade barriers whereas tariff barriers cause

⁵⁰⁰ Intra-Regional FDI and Economic Integration in South Asia: Trends, Patterns and Prospects. (February 2013)..

⁵⁰¹ Kaul, (2017)..

⁵⁰² Next Steps to South Asian Economic Union: A Study on Regional Economic Integration (Phase II) Commissioned by SAARC Secretariat. (2014).M

⁵⁰³ Jovanovic, M. N. p. 79. International Economic Integration, London: Routledge (1992)

⁵⁰⁴ ADB 2014

around 47.5%. Among tariff barriers, ordinary customs barriers have 64.3% and other trades have 35.7% of trade. The other cumbersome barriers are 11% corruption, 11% Custom documentation and formalities, 11% technical barriers to trade, 9-10% Anti-Dumping Costs, and 5% other countervailing duties.

South Asia has great potential to become a successful regional economic bloc despite wielding asymmetric economic power. It is necessary to view South Asian integration in a broader perspective accounting for changing global economics and business patterns across the wider Asian region. Such assessments are required for Member States' economic interests and relations with other South Asian countries. Further, it will provide insight to how other South Asian economies will react to new challenges. The following sections discuss numerous NTBs.

6.3.9.1. Unnecessary Testing Requirements

Quality assessment and inspection is routine border trade work. Most South Asian countries lack proper infrastructure to carry out this work. Work, quality, and negligence in sanitary and phyto-sanitary (SPS) test results significantly escalate costs. It is impossible to predict the required inspection timetable. Moreover, there are no accepted inspection standards, rules, or tests. For example, South Asian countries have a standard rule for pulp import. However, when Indian pulp exporters export to Sri Lanka they face additional requirements. They are required to obtain a Health Certificate from the Ministry of Health of Sri Lanka and go through a rigorous quality assessment process. This increases trade cost.⁵⁰⁵ In the early 2000s, Bangladesh had a good cement export market in the North-East India. Bangladesh exported

⁵⁰⁵ Sagar Prasai, MAPPING BARRIERS TO TRADE IN SOUTH ASIA (The Asia Foundation 465 California Street, 9th Floor San Francisco, CA 94104 www.asiafoundation.org November 2015).

approximately \$1.2 million worth of cement every month until February 2003.⁵⁰⁶ This was possible because Bangladesh cement was cheaper than the domestic cement and domestic transportation cost was very high. Indian authorities announced that all Bangladesh cement had to obtain a testing certificate from the Bureau of Indian Standard (BIS) before exporting and subjected such cement to a fee depending on export volume. This requirement resulted in stopping Bangladesh's cement export to India.⁵⁰⁷

6.3.9.2. Certification and Mutual Recognition Absence

Unlike European jurisprudence, in this region the mutual recognition concept is unpopular. A recent MCCI study revealed that the exporting country certificate of conformity is generally unaccepted by the importing country except for very limited sectors. Usually, imported goods are required to go through a re-inspection process causing great obstacles to free movement of goods within this region.⁵⁰⁸

6.3.9.3. Inconsistent Packaging and Labeling Requirements

India has the largest consumer market in South Asia and receives the majority of exports. Consequently, India's trade attitude influences neighboring countries economies. Similarly, India's food and safety standards affect other countries trade volume. In India, the Food Safety and Standards Authority of India (FSSAI) is responsible for determining the competitiveness of the foods and related products circulated in the Indian market. However, there are no harmonized

⁵⁰⁶ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁵⁰⁷ Financial Express, 2003

⁵⁰⁸ Prasai. November 2015.

goods labeling requirements. This hinders regional goods trade and importing because it is difficult to comply with FSSAI guidelines targeting multiple markets.

6.3.9.4. Insufficient Quarantine and Warehouse Services

Lack of SPS facilities at borders causes further delay due to the quarantine period. This delay affects all imports. The biggest delays are imported plants, live animals, fruits, vegetable, and perishable goods. The lack of predictability, procedural delays, and port inefficiency can result in needing to warehouse goods. However, the warehouses are inadequate in this region's land and seaports. There is no initiative at the regional level or from individual governments to build excellent warehouses in border regions. Uncertainty in the process and lack of adequate warehouse facilities increase overall trade costs.

6.3.9.5. Absence of Formal Trade Financing

There is no unified schedule of trade-related transaction costs. In this region, cost inflation is at different levels. For example, Bangladesh and India do not have direct banking facilities at their border. As a result, traders have to rely on third-party payments. This causes transaction delays and indirectly diverts traders to informal and expensive alternative payment

routes. A recent study revealed that, Hawala⁵⁰⁹ and Hundi⁵¹⁰ bilateral trade payment systems carry out around 60% India trades and 72% Pakistan trade.⁵¹¹

6.3.9.6. Information Asymmetries

Under SAFTA Article 7(4) Member States are obligated to notify the SAARC Secretariat annually of all para-tariff and non-tariff measures. Further, the COE must regularly review such measures in their regular meetings to check their compatibility with other WTO measures. Despite these mechanisms, these organizations fail to provide a stable and steady trading regime. It is impossible for traders to make a cost risk assessment because important information is unavailable. Moreover, it is very difficult to obtain relevant information from concerned authorities. These uncertainties further escalate trade costs. However, GATT Article XI and the WTO advise countries to publish the actual regulations measures adopted and provide all relevant trading information on the internet for ease of access.

6.3.9.7. Imposing Unusual Dumping/ Anti-dumping Duty

Under SAFTA Article 16(5), Member States are required to safeguard non-discriminatory measures applicable to products imported from all other contracting states. On 28 January 2004,

⁵⁰⁹ Hawala is a method of transferring money within close networks based on promissory notes rather through formal banking channels. The practice is a criminal offense under anti-money laundering laws in all countries but continues to flourish in areas where banking channels are not available.

⁵¹⁰ Technically, a Hundi is an unconditional order in writing made by a person directing another to pay a certain sum of money to a person named in the order. Hundis, being a part of the informal system have no legal status and are not covered under the Negotiable Instruments Act, 1881.

⁵¹¹ Institute for Social and Economic Change. 2015. Non-Tariff Barriers under Free Trade Agreement - A Study on India and Sri Lanka. In press. Bengaluru, India: Institute for Social and Economic Change.

Bangladesh filed a DSU case with WTO against India for imposing antidumping duty on lead acid batteries. Bangladesh contended the duty imposition was contrary to India's obligation under GATT Articles I:1 and II:1 and Bangladesh's benefits under the WTO were nullified or impaired pursuant to GATT Articles XXIII:1(a) and XXIII:1(b). India's lead acid battery market was around 600 million USD. After SAFTA's implementation, battery export tariffs reduced from 64.21% to 38.33%. Bangladeshi exports fulfilled around 10% of India's market. In 2002, the Indian government imposed anti-dumping duties on all battery exporters because China and Korea were exporting batteries below normal value. Bangladesh challenged this provision before the WTO dispute settlement body. In 2004, these two states held a consultation.⁵¹² India decided to withdraw the controversial anti-dumping duties. However, Bangladesh lost its previous battery market in India during the three-year case.⁵¹³

On 1 January 2017, India imposed a five-year anti-dump duty on Bangladesh and Nepal jute and jute good import 'protecting the domestic industry.'⁵¹⁴ After three months, India withdrew additional customs duties levied on jute product import from Nepal. However, there was no anti-dumping duty reduction.⁵¹⁵ Bangladesh's duty ranges from \$19 to \$352 per ton.⁵¹⁶ The anti-dumping duty effects Bangladesh's economy in sectors like jute yarn, hessian fabric,

⁵¹² Mahmud, M. (2005), 'India Lifts Anti-Dumping Duty on Bangladeshi Battery', The Daily Star, January 09, online edition, available <http://www.thedailystar.net/2005/01/09/d50109050141.htm>, accessed on May 23, 2009.

⁵¹³ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁵¹⁴ See more at: <http://www.thehindubusinessline.com/economy/policy/india-withdraws-additional-customs-duties-on-jute-goods-import-from-nepal/article9663444.ece>, April 25, 2017.

⁵¹⁵ Id. At.

⁵¹⁶ Mohsin Milon, Jute exports stall as India imposes antidumping duty _ The Daily Star, THE DAILY STAR, January 11, 2017.

and jute sacking bags. Jute is the Bangladesh's third largest export product.⁵¹⁷ In 2015-2016, Bangladesh exported jute and jute products worth 919.58 million USD, a 5.88 % increase from the previous year. Bangladesh exports around 20% of its jute to India covering around 8% of India's jute market.⁵¹⁸

6.3.9.8. Corruption

Procedural delay and uncertainties significantly increase trade cost. This indirectly encourage traders to opt for informal payment methods to ensure goods are processed and delivered on time. Customs authorities have some discretionary powers to facilitate the free flow of trade, and often they arbitrarily use and abuse their powers. For example, instead of charging import tariffs according to the goods quality or value they routinely decree product value on other bases.⁵¹⁹

6.3.9.9. Para-Tariffs

Generally, all tariffs falling outside conventional custom duties are para-tariffs, including port access fees and handling charges. For example, India subjects all apparel products to 1% landing charges, 2% education taxes, and 12% countervailing duty. Additional countervailing duties apply to apparel in certain routes such as India-Bangladesh land route. Additionally, charges arise for porter and laborer trade unions when goods enter India by road.⁵²⁰

6.3.10. Terrorism Suppression

⁵¹⁷ Id. At.

⁵¹⁸ Id. at.

⁵¹⁹ South Asia Watch on Trade Economics and Environment 2015

⁵²⁰ South Asia Watch on Trade Economics and Environment 2015

Large-scale terrorist violence affects South Asia.⁵²¹ Including Afghanistan in SAARC adds new dimensions of violence and terrorism. After the signing at the third summit, in November 1987, the SAARC Regional Convention on Suppression of Terrorism came into effect on 22 August 1988. The Convention adopted a regional approach to the established principles of international law of terrorist offences. It made provisions for exchanging information on terrorist activities and extraditions between Member States. Article VIII of the Convention states “contracting States shall cooperate among themselves, to the extent permitted by their national laws, through consultations between appropriate agencies, exchange of information, intelligence and expertise and such other cooperative measures as may be appropriate, with a view to preventing terroristic activities through precautionary measures.”⁵²² Following this Convention, in 1990 SAARC Terrorist Offences Monitoring Desk (STOMD) was established in Colombo. Its main purpose is to collate, analyze, and disseminate information regarding the terrorist incidents, tactics, strategies, and methods.⁵²³

6.3.11. Failure to Comply Compensation to Revenue Loss Mechanism

Under SAFTA Article 10(E), non-LDCs are required to compensate LDCs for customs revenue losses for undertaking tariff reduction. The compensation formula is: $RL(17) = CRNS(17) - (1 + \alpha) * CRNS(16)$. $RL(17)$ = the revenue loss in 2017, where $CRNS(17/16)$ = custom revenue of non-sensitive products covered under SAFTA 2016 and 2017 tariff liberalization program, and α = annual customs revenue growth rate of non-sensitive lists. The compensation is

⁵²¹ Khatri and Kueck 2003: Lama 2006

⁵²² Declaration of SAARC Summit in 1988

⁵²³ Mahendra P. Lama, SAARC Programs and Activities Assessment, Monitoring, and Evaluation, (2010).

calculated in USD. The main objective is to aid vulnerable economies by making up for losses resulting from normal tariff reduction.⁵²⁴

SAFTA allows Member States to withdraw tariff concessions in limited circumstances to protect domestic industry from injury caused by increased free trade imports under SAFTA. These provisions are to prevent economic damage. Such measures' duration is less than three years. These safeguards are not applicable to LDCs products that do not exceed 5% of the importing country's import share.⁵²⁵

6.3.12. Absence of Proper SAFTA Dispute Settlement Mechanism

SAFTA Article 10(7) states, "The COE will also act as Dispute Settlement Body under this Agreement."⁵²⁶ However, SAFTA lacks a streamlined dispute resolution method in the SAARC Secretariat. SAFTA takes a minimalist approach and provides a method that can effectively resolve their disputes through consultation by providing parties flexibility and control.⁵²⁷ The present dispute settlement method focuses on amicable dispute settlement between parties.⁵²⁸ An aggrieved contracting party is required to make a written request to the other party for a consultation setting out the main disputed issues.⁵²⁹ Further, the complaining party has to explain the complaint facts and legal basis to the COE. Following the request for consultation, the other party must reply within fifteen days and must engage in consultation

⁵²⁴ Ibid

⁵²⁵ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁵²⁶ Article 10 of SAFTA Agreement

⁵²⁷ Md. Rizwanul Islam, An Appraisal of the South Asian Free Trade Agreement and Its Consistency with the WTO Rules on Preferential Trade Agreements, *THE JOURNAL OF WORLD TRADE* (2010).p.1195

⁵²⁸ Article 20(1) of SAFTA

⁵²⁹ Article 20(2) of SAFTA

within thirty days of the initial request.⁵³⁰ If the other party does not respond within the prescribed time, does not take part in consultation, or they fail to reach a settlement then the complaining party may request the COE to settle the dispute.⁵³¹

The COE must examine the dispute and make recommendations within sixty days from the referral date. The COE has sweeping power on the manner of dispute settlement. For example, the COE can request a specialist from the panel of specialists from a contracting party with direct interest in the present dispute.⁵³² Once appointed, the specialist must report to the COE within thirty days.⁵³³ However, there is no provision directing the COE about the impact of the specialist recommendation. If the specialist's report is silent the COE chooses whether to give it any weight. The COE's wide power in final dispute determination may undermine the specialist's role. Any party aggrieved by the COE's recommendation can appeal to the SMC. The SMC's powers are like an appellate court. The SMC can sustain, modify, or reverse the COE's recommendations.⁵³⁴ The SMC has sixty days to settle the appeal.⁵³⁵ When the COE and the SMC find the complaint issues inconsistent with the agreement's provision the SMC can provide recommendation and demonstrate implementing measures. The SMC and the COE are facilitators unlike courts giving judgment.⁵³⁶ The contracting party is required to inform the COE or SMC about their course of action following recommendation within ninety days. If the COE

⁵³⁰ Article 20(3) of SAFTA

⁵³¹ Article 20(4) of SAFTA

⁵³² Article 20(8) of SAFTA

⁵³³ *ibid*

⁵³⁴ Article 20(9) of SAFTA

⁵³⁵ *ibid*

⁵³⁶ Article 20(10) of SAFTA

does not receive the information, they retain power to authorize other interested parties to withdraw concessions with equivalent trade effect.⁵³⁷

With one exception, Article 20 of SAFTA provides that bilateral consultation shall resolve all potential agreement disputes.⁵³⁸ However, there are many disputes where the complaining party and responding party are more than two. Other references to contracting states in Article 20 are in a different context or jointly referred to the complaining and responding party. This can cause problems. For example, one party's decision to initiate a measure to protect its domestic industry against the temporary surge of the goods can affect multiple countries. There is no provision as to whether the affected parties shall bring separate complaints and solve each the matters bilaterally or whether to address the dispute collectively. Furthermore, there are no guidelines as to the position when the COE decides to solve the dispute, whether they should consider it on a bilateral basis or whether it will treat is as multiple individual complaints involving identical subject matter. The COE faces further complexities in substantive dispute settlements with identical findings on identical subject matter. Even considering matters separately, there are chances for several complaints regarding the same subject matter. All these ambiguities are avoidable by amending SAFTA provisions to accommodate single proceedings in cases that involve identical claims by or against more than one Member State.

6.3.13. Absenteeism of LDCs Technical Assistance

SAFTA Article 8 identifies facilities set up to promote intra-regional trade. These facilities are efficient intra-SAARC trade, removal of investment barriers, import licensing and

⁵³⁷ Article 20(11) of SAFTA

⁵³⁸ The only exception is Art. 20(11) in which the relevant part reads: 'the Committee of Experts may authorize other interested Contracting States to withdraw concessions having trade effects equivalent to those of the measure in dispute'.

registration procedures simplification and harmonization, legislative and policy related issues, assistance for developing national capacity training and human resource development, effective market promotion in export-oriented sectors, harmonization of standards, and streamlining mutual recognition test results.⁵³⁹ These factors require signatories to give meticulous and effective consideration to their implementation.

To make the most out of SAFTA, LDC's should come forward in fields like technical assistance and cooperation arrangements. LDCs should develop their technical aspects on a priority basis absent binding commitments. This is possible by ensuring training and skill development, product certification, amending and improve national anti-dumping legislation, taking export and investment oriented measures, developing and improving tax policies and instruments, reforming and modernizing trade policies, eliminating technical trade barriers, and improving SPS facilities, safeguards, and compensation, etc.⁵⁴⁰ However, there is no roadmap for how the signatories will achieve these goals.

The developing contracting states provide technical assistance to LDC for their trade-related capacity development.⁵⁴¹ The agreement highlights the objectives of technical assistance for enhancing trade capacities, developing and improving tax and tariff policies and related laws, refining and developing national expertise on different WTO agreements, undertaking rigorous studies on boosting trade related infrastructure, supporting export, and facilitating investments.⁵⁴²

⁵³⁹ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁵⁴⁰ Hoi-Yong*. Dhruva Kumar Gautam**. Lee Chong, Hak-Chun, South Asian Free Trade Area (SAFTA) and Regional Integration: Revisit the Existing Reality, (2014)

⁵⁴¹ Article 11(d) of SAFTA.

⁵⁴² Annex II of SAFTA.

6.3.14. Stoppage Reduction Based on Tariff Structure

Tariffs for the priority sector range from 5%-50%. Member States should move towards adopting Tariff Liberalization Programs for Sensitive Lists. In 2015, member states agreed to reduce tariffs by 20% and 30% by 2020 with some flexibility for highly sensitive products.⁵⁴³ In South Asia, two sided conflicts and tensions are common phenomena. These conflicts arise because of historic animosity or difference in the laws and regulation across Member States. The lack of unification hinders smooth trade import and export among SAARC countries. However, mutual agreements may ease or resolve asymmetries between the countries. Such bilateral arrangements can be highly beneficial for both conflicting states.⁵⁴⁴

6.3.15. Trade in Services Barriers

Service trade policy interlinks with the international trading system of goods. Trade cost reductions have a direct impact on service performance improvement because goods produce enterprises and increase diversity and quality.⁵⁴⁵ Statistics reveal open attitudes towards service trade directly impact productivity of those countries' manufacturing industries.⁵⁴⁶

⁵⁴³ ADB. 2014.

⁵⁴⁴ Hassan Mobeen Alam & Others, Trade Barriers and Facilitations among SAARC Economies, Vol. 2 No.10; June 2011 INTERNATIONAL JOURNAL OF BUSINESS AND SOCIAL SCIENCE (June 2011).

⁵⁴⁵ Hoekman, B. and B. Shepherd (2017), "Services Productivity, Trade Policy and Manufacturing Exports", World Economy 40:3, pp. 499-516.

⁵⁴⁶ Arnold, J., A. Mattoo, and G. Narciso, (2008), "Services inputs and firm productivity in Sub-Saharan Africa: Evidence from firm level data", Journal of African Economies 17 (4): 578-99.; Arnold, J., B. Javorcik, and A. Mattoo (2011), "Does services liberalization benefit manufacturing firms? Evidence from the Czech Republic", Journal of International Economics 85(1): 136-46.; Arnold, J., B. Javorcik, M. Lipscomb, and A. Mattoo (2015), "Services reform and manufacturing performance: Evidence from India", The Economic Journal 126: 1-39. And Duggan, V., S. Rahardja, and G. Varela (2013), Service sector reform and manufacturing productivity: Evidence from Indonesia, Policy Research Working Paper 6349, World Bank, Washington, DC.

In practice, the cause of trade barriers is adverse legal and regulatory frameworks, typically a national government's intention to discriminate foreign services or suppliers.⁵⁴⁷ Service trade barriers can limit or restrict the number of suppliers or operations, transaction value, and the entity type through which suppliers provide services.⁵⁴⁸ Market access and treatment measures combined determine international contestability and competition in a country's service market.

Some common forms of barriers to service include monopolies, discretionary foreign investment screening, foreign equity limits, caps on number of licenses, restrictions on temporary movement of natural persons supplying services, and discriminatory subsidies or licensing requirements. Service trade policies include service supply to foreign suppliers whether across borders, through establishments, or natural persons moving to supply services.

6.3.16. SAARC Fails to Resolve Inter-State Conflicts

This region is one of the world's most conflict prone regions. India has bilateral disputes with most of its neighboring countries. There is an historic dispute between India and Pakistan over Kashmir. This dispute is one of the most difficult challenges of SAFTA. This animosity delayed many SAARC summits and implementations of various measures.⁵⁴⁹ In 1971, India supported Bangladesh's liberation war. This weakened their relationship with Kashmir. Furthermore, there are several conflicts between India and Bangladesh originating prior to Bangladesh's liberation. These conflicts arose when India constructed the Farakka barrage over

⁵⁴⁷ GATS Article XVII: National Treatment

⁵⁴⁸ GATS Article XVI: Market Access

⁵⁴⁹ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

the river Ganges about 18 kilometers away from the Bangladesh border. India diverts Ganges water during the dry season.⁵⁵⁰ The bilateral relation between India and Bangladesh further deteriorated when India constructed the Tipaimukh barrage in the Borak river, just one kilometer away from Bangladesh's border leaving the North-Eastern part of Bangladesh vulnerable to desertification.⁵⁵¹ Additionally, Bangladesh has disputes with India regarding border demarcation, enclave exchange, and illegal migration. Similarly, border relations between India-Sri Lanka and India-Nepal are unsatisfactory. The main conflict between India and Sri Lanka began when India supported militant Liberation Tigers of Tamil Eelam (LTTE). Moreover, India and Nepal have various economic issues. Apart from these, the inter-state relations between other South Asian countries are tension free.⁵⁵²

There are various theories regarding the relationship between RTAs and conflict. Under the classical trade theory, RTAs ensure increasing political incentives that results in political stability and are beneficial to Member Countries. Barbieri (2002) analyses the difference between RTAs and conflicts and the strong positive connection between them. He believes RTAs in conflict prone zones may trigger militarized inter-state dispute and the inter-state conflicts within South Asia obscure SAFTA's goals.⁵⁵³

⁵⁵⁰ Jasim, E. H. (2009), 'India Finalizes Construction of Tipaimukh Dam: Adverse Impact Feared on Bangladesh', *The New Nation*, May 10, online edition, available at: <http://nation.ittefaq.com/issues/2009/05/10/news0820.htm>, accessed on May 17, 2009.

⁵⁵¹ Id. At.

⁵⁵² Khan, S. R., M. Yousaf, F. H. Shaheen, and A. Tanveer (2008), 'Regional Trade Agreements in South Asia: Trade and Conflict Linkages', in S. R. Khan (ed.), *Regional Trade Integration and Conflict Resolution*, Islamabad: Routledge, pp. 63-92.

⁵⁵³ Barbieri, K. (2002), *The Liberal Illusion: Does Trade Promote Peace?* Ann Arbor: University of Michigan Press.

6.4. Market Leader or India's SAFTA Role

It is common phenomenon that India faces considerable amounts of regional opposition while the larger world outside hails its soft power. Generally, most countries seem to have a mistrustful relationship with the larger powers. For example, the U.S. seems to face these problems from the neighbors of Central America. Similarly, Germany has grown as a dominant power in the EU and China in the ASEAN region.⁵⁵⁴ The role of India on the global stage is misleading due to its misconception with this region.

In 2008, India's trade within SAARC was 0.8% of its total imports and 5% of total exports. Whereas, Nepal's was around 73.9% total imports and 59.6% total exports.⁵⁵⁵ India is the strongest economy in South Asia and can take the initiative to build trust amongst SAARC nations. India can show openness and explore various arrangements to alleviate neighboring countries' security and domination concerns. This can be done in through discussions at the ministerial level; forming agreements, pacts, and informal civil society organizations; and developing people-to-people contacts. Such efforts would send a strong message across SAARC to develop a closer and collegial relationship between countries. India is in a position to initiate a healthy relationship between members by disregarding previous misunderstandings and restoring faith in SAARC unity.⁵⁵⁶

There are many reasons behind SAARC neighboring countries' cageyness. Historically, Pakistan and Bangladesh have difficult border issues with India. Moreover, there is a growing concern about cross border access to terrorists and illegal immigration. All these issues generate

⁵⁵⁴ Mohamed Zeeshan, Can Modi Bring South Asia Together?, THE DIPLOMAT, INDIA (October 06, 2014).

⁵⁵⁵ Deepika, W. (2009). 'Assessing the potential for growth of intraregional trade in South Asia'. Retrieved from http://www.unescap.org/tid/publication/tipub2563_chap3.pdf

⁵⁵⁶ ADB, THE POLITICAL ECONOMY OF REGIONAL COOPERATION IN SOUTH ASIA, (July 2010).

a climate of distrust between these nations. These countries have an internal attitude of economy with each other. As a result, the growth amongst the South Asian countries is exclusive. For India, this created more suspicion. No country benefits from this restrictive attitude towards each other, regional integration is necessary for growth. For example, all of India's neighbor countries need to benefit from its huge and growing economy. India needs better relations with neighbor countries to create a friendly climate for a sustainable development and enhancing its foreign policy ambitions beyond the region. This is possible if India embraces this region and builds a framework of cooperation that increases contact and a sense of developed prosperity in the South Asian region.⁵⁵⁷

Regional cooperation can play a critical and decisive role in maximizing individual experience. The SAARC charter includes elements like regional harmony, peace, and prosperity. India should take the lead to build mutual confidence and comfort levels. The former Prime Minister of India, Inder Kumer Gujral, said that there is no zero-sum game in the South Asia and it is in the best interests to all to move towards mutual prosperity.⁵⁵⁸ Given its geographic position and the size of its economy, India can play a vital role in regional integration without sacrificing its own basic interests.⁵⁵⁹

India shares land and maritime borders with all SAARC counties except one. As a result, India's role in SAARC region is of paramount importance. India should not perceive its neighbors as being envious of its growing economic and political clout. From India's

⁵⁵⁷ Zeeshan, THE DIPLOMAT, INDIA, (October 06, 2014).

⁵⁵⁸ Inder Kumer Gujral, Ex-Prime minister of India, South Asia and the world; and Ramesh Thakur and Oddny Wiggen, South Asia in the World: Problem Solving Perspectives on Security, Sustainable Development, and Good Governance (United Nations University Press 2004).

⁵⁵⁹ Id. at.

perspective, prosperity lies in regional cooperation rather than isolation. As a result, India should take active initiative to engage other countries and undertake confidence-building schemes.⁵⁶⁰

Sustainable economic development and prosperity of this region is possible by prioritizing more than just the western market. A large and vibrant regional Asian market can be significant, cause a demographic shift, and grow global demand for Asian products. These countries can adopt a long-term strategic approach to create the Asian market. To achieve this goal, Pakistan is an important hub to connect the Asia-wide market.⁵⁶¹ Full-fledged economic relations between India and Pakistan are a pre-requisite for successful liberalization. These countries should eliminate all voluntary export restraints tending to hurt small and medium sized manufacturers. Further, India should concentrate on exporting machineries and technologies to Pakistani firms. These firms currently import from developed countries at a higher cost. Moreover, the visa facilities must be flexible and user friendly so that small- and the medium-scale entrepreneurs can develop a cross-border linkage and make maximum utilization of liberalization.

Some terrorist's attacks in India drastically shut down communications, visits, and healthy trade flows with Pakistan. Rather than destroying the entire relationship, India should be more proactive in distinguishing, the isolated militants from the greater people of Pakistan which no connection with militant activities. Adopting a hard line can prove counterproductive in

⁵⁶⁰ Hemayet Uddin, Will SAARC embark on a new path?, THE GATEWAY HOUSE (November 21, 2014).

⁵⁶¹ This discussion is based on Ijaz Nabi, "Lifting the India-Pakistan Trade Game," The Hindu, March 28, 2012, <http://www.thehindu.com/opinion/lead/lifting-up-theindopak-trade-game/article3251761.ece>.

realizing prosperous and peaceful Asian economic integration.⁵⁶² Identification and solution of political and economic sectors pose greatest challenge for the proper SAFTA implementation.⁵⁶³

With 78%, India is the largest GDP contributor in the South Asia. Pakistan contributes 10%, Bangladesh contributes 8%, and Sri Lanka contributes 3%.⁵⁶⁴ Other SAARC members have negligible GDP contribution. This figure demonstrates India's position in taking the initiative of greater trade integration in this region. India comprises 73% of SAARC's regional territory, has 75% of the regional GDP, accounts for 78% of regional export and 60% of regional imports.⁵⁶⁵ Therefore, India is in the position to advance the trade agenda and take initiative for regional integration. The import and export flow of goods to and from India with neighboring countries demonstrate neighboring countries receive Nepal 55%, Bangladesh 20%, and Sri Lanka 15% of their total imports whereas exports by these countries is a small in comparison to India. Furthermore, India has the largest military force of this region. India and Pakistan have nuclear weapons.⁵⁶⁶

There are various socio-cultural and religious similarities between India and other SAARC countries. Therefore, without India's active participation and leadership, it is impossible to achieve regional integration. "India constitutes the core while all its neighbors form a

⁵⁶² Michael Kugelman Robert M. Hathaway, *Pakistan-India Trade: What Needs To Be Done? What Does It Matter?*, (2013).

⁵⁶³ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

⁵⁶⁴ See the figure 1.1 for details of contribution of individual countries GDP in total South Asian GDP.

⁵⁶⁵ World Bank (2012). *World Development Indicators Database*. Available: <http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2012> access date August 10.

⁵⁶⁶ Rajiv Kumar Bhatia, *INDIAN FOREIGN AFFAIRS JOURNAL*, (April-June 2011,).

periphery of the South Asian region.”⁵⁶⁷ Statistics reveal that FTAs with nations having hegemonic power are more successful than the ones constituted amongst equal states.⁵⁶⁸ This is because in regimes where there is hegemony, the strong countries can act as the institutional focal point to implement the FTA. Moreover, such countries also can play an important role in minimizing and neutralizing tension that may arise from unequal distribution of FTA gains which between countries with similar power is very difficult to coordinate.⁵⁶⁹

Despite India’s superior position within this region, SAFTA countries do not accept India as the leader of this region. India’s dominant position within this region creates distrust and suspicion amongst members. In this environment, countries cannot work together towards regional trade integration. Moreover, Pakistan constantly challenges India’s hegemonic power within this region. The lack of consensus regarding hegemonic power and leadership has two impacts on the proper SAFTA. First, India may feel reluctant to act as the institutional focal point to implement SAFTA goals and, second, may feel unwilling to ease the tensions that persist between other Member States that may arise from distributional arrangements.

6.5. Observer Role

When a country has considerable stake in a certain region, it starts attending as an observer and thus explores various political, cultural, and economic avenues. The SAARC Charter does not define the term observer. Inclusion of new states and observers will convert

⁵⁶⁷ Harshe, R. (1999), ‘South Asian Regional Co-operation: Problems and Prospects’, *Economic and Political Weekly*, Vol. 34, No. 19, pp. 1100-1105.

⁵⁶⁸ Crone, D. (1993), ‘Does Hegemony Matter? The Reorganization of the Pacific Political Economy’, *World Politics*, Vol. 45, No. 4, pp. 501-525.

⁵⁶⁹ Hossain, ONLINE AT [HTTP://MPRA.UB.UNI-MUENCHEN.DE/18517/](http://MPRA.UB.UNI-MUENCHEN.DE/18517/) MPRA PAPER NO. 18517, POSTED 11. NOVEMBER 2009 00:05 UTC, (July 2009).

South Asian into a new power game. SAARC's success lies on the perceptual move of regional. For third world countries, the regional schemes work as a mechanism to satisfy national aspirations and realize national goals.⁵⁷⁰ Though SAARC fails in economic regional integration, the presence of the observers is a positive sign. At the 14th SAARC Summit, Afghanistan became the 8th SAARC member and five nations (U.S., EU, Japan, China, and South Korea) obtained observer status. Economically and strategically, these states hold key positions in the global market. Further, at the 15th SAARC Summit, held in 2009 in Colombo, delegates of nine countries participated as observers. The Chairperson and the Prime Minister of Bangladesh stated, "I am happy to announce that SAARC leaders have admitted Afghanistan as member of SAARC, subject to the completion of the formalities, we have also decided to accord observer status to People's Republic of China and Japan, Afghanistan will certainly prove as a bridge between Central and South Asia."⁵⁷¹ The presence of China as the observer unwelcomed by India and Nepal because they fear China's presence will make their focus thinner. As an observer, China will affect other member countries. Other countries may use China. Further, China's presence may divert regional cooperation goals from socio-economic development to global power politics promoting East-West Connectivity. China's connection with this region is through common historical, geographical, ecological, and other common interests such as military, terrorism, and environmental security.⁵⁷² Moreover, China shares common borders with Pakistan, Afghanistan, Nepal, and Bhutan. Therefore, China can be beneficial as observer because it is a stakeholder in the declining South Asian economy. On 3 March 2007, China made the formal application to SAARC for observer status.

⁵⁷⁰ See more at, <http://india.foreignpolicyblogs.com/2010/05/12/saarc-iii-challenges- and-prospects/>

⁵⁷¹ See more at, <http://www.southasiaanalysis.org/%5Cpapers17%5Cpaper1626.html>

⁵⁷² See more at MAY 2011 VOL 3, NO 1 <http://www.ifa.org.np/pdf/prc/mrjosse.pdf>

During the 14th SAARC Summit Iran gained observer status to enhance SAARC trade links between Iran and SAARC Member Countries. Apart from the commercial and geographical links Iran acts as the gateway for East-West connectivity, Iran's observer status may be beneficial to India. India may get strategic advantages for the fight against terrorism, fulfill their security and economic needs, and obtain easier access to Central Asia.⁵⁷³

The observer issues carry both challenges and opportunities. Observers enhance SAARC internationally and creates imperatives for peace and cooperation. The presence of observers enhances credibility. This can attract foreign direct investment, open up transit trade facilities, inter-regional trade, and economic cooperation opportunities within the member states. On 10 November 2006, U.S. and South Korea gained observer status following the Standing Committee meeting. The observers provide a wider platform for business trade and strategic development. Inclusion of Iran and the U.S. contributes to economic growth and attracts mutual aid. Moreover, these countries may bring in new power within this region. The U.S. has shown concerns about Iran- Pakistan- India (IPI) gas pipeline. This project may change the outlook of regional politics. For example, if the nuclear tension between Iran and the U.S. rises, Pakistan will not be able to step out of the project. The presence of Iran in SAARC will greatly stimulate East-West connectivity. The fear of the impact of the big power is undeniable and justified. However, they can be positive too. For example, their inclusion can provide economic stability and progress both regionally and globally.

⁵⁷³ 24th edition of the World Energy Resources report & Further details at www.worldenergy.org and @WECouncil.

6.6. Conclusion

Economists and globalization experts observe that multilateral trading systems within regional trading blocs can foster regional integration and globalization. Some of the problems that plagued this region are large sensitive lists, weak provisions for para-tariff and non-tariff measures, lack of adequate transport facilities, complex visa rules, lack of technical assistance to LDCs, poor revenue compensation mechanisms, and other political disputes among Member States. SAFTA has the potential to grow if these countries take a positive outlook. Despite the positive measures envisaged by SAARC, Member States generally adopted a restrictive approach in liberalizing economies. Further, there is inherent political conflict between them. To get the most from SAFTA Member Countries should take immediate steps to cut down the sensitive lists, reduce the non-tariff and para-tariff barriers, formulate streamlined revenue compensation schemes, protect and promote investments, improve transport facilities, and integrate bilateral agreements into SAFTA. SAFTA leaders can incorporate one significant FTA embodying their overall economic interests and targets. Politically and geographically, this region has great potential for highly integrated trade, investment, and production space. However, this goal is impossible without the members accepting inter dependencies in trade and services.⁵⁷⁴

Despite SAARC countries sharing common heritage and historic background, this region is the least integrated and most unstable region of the world. To get the most out of SAFTA there must be a diversification of trade. Further, it is necessary to implement SATIS. These countries need to strengthen cross border investments and gradually remove NTBs that constrain cross border trade and investments. Further, these countries should fully implement existing

⁵⁷⁴ Hoi-Yong*. Dhruba Kumar Gautam**. Lee Chong, Hak-Chun, South Asian Free Trade Area (SAFTA) and Regional Integration: Revisit the Existing Reality, (2014).

declarations and agreements. Recently, as part of enhancing bilateral trade with India, Pakistan granted India MFN status. Further, to develop bilateral relations with LDCs India decided to sign various strategic agreements with Afghanistan and Nepal. The main purpose of such agreements is to cut the sensitive list for LDCs to 25 items and grant duty free and quota free access to all commodities with the exception of tobacco and liquor. It appears that the South Asian countries are taking bold strides towards business liberalization. This is the ideal time to adopt a collaborative approach to realize and enhance the optimum potential of this region.

**Chapter Seven: Recommendations & Future options
for South Asian Free Trade**

7.1. Introduction:

SAFTA's aim is to establish a smooth mechanism for cross-border goods movement between individual regions by eliminating trade barriers. SAARC's initiative, patterned like the EU, is to create free trade without obstacles, free travel without visa requirements, and establish common currency and defenses for Member States. Organizations established by South Asian citizens influenced SAARC's formation. Its formation combines their innovative ideas to develop regional trade. However, these governments fail to implement SAARC goals. Additionally, the lasting conflict between India and Pakistan prevents regional integration and cooperation. Suspicions persist and cast doubt on SAARC's effective performance. Countries with smaller economies like Pakistan aggregate because of India's dominance. India is circumspect of neighboring differing countries unity.⁵⁷⁵ Despite favorable aspects, South Asian countries intra-trade business system achievement lags. The focal points of this concluding chapter are the possibilities and recommendations for imminent researchers.

7.2. Option One: Disband SAFTA

If Pakistan-China border trade is successful like NAFTA and the EU ensures trouble free, fast, and free movement of goods and services, then is the same possible for SAARC? Intra-EU trade Export has a 70% success rate; the Intra-NAFTA trade has a 50% success rate, whereas, the Intra-SAARC trade can only achieve a 5% success rate.⁵⁷⁶ According to a WB estimation, annual India-Pakistan trade is approximately 1 billion USD. However, eliminating trade barriers could result in an increase up to 9 billion USD.⁵⁷⁷ The Asian Development Bank Institute indicates that 34 years after SAARC's establishment, it negatively affects intra-trade business. This is evident

⁵⁷⁵S. G. Jilane, Whither SAARC?, SOUTH ASIAN (November, 2014).

⁵⁷⁶ See more at: Figure 5:31 World Merchandise Exports of RTAs by Destination in 2015

⁵⁷⁷S. G. Jilane, SAARC Promises and Performance, SOUTH ASIAN (December 2011)

from the 4.23% decrease ratio in grouping's global business.⁵⁷⁸ The WTO identifies South Asia as the world's least integrated region corresponding with other RTAs.

To progress, the South Asian intra-trade system states must look beyond SAARC frameworks to alternatives like bilateralism and sub-regionalism. In 2014, Indian Prime Minister Narendra Modi endorsed this idea at the 18th Summit held in Kathmandu. Modi recommended that South Asian countries' unification should be expanded through or beyond SAARC, between all or some of the regions.⁵⁷⁹ SAARC development should succeed because of history and culture, which creates bonds between South Asian citizens. Unfortunately, SAARC fails to impact social, economic, or cultural aspects. Regional organizations should target and observe some core objectives and take measures to address the prevalent distrust and mistrust obstructing overall growth and integration. Additionally, officials and leaders lack of political determination defeated unification.

7.3. Option Two: Renegotiate SAFTA

Sub-regional grouping within SAARC is possible through maintaining SAARC while circumventing maintenance engagement. An initiative exists among Bangladesh, India, Bhutan, and Nepal through implementing the motor vehicles agreement. The purpose of this agreement is to ensure passengers and cargo transports trouble-free movement between countries.

Additionally, expanding the scope of corresponding agreements into different areas created

⁵⁷⁸Asian Development Bank, Asia Regional Integration Center. (30 January 2014). Indicators'. Retrieved from <http://aric.adb.org/integrationindicators>.

⁵⁷⁹RSIS Pradumna B. Rana, Jumpstarting South Asian integration, EAST ASIA FORUM ECONOMICS, POLITICS AND PUBLIC POLICY IN EAST ASIA AND THE PACIFIC <HTTP://WWW.EASTASIAFORUM.ORG> (13th October, 2016).

enormous opportunities. These areas may include interpersonal connectivity through tourism, cultural exchange, transit, and related areas. A trouble-free visa policy is a step towards this development.

7.3.1. Sweeping Uncertainties

Global capital and technology depend on regional harmonization. This harmonization requires state infrastructure, available trained labor, and economic expenses and subsidiary industry transfers. Harmonization will result in all parties benefiting from territorial collaboration.⁵⁸⁰ Regional collaboration and cooperation are the solutions for intra-state controversies and internal problems. However, SAARC fails to establish regional cooperation and relationships within Member States. Bilateral disputes and political controversies, especially between India and other regions, are matter of Member State's non-interference. This lack of conversation prevents regional cooperation.⁵⁸¹ Generally, effective economic integration transforms regions and spreads infrastructure and institutions with lower frictions enabling coordination and better information exchange.⁵⁸²

7.3.2. Escalating Intra-Regional Trade

⁵⁸⁰Islamabad SM Naseem was a professor of economics at Quaid-I-Azam University, and director of the Development Planning Division, ESCAP, Bangkok., SAARC's make or break moment, THE HINDU, December 06, 2014.

⁵⁸¹Farhana Syead, Lofty goals of SAARC_ Myths and realities, FINANCIAL EXPRESS, BANGLADESH, July 09, 2014.

⁵⁸²Deshal de Mel, Suwendrani Jayaratne and Dharshani Premaratne, Trade facilitation issues in South Asia on edited books by Sultan Hafeez Rahman Sridhar Khatri & Hans-Peter Brunner, Regional Integration and Economic Development in South Asia (Edward Elgar Publishing Limited and Edward Elgar Publishing Inc. 2012).

Economic development in different parts of states separate where there are substantial social and geographical gaps. These gaps can cause higher transportation costs, decreases in inter-connection, and strong institutional differences.⁵⁸³ Unified economic methods will improve lagging and peripheral parts of states.⁵⁸⁴ Escalating intra-regional trade is not a new idea. However, the expectation is SAARC will remain absent an adhesive unified economical procedure. This expectation is due in part to Intra-SAARC trade's limited performance compared to trade within other regional blocks. Performance may improve through the WTO initiative to develop the trade system between SAARC states through regulations and governmental policies.⁵⁸⁵ It is necessary to identify obstructions and possible assistance for trading within SAARC.

SAFTA's proper application increased South Asian intra-regional trade more than 2 billion USD. The ratio of intra-regional trade is less than 5%, well below East Asia's 32%.⁵⁸⁶ SAFTA compared to other RTAs remains the lowest because South Asian countries are more willing to trade with the U.S. or EU. Nevertheless, South Asia took a step towards unifying the rest of Asia.

SAARC was established to achieve the goal of intra-trade of 100 billion USD.⁵⁸⁷ Member States are required to act towards an eventual CU through removing tariffs, NTBs, complex sensitive lists, and adopting a common external tariff (CET). They are required to give

⁵⁸³Essletzichler and Rigby, 2010

⁵⁸⁴Khatri & Brunner. 2012.

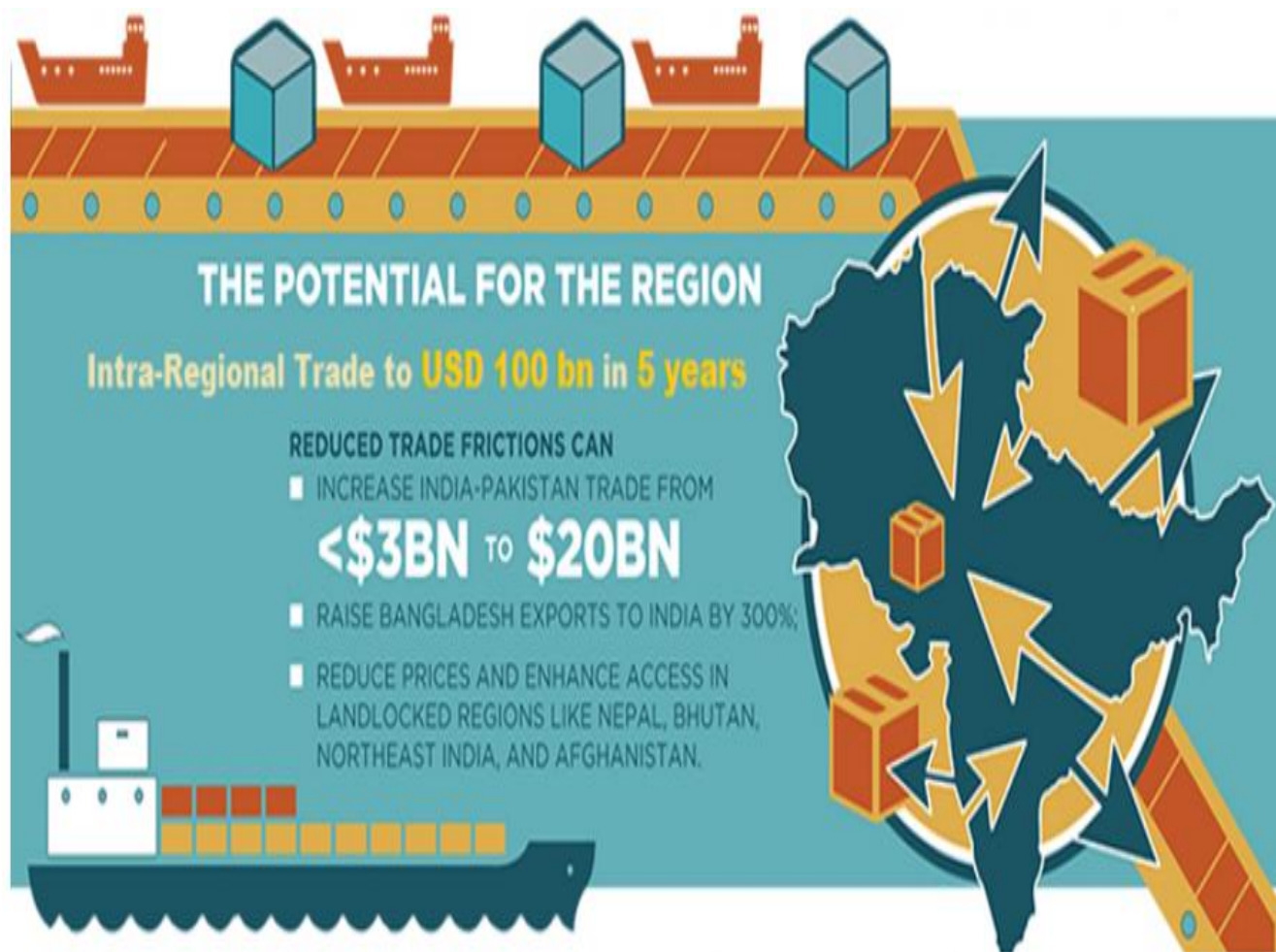
⁵⁸⁵Hassan Mobeen Alam & Others, Trade Barriers and Facilitations among SAARC Economies, Vol. 2 No.10; June 2011 INTERNATIONAL JOURNAL OF BUSINESS AND SOCIAL SCIENCE (June 2011).

⁵⁸⁶UNCTAD 2008 & South Asia—Intraregional Cooperation: The Way Forward, ShahidKardar, August 2011

⁵⁸⁷Prabir De and Mustafizur Rahman, Regional Integration in South Asia (Knowledge World (KW) Publishers Pvt. Ltd 2017).

inspiration to value chains, textile, and clothing value chains, uphold intra-region investments, improve connectivity-financial trade, define the scope of economic corridors formation, encourage service trade, and resolve the India/Pakistan dispute through regularizing their trade relationship.⁵⁸⁸ Through moving towards a CU, South Asia's future prospective trade will illuminate among the regions.⁵⁸⁹

FIGURE 7: 1 POTENTIAL FOR THE SOUTH ASIAN REGION⁵⁹⁰



⁵⁸⁸The World Bank, One South Asia(2017).

⁵⁸⁹Nina Veronique Salze-Lozac'h, The Key To Asia's Future, THE DIPLOMAT, INDIA (Jan 18, 2013).

⁵⁹⁰ See More at: <http://www.worldbank.org/en/news/infographic/2016/05/24/the-potential-of-intra-regional-trade-for-south-asia>

7.3.3. Uppermost Prospect Implementation

SAARC fails to improve the politico-security environment through South Asia regionalism. Trade diplomacy should be free from political unrest and security issues. The national security range should increase to ensure economic and trade stability. South Asia countries' political unrest conflicts with achieving SAU. As the basis of a peaceful union, the EU should be a model. The European Union established the free movement of people; common currency and common foreign and economic policies. To establish a peaceful region SAARC must ensure these objectives by developing a regional entity.⁵⁹¹

Poverty, unemployment, national security, environment, and globalization have impeded South Asian progress. SAARC leaders must consider the bigger picture beyond national interests to achieve a harmonious environment through effective economic cooperation. However, SAARC's present framework is fragile and cannot tackle the challenges of bilateral political questions. To achieve similar economic progress, South Asian countries should concentrate on improving transportation and business infrastructure and construct an institutional method to achieve harmonization and collaboration between government and investors.⁵⁹²

7.3.4. Move Towards a CU by 2020

To give effect to the shared aspirations for a more prosperous South Asia, the Leaders agreed to the vision of a phased and planned process eventually leading to a SAEU. SAARC must make timely and consistent progress to meet the milestones of an FTA, a Customs Union, a

⁵⁹¹Muhammad Jamshed Iqbal*, SAARC: Origin, Growth, Potential and Achievements, PAKISTAN JOURNAL OF HISTORY & CULTURE, VOL.XXVII/2 (2006) (2006).

⁵⁹²ASIAN ECONOMIC INTEGRATION REPORT
WHAT DRIVES FOREIGN DIRECT INVESTMENT IN ASIA AND THE PACIFIC? (2016).

Common Market, and a Common Economic and Monetary Union to envisage the SAEU. Trade liberalization is sought as a stepping stone for greater cooperation and a step toward setting up a SAEU along the lines of the EU.⁵⁹³ SAARC countries must take several steps before forming a CU.⁵⁹⁴ These steps include having a fully functional FTA within SAARC and CETs for the entire province. However, they must abolish tariffs, NTBs, and complex lists before phasing in a South Asia CET. SAARC's constant improvements will enable establishing this union. The first step towards transformation lies in SAFTA's mission to establish a CU and common market, known as South Asian Economic Union (SAUE) by 2020.⁵⁹⁵ Establishing a CU plays a vital role in trade advancement. SAARC takes CU examples from the South Africa Customs Union (SACU) and the EU.

7.3.5. Eliminate NTBs

South Asia border procedures are ineffective and outdated. This region suffers from poor infrastructure and inadequate administrative services. The lack of regional support and improper

⁵⁹³See SAARC, CUSTOMS ACTION PLAN ON CO-OPERATION, UNIFORMITY AND HARMONY FOR CUSTOMS ADMINISTRATIONS OF SAARC MEMBER COUNTRIES (1997), http://saarcsec.org/uploads/document/Customs%20Action%20Plan_20110821034407.pdf (SAARC's Custom Action Plan was adopted as early as 1997); SAARC, SAARC AGREEMENT ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS (2005), http://saarc-sec.org/uploads/document/Agreement%20on%20Customs%20Matters_20110821034137.pdf (Later in 2005, SAARC finalized the Agreement on Mutual Administrative Assistance in Customs Matters); Customs Cooperation, SAARC, [http://saarc-sec.org/areaofcooperation/detail.php?Activity id=42](http://saarc-sec.org/areaofcooperation/detail.php?Activity%20id=42) (last visited Nov 3, 2017) (The Cooperation in the field of Customs is carried out through the Group on Customs Cooperation [GCC]. Over time, various rounds of meetings have materialized on customs cooperation.).

⁵⁹⁴See, for example, the declaration at the 18th SAARC Summit in Kathmandu in 2014 (all declarations can be found here: <http://saarc-sec.org/SAARC-Summit/7/>).

⁵⁹⁵ See more at: http://saarc-sec.org/areas_of_cooperation

transit agreements results in long delays. These problems increase transaction costs and negatively affect trade.⁵⁹⁶ An NTB's purpose is to provide protection for domestic industries or affect free trade movement. Generally, there are three types of NTBs. First, export barriers including export sponsorship, prohibitions, and quotas. Second, import barriers including import licensing, bans, and customs processes. Third, rules and regulations dealing with restrictive product standards, product and labor quality, and environmental standards, etc. These countries fail to take measures to eliminate NTBs. Eliminating NTBs will bring this region considerable dividends. Additionally, tariff and NTBs elimination may increase intra-regional trade 1.6 times.⁵⁹⁷ Developing India-Bangladesh border infrastructure, which can increase trade amounts 6 times current levels.⁵⁹⁸

7.3.6. Promote Intra-Regional Tourism

This region has great potential for tourism. South Asia is most diversified, experiencing an amazing variety of landscape and cultures. Additionally, it lays claim to both the Himalaya in the top of the world and Maldives, which lie flush against the lapping ocean. According to Chanda's (2014) observation, the intra-SAARC travel accounts for 20% of all international arrivals amongst SAARC countries. South Asia is a combination of different cultures, religions, and languages. The geographical contiguity, inter-connection between culture, social, and history can lead to a stronger and more competent region. South Asian countries have natural beauty, historical places, monuments, and

⁵⁹⁶FICCI, *The South Asian Century: Progressing Towards Regional Integration - A Study* (January 2014).

⁵⁹⁷Rahman. 2017.

⁵⁹⁸Id. at.

ancient culture. These attributes create opportunities for developing the tourism industry. The sea and hills are some of the main tourist attraction. Nepal, Bhutan, India, and Pakistan benefit from hill tourism. India, Bangladesh, Maldives, and Sri Lanka benefit from seacoasts tourism. Nepal is gaining popularity for Eco tourism and India attracts health tourism. India, Sri Lanka, and Bangladesh have a high share of overall tourism inflows. As a result, they can work together to exploit the regional opportunities. Therefore, the promotion of regional tourism is important for SAFTA Member States. Security issues hinder tourism promotion, creating a business and investment friendly environment, and promoting services trade.

7.3.7. Promote Intra-Regional Investment

South Asia is the world's fastest growing region. However, it faces problems in capital inflows deterioration, increasing inflation, and reductions in remittances from oil-exporting countries. Economic growth rose from 6.8% in 2014 to 7.0% in 2015. South Asia's economic growth is projection is 7.1% in 2016 and 7.2% in 2017.⁵⁹⁹ SAARC should encourage trade and inspire investment activities between Member States. The joint venture should be a priority because signing agreements and treaties cannot ensure accomplishing regional goals. An investment friendly environment is a necessary because and investments are closely connected. Presently, South Asia lags behind with low levels of trade in goods and performs very poorly in the ease of doing business where South Asian countries rank the lowest. In 2011, SAARC members pledged to promote greater flow of financial capital and long-term investment. SATIS provides for services investment. It focuses on issues like market access, progressive

⁵⁹⁹South Asia. (2016);id. at.

liberalization, domestic regulations, recognition, dispute settlement, safeguarding measures, and subsidies. In order to achieve this goal, FDI and facilitation of value chains are key.

An investment friendly environment is necessary because this region has fails to secure more than 2% of overall FDI.⁶⁰⁰ In order to attract FDI, Member States should focus on establishing regional value chains or regional value platforms for exports similar to ASEAN countries.⁶⁰¹ Additionally, they need to address and cure non-transparent regulatory restrictions on incoming FDI such as land availability to set up business, restrictions on doing business with other countries, etc. Lastly, Member Countries must address the frequent corruption, bureaucratic delays, and property disputes significantly undermining the investment environment. To accommodate foreign investment these countries can take certain steps to reduce corporate and personal income taxes in high priority sectors, subject to avoiding counterproductive regional competition. Addressing these issues and eliminating them will significantly attract FDIs.⁶⁰²

SAARC countries should facilitate public-private investment partnerships, keeping in mind the need for developing regional and sub-regional energy and infrastructure projects. Such steps shall promote regional value chains in the apparel, service sector and other industries.

SAARC countries should focus on reinforcing and streamlining existing value chains and

⁶⁰⁰See more at. <http://www.worldbank.org/en/news/speech/2015/09/29/speech-by-anabel-gonzalez-at-the-south-asia-economic-conclave.print>

⁶⁰¹ A well-functioning SAFTA will lead to a higher inflow of foreign direct investment and encourage vertically integrated FDI in the region (ADB and UNCTAD, 2008; Aggarwal, 2008). Kumar and Singh (2009) indicate that there is a great deal of potential for intra-regional FDI, especially in infrastructure (both cross-border and national), provided that credible regional regulatory harmonization occurs.

⁶⁰²Anabel Gonzalez, Speech by Anabel Gonzalez at the South Asia Economic Conclave (<http://www.worldbank.org/> September 29, 2015).

developing new value chains. Costa Rica is an example of new value chain possibilities. In Costa Rica, for 25 years the source of international business was exporting coffee and bananas. Then a massive economic boom occurred, and it began exporting over 4500 products to 150 nations.⁶⁰³ This transformation is a result of innovative trade policies and trade agreements attracting foreign company investments.⁶⁰⁴

Innovation in streamlining investment regulations and adopting fast procedures for regional investors and commercial services is necessary. SAARC countries need to make up to dated information on investment related regulatory frameworks and service contracts bidding process easily accessible. Additional benefits exist in formulating a regional investment treaty duly highlighting bilateral investment treaty with India and Pakistan and facilitation, intra- trade, FDI, value chains, and innovative treaties and ease of access, investor protection, dispute settlement, contract enforcement, rule against double taxation, etc.

7.3.8. Promote Trade in Services

The South Asian service sector contributes more than half of the region's GDP.⁶⁰⁵ The service sector is growing faster than manufacturing businesses. The service sector is vital to overall integration because it contributes significantly to the GDP. The region's goal is to ensure gradual and progressive service liberalization in conjunction with the individual country's national policy issues, the economy size, and level of development. However, Member States

⁶⁰³Id. at.

⁶⁰⁴Id. At.

⁶⁰⁵ See details World Bank 2012, World Development Indicator available on: <http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2012>.

have not taken initiative to this effect. The general constraints on cross border service, cumbersome visa regimes, and poor communication and transport links restrict individual mobility.

7.4. Option Three: Merge with a Bigger Block

In the two decades following NAFTA's establishment, trade between the U.S. and Mexico increased by 506% trade between the U.S. and Canada increased by 192%,⁶⁰⁶ and trade between the U.S. and non-NAFTA countries increased by 279%.⁶⁰⁷ In 2000-2014 NAFTA's total trade rose from 1349 billion USD to 2400 billion USD, MERCOSUR rose from 42 billion USD to 108 billion USD, the EU rose from 3348 billion USD to 7800 billion USD, and ASEAN rose from 185 billion USD to 608 billion USD, whereas, South Asia rose from 6.3 billion USD to 51.3 billion USD.⁶⁰⁸ Another researcher Baldwin, states that RTA expansion is due to domino theory.⁶⁰⁹ According to this theory, change stimulated by the creation, extension, or deepening of a preferential trade area aggravates economic actors in nonparticipating nations to employ

⁶⁰⁶ February 2013 CRS NAFTA at 20 study, at 10 and Raj Bhala, et al., Economic Aspects of FTAs, in INTERNATIONAL TRADE LAW:

AN INTERDISCIPLINARY, NON-WESTERN TEXTBOOK (2015).

⁶⁰⁷Id. at.

⁶⁰⁸ Data generated from Statistics Database, WTO, <http://stat.wto.org/Home/WSDBHome.aspx?Language=> (last visited Apr. 3, 2017) [hereinafter Statistics, WTO]; Indicators, ARIC, supra note 227.

⁶⁰⁹ See R. Baldwin, "A Domino Theory of Regionalism", in: R. Baldwin/ P. Haaparnata/ J. Kiander (eds), Expanding Membership of the European Union, 1995, 25-53; id., "The Causes of Regionalism", in: World Economy 1997, 865 et seq.

inclusion pressure.⁶¹⁰ Though there are lobbies both for multilateral and regional approaches due to trade blocs' discriminatory practices, it becomes difficult to lobby regional approaches.⁶¹¹

The non-preferential rules ultimately become ineffective because every country is entitled to MFN status. Former WTO Director General Pascal Lamy stated:

“There is no more the notion of country of origin for manufactured goods as the various operations, from designing the products to manufacturing components, assembling and marketing have spread worldwide by forming international production chains. Nowadays, conceptually, products are/should be tagged ‘Made in the World’ rather than ‘Made in the UK’ or ‘Made in France.’ What we call ‘Made in China’ is indeed assembled in China, but the commercial value of the product depends on numerous countries that led its assembly in China in the global value chain, from designing to manufacturing and organizing the logistical support to the chain. To put it in simple words, the manufacture of goods and services can no more be considered ‘mono-located,’ but rather, ‘multi-located.’”

It is time to discover new channels so that accounting and statistical systems can consider the new international trade geography in an economic system. According to American Economist Tom Friedman, this system crashed under the influence of globalization and internationalization of production relations. The old mercantilist thoughts of us against them; of resident against rest of world, have lost much of their meaning.⁶¹² Lamy proposition ROOs with

⁶¹⁰ Id at.

⁶¹¹Peter Hilpold, Regional Integration according to Article XXIV GATT - Between Law and Politics, 7 MAX PLANCK Y.B. U.N. L. 219, 260 (2003 (2003)).

⁶¹² Pascal Lamy, Director-General, WTO, Speech to French Senate: Globalization of the Industrial Production Chains and Measuring International Trade in Value Added (Oct. 15, 2010), https://www.wto.org/english/news_e/sppl_e/sppl174_e.htm; WTO, MADE IN THE WORLD INITIATIVE (MIWI):

his “Made in the World” idea as a mode of assessing any trade based on its value rather than from the originating country.⁶¹³

7.4.1. SAFTA-China FTA

China dominates foreign investment policy and SAARC leader India fails to deliver significant investment. This causes constant political strife with Pakistan and causes many Member Countries to insist on merging with China.⁶¹⁴ These demands for merger cause India discomfort because it has long enjoyed the status of the biggest economy. This status automatically grants policy-making power within the region. In the concluding speech of the 18th SAARC summit, Indian Prime Minister Narendra Modi conveyed that India has a vision to develop SAARC. Modi proposes developing the foundation on five pillars -Trade; Investment; Assistance; Co-operation; and People-to-People Connections. China also envisions integrating South Asia. However, it is ultimately beneficial for all parties if these two fast growing economies join together to foster regional development. New Delhi and China have conflict over India’s northeastern border region. Ultimately, India’s desire to dominate the region leads to resisting China’s integration and all parties lose the potential benefits.⁶¹⁵

Pakistan lobbies for increasing China’s SAARC status from observer to dialogue partner or full member. The message is that China will counterbalance India. Sri Lanka and Nepal also

A PARADIGM SHIFT TO ANALYZING TRADE, https://www.wto.org/english/res_e/statis_e/miwi_e/flyer_miwi_e.pdf (last visited Apr. 3, 2017)

⁶¹³ “Global Value Chains,” WTO, https://www.wto.org/english/res_e/statis_e/miwi_e/miwi_e.htm (last visited Apr. 3, 2017).

⁶¹⁴ Bhoj Raj Poudel & Kawsu Walter Ceesay, A Zero-Sum Game in South Asia Benefits Nobody, *THE DIPLOMAT*, INDIA (December 04, 2014).

⁶¹⁵ *Id.* At.

want China's upgrading in status or inclusion in SAARC to weaken India and, thereby, disrupt the association's equilibrium. Beijing can easily take the advantage of the gap between Member States. Beijing may utilize Islamabad, Sri Lanka, and Nepal's support. Additionally, China's investment in the regions like Africa and Latin America negatively affects environmental sensitivities and labor laws. The region could fall into a vulnerable position if SAARC fails to establish clauses on environment and labor issues.

India has FTAs with Sri Lanka, Nepal, and Bhutan and participates in SAFTA with seven other South Asian countries, whereas, China has one South Asia FTA, with Pakistan. Starting in 2001, China created preferential RTAs with India, Sri Lanka, and Bangladesh under Asia-Pacific Trade Agreement (APTA). However, such arrangements are in respect only to certain goods. Similarly, India also has preferential market access to both Bangladesh and Sri Lanka under APTA. However, it remains a weak trade agreement.

Since the mid-2000s, China's trade link with this region has resulted in inflows of loans and aid. The loans are mainly for developing infrastructural projects such as ports, highways, bridges, and power plants. China has overtaken traditional donors to countries like Pakistan, Sri Lanka, and Bangladesh. For example, since 2009, China has emerged as the largest donor to Sri Lanka.⁶¹⁶ China invests in Pakistan, specifically in military training services.⁶¹⁷ India does not have the ability to prevent China's growing influence.⁶¹⁸ The South Asian countries are dependent on China's financial assistance because they directly benefit from deep trading and

⁶¹⁶ China has become Sri Lanka's largest donor:

http://www.ips.lk/staff/ed/publications_ed/international/china_srilanka_economic/china_s_l_economics.pdf

⁶¹⁷financial assistance to Pakistan: http://en.wikipedia.org/wiki/China_per_centE2per_cent80per_cent93Pakistan_relations

⁶¹⁸ India can do very little: <http://www.eastasiaforum.org/2014/05/14/delhis-dance-with-the-great-powers/>

investment links. Professor S.D. Muni identifies India's policy towards China revolves around containment, conflict, competition, and cooperation.⁶¹⁹ This causes India's policy towards China to remain confused, diluted, and following lobby interests.

However, the relation between these giants should change under Modi government leadership. Since 1990, China's economy has experienced rapid growth, whereas, India's lags. In 2012, China's trade with SAARC countries was 25 billion USD, whereas, India's trade was 17 billion USD.⁶²⁰ China is the largest trading partner with Bangladesh, India, and Pakistan and is the second largest trading partner with Sri Lanka and Nepal.⁶²¹

7.4.2. SAFTA-BIMSTEC:

The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) is an institution responsible for promoting inter-regional cooperation and bridging the gap between South Asian countries and East Asian countries such as Myanmar and Thailand. BIMSTEC promises to play an active role in furthering regional connectivity and integration in Asia. Despite positive aspects, BIMSTEC like SAFTA failed to make any significant practical impact. India organized the BIMSTEC Summit in mid-October 2016 for discussing issues like

⁶¹⁹ India's policy toward: <http://www.routledge.com/books/details/9780415501910/>

⁶²⁰amounted to US\$17 billion:

<http://businesstoday.intoday.in/story/india-losing-ground-as-trading-partner-south-asiancountries/1/201078.html>

⁶²¹Institute of Policy Studies of Sri Lanka Samam Kelegama, China's growing reach in South Asia, EAST ASIA

FORUM ECONOMICS, POLITICS AND PUBLIC POLICY IN EAST ASIA AND THE PACIFIC

<HTTP://WWW.EASTASIAFORUM.ORG> (25th June, 2014).

transport, electricity, and broadband connectivity.⁶²² To extract the fullest benefit of both SAFTA and BIMSTEC, SAFTA can merge with the BIMSTEC and focus on South East Asia.

7.4.3. SAFTA -ASEAN

ASEAN is the most dynamic and successful FTA within this region. India has bilateral trade relations with 10 ASEAN countries. The Regional Comprehensive Economic Partnership (RCEP) is the most comprehensive integration initiative in Asia. This scheme is a unique FTA comprised of 10 ASEAN and Australia, China, India, Japan, South Korea and New Zealand. ASEAN countries have bilateral trade relations these countries. It is one of the most prominent trading blocs in recent times. In November 2012, the RCEP negotiations began and so far, there have been 18 round of negotiation between countries. The RCEP covers 45% of global population and accounts for 40% of the world's GDP and 30% of world trade.

India is the only South Asian country in the RCEP. This creates great opportunities for India to integrate with advanced economies in Asia and the Pacific and contribute to global value chains. RCEP may help curb Asian FTAs overlapping provisions. Further, it can rationalize the rule of origin and promote FDI inflows and technology transfers by multinational corporations. Merging with RCEP could further alleviate poor economic business conditions. ASEAN is actively working towards integration. At the 31stASEAN Summit, the Secretary General of the ASEAN emphasized integrating ASEAN and APEC economic regions with the objective of fragility of global trade recovery emerging with the trends and challenges of globalization and multilateralism. Keeping pace with this, South Asian countries should take a pro-active role in

⁶²²RSIS Pradumna B. Rana, Jumpstarting South Asian integration, see id. at (13th October, 2016).

developing infrastructures, capacities, and institutions through upgrading them in order to safeguard against potential loss of market access from the erosion of trade preferences.

7.4.4. SAFTA- EU

There had been various attempts by governments to facilitate trade through FTAs. However, the progress of such initiatives has been very slow if not negligible. For example, Bangladesh is trying to enhance bilateral relations with Turkey, Sri Lanka, Malaysia, Nigeria, Macedonia, and Malo. There is a slight chance of success with Turkey and Sri Lanka.⁶²³ The FTA objective is to eliminate trade barriers by exempting tariff and other import costs. Generally, these countries are reluctant to sign a FTA that is worse off due to the conditions attached. Government officials tend to focus more on protecting local industries from negative FTA impacts. This attitude hampers the overall objective of regional goods and services integration.

Trade liberalization opens the doors to additional opportunities and stronger productivity growth. Trade and investment brings in new ideas, innovations, technologies, and better research which ultimately improves products and services. EU statistics indicates that 1% economy openness results in 0.6% rise in labor productivity in the following year.⁶²⁴ This indicates that openness in the market has a direct connection with labor productivity. However, some analyst observes that as a RTA, SAFTA is too little and too late.⁶²⁵ Additional observations are that the

⁶²³Rezaul Karim, No 'visible' headway in FTA talks with six states | TRADE & MARKET | The Financial Express-BD(2014), available at <http://www.thefinancialexpress-bd.com/2014/12/12/70577/print>.

⁶²⁴WTO, World Trade Organization International Trade Statistic, (2013).

⁶²⁵ Hashim, 2007 & Weerakoon, 2009

previous South-South mechanisms, like AFTA and MERCOSUR, were acting rapidly towards dismantling trade barriers.

7.5. Recommendations

SAFTA has many economic and political effects within this region. Promoting South Asian regional integration is a difficult task. The follow modifications are recommendations for successful integration.

7.5.1. Trade Rules and Procedures Simplification and Transparency

The transparency provision in GATT Article X:1 requires relevant information to be published in a manner and form remaining accessible to third parties. This information includes relevant laws, regulations, and other concerned judicial decisions. These measures enhance transparency and ensure good governance. Easy access to authentic information eliminates opportunities for corruption and outdated practices. Additionally, streamlined procedures are helpful when challenging a matter in the neutral appeal forum. Member of WTO, TFA, and SAARC are under a duty to publish and make information available to all. Under TFA Article 1, member states have to publish all trade related information in an accessible manner so that concerned people can access them. The information should be available to all. Further, they must create an enquiry point and duly notify the point to all.

There must be progress in monitoring trade diversification, exported products levels, preference utilization rate, and other firm level information. This information allows contextual data and improves understanding the backward and forward linkage among trade, sustainable

development, and poverty reduction.⁶²⁶ These publications promise to increase transparency in trade transactions and simplify trade procedures and documents by applying international instruments. These countries need to adopt a transparency and make all relevant regulation available. The lack of transparency and publicly available trade related information is one of the biggest NTBs in international trade. Countries should upgrade their existing trade information after consulting with regional import and export experts. If Countries engage in greater dialogue among themselves then they will have a more active and amenable business environment. These dialogues can be beneficial to fill regulations and procedures information gaps. The exchange of information can be through networks, trade fairs, and other exhibition forums. Additionally, SAARC lacks a dynamic statistics wing. This research collected the most current statistics and information. The most current data found is 5 years old. SAARC should have a more dynamic and current resource and statistics center like other international forums like the WTO, ADB, UNCOMTRADE, and WB statistics. The SAARC Secretariat should take steps to rectify this.

7.5.2. Commit to Continuous Dialogue for Swelling Intra-Trade

One of SAARC's major drawbacks is that it lacks effective conflict mediation or resolving institutes for bilateral or multilateral issues. Over the years, SAARC evolved into an institution providing broader guidelines. SAARC plays a passive role in devising instruments and techniques for consultation on bilateral and multilateral political and security problems. SAARC excluded bilateral discussion forums that are vital for eliminating historic mistrust.

⁶²⁶INTER-AGENCY TASK FORCE ON FINANCING FOR DEVELOPMENT: Trade as an engine for development. (July 2016).

Additionally, dialogue is difficult because SAARC faces difficulties in holding summits. SAARC has cancelled or postponed about half of its summits. Boycotting summits weakens communication. Considering the broader objectives of regional integration, members should commit to continuous dialogue through summit participation. Attending summits enables countries to foster the decision-making process. SAARC can learn from the ASEAN minus x scheme. This allows members to opt out of a scheme when they are not ready or willing to initiate. This initiative enables smooth measures implementation. Similarly, SAARC should adopt a SAARC minus x' scheme. This scheme is necessary because of the ongoing nuclear tension between India and Pakistan. However, SAARC is silent on these matters. Additionally, like the ASEAN Summits, SAARC can arrange summits twice a year. This will facilitate the dialogue process between SAARC countries. SAARC requires parties have a fair and equal chance of succeeding for regional agreements. This is a streamlined and model GATT with wide ranging cross-retaliatory powers. However, there is little initiative from Member States to resolve or manage interstate and intra-state conflicts.

7.5.3. Ensure Seamless Trade in South Asia

South Asian countries can adopt a CET with multilateral obligations to harmonize external tariffs on a sector-by-sector basis. The goods with the closest current tariff rates can initiate this. Next, these countries can focus on reducing the large gaps with the ultimate purpose of adopting a common external tariff. Incorporating these steps will eliminate the rules of origin, facilitate trade integration, and make optimum use of scarce resources. To achieve this goal the first step is to encourage junction in the MFN tariff rates from imports and exports outside South Asia. The second step the governments can take is reducing remaining NTBs to goods and

services flow. Further, the governments should address problems arising from discriminatory charges and subsidization by South Asia competition. The countries should tackle the foreign suppliers' unfair trade practices in the South Asian market. The countries need to expedite customs clearance procedures automation under the Automated System for Customs Data (ASYCUDA). The countries should adopt these steps to create seamless market throughout SAARC.

Free trade is possible with proper elimination of tariffs and NTBs on all trade and goods. However, SAFTA does not properly mention provisions like NTBs and para-tariffs. It calls for elimination. This objective is too broad; SAFTA should formulate exact elimination models and provide definitive periods for accomplishing this goal. The lack of active measures causes significant hindrances to potential trade gains. The SAARC is more equipped to combat NTBs such as SPS, technical barriers to trade, port entry restrictions, and para-tariffs. The SAARC Secretariat is keen on tackling these measures through report and complaint procedures. Greater harmonization levels are necessary to overcome technical barriers to trade and SPS especially for animal and plant products. Additionally, governments can take steps to eliminate sensitive lists, providing relevant trade information, ease transport, and eliminate tariffs and NTBs. Lastly, for better and effective SAARC integration nations should consider India's SAARC power grid proposal and Sri-Lanka's SAARC currency proposal.⁶²⁷

⁶²⁷ SAARC Summit Declaration

7.5.4. Establish a Permanent South Asian Dispute Resolution Tribunal

Under SAARC, SMC is the highest administrative body and COE is the primary dispute resolution body. Dispute Settlement Mechanism (DSM) can follow a negotiation or rule based approach to settle disputes. The rule-based approach is more plausible than the negotiation based approach because it ensures neutrality and consistency. Further, it ensures unbiased dispute solving mechanism. ASEAN follows the rule-based approach. Whereas, SAFTA follows the DSM international best practices with clauses that vary to some extents.

The WTO DSB has sole jurisdiction for appointing the expert panel to consider the case and to accept or reject the panel's recommendations or other appeal results. The DSB ensures the ruling and recommendation implementations and has the power to authorize retaliation if a country does not follow a ruling consultation within 60 days. However, before taking action the dispute countries must carry out negotiations to solve the disputes by themselves. If the parties cannot reach a settlement, they can ask the WTO director-general to mediate the matter or help another way. At this stage if the parties cannot resolve their dispute the complaining country can ask for panel appointment. The other country, commonly known as the country in the dock, has a one-time power to block the panel appointment. There is no power to block when the DSB meets the second time. The procedures of the DSB can be an effective role model for SAARC tribunals.

The ASEAN DSM may take up to 290 days to decide and the NAFTA DSM up to 310 days, whereas, the SAFTA DSM up to 330 days. This demonstrates SAFTA DSM's delay.⁶²⁸ Further, SAFTA should adhere to a clear in-depth attitude towards the rule-based approach. SAFTA can learn from NAFTA and use independent experts in dispute settlement. However, the

⁶²⁸Charter of SAFTA, 2010 published by SAARC, Kathmadnu.

unanimous decision of the political entity with SAFTA supervisory power operates as the highest interpretative authority for the agreement.⁶²⁹ The SMC can continue in the role of supreme body. It also assumes the roles of appellate authority that seems to be objectionable in certain circumstances. The body should consist of individuals from Member States who have expertise in international trade law. Further, it is necessary to vest the task of settling disputes in personnel with jurist expertise since because the task requires high-level juristic expertise.

7.5.5. Stoppage Bilateral FTA with Plurilateral FTA

There are several debates on multilateralism and regionalism. These concepts require discussion in a broader theoretical context. The center of the debate is whether the two modes of liberalization (regional versus bilateral) are competitive or complimentary in nature. These considerations are vital to regional politics, cooperation, and for bilateral trade relations amongst countries with FTAs. Amongst South Asian countries, Sri Lanka has bilateral agreements with India and Pakistan, and India has bilateral agreements with Nepal, Maldives, and Bhutan. The majority of negotiations and complaints occur through bilateral negotiation forum. These communications result in inconsistency between the bilateral agreement and SAFTA. Generally, bilateral agreements contain comparative TLP, sensitive list, and ROOs in the DVA with the PSFTA. The ISFTA is often contradictory to SAFTA provisions.⁶³⁰ Typically, multilateral trading systems accommodate the changing trade realities.

⁶²⁹ Michael Ewing-Chow & Md. Rizwanul Islam, 'South Asian Free Trade Agreement and the Possibility of Regional Integration within the SAARC: A Historical, Legal and Economic Analysis', *Asian Journal of Comparative Law* 2, no. 1 (2007), Art. 7, <www.bepress.com/asjcl/vol2/iss1/art7>, 13. Mexico-USA (1993) 32 ILM 605. see Art. 1131(2) of the NAFTA, signed on 17 Dec. 1992 (entered into force on 1 Jan. 1994), Canada 51

⁶³⁰ Detail discussed in chapter 3.2 chapter.

Bilateral preferences may receive discrimination in multilateral trading systems. There are instances where RTAs overlap specifically designed regional integration situations and directly counterbalance MFN results. Regionalism cannot be an alternative to multilateralism because it threatens multilateral frameworks. Tension is evident whenever there is collusion between the rules of origin. In the integrated world, the rules of origin are of utmost importance to rationalize FTA independence.

7.5.6. Transit Transport System Integration and Harmonization

A single national system is essential for integrating trade frameworks and ensuring smooth goods movement. This scheme will be an integrated hub for importers, exporters, and the facilities required for goods in transit. To streamline the process there must be a unified electronic gateway for information exchange. This procedure will accelerate revenue collection and improve trade compliances, transparency, and accountability. These measures will promote improved coordination between customs and government agencies such as plant quarantine, banks, chamber of commerce, export promotion council board, insurance companies, etc. Implementing harmonization of standards and conformity assessment procedures may strengthen regional integration and encourage governmental contracts and national certification institution agreements. This would address a multitude of problems. For example, it would solve BSTI Bangladesh's testing report problems in acceptability to the Indian authority.

Due to the lack of transit trade, India's exports to Pakistan and Afghanistan and Pakistan's export to Bangladesh and Nepal are very expensive.⁶³¹ Under the 2013 WTO Bali

⁶³¹ No transit agreement exists between India and Pakistan. India is seeking transit facility for its wheat export to Afghanistan, but the Pakistan agricultural industry has shown reservations on this due to the fear of Indian wheat

Package, the countries are required to provide each other transit facilities. This agreement requires India and Pakistan to provide each other with seamless transit facilities. If these provisions are implemented the regional economy will significantly strengthen. For example, India would have easy access to Afghanistan and Central Asia and Pakistan would have easy access to the growing market of Bangladesh, Bhutan, and Nepal. To implement this scheme all forms of transportation must be available to assist smooth goods and services movement within this region.

Following intense negotiations, bilateral smart borders agreements can be a solution for a unified South Asian border action plan. South Asian nations need to curb visa complexities, harmonize visa regulations including entry screening and tracking procedures, and integrate name-based and biometric watch lists. Furthermore, exit and export tracking procedures need streamlining and there must be a procedure for data sharing mechanisms for foreign nationals' entrance and exit. To build container security, initiatives should require joint container inspection for entering South Asian ports.

7.5.7. Periodic Sensitive Lists Review

Generally, Member State's sensitive list comprises of important items having potential regional trade. LDCs include core export items on their sensitive list, which ultimately encourages negative trade of these products. Nearly 53% of total SAARC countries imports are included on the sensitive list for protection. Long sensitive lists are a great hindrance to regional integration. Member States must reduce their sensitive lists on a priority basis with time limits. If

finding its way into Pakistan and lowering wheat prices and, secondly, Indian wheat taking up the Afghani market of Pakistani wheat exporters.

this occurs, the tariff could reduce significantly.⁶³² India can play a vital role in eliminating its sensitive lists. India is in a better position to do so because the impact of eliminating the sensitive lists is minimal for India compared with other trade statistics. There is a requirement to revise the sensitive list every four years. However, there is no formal requirement to reduce the list.⁶³³ There is no practical reduction because revising sensitive list lies within the member's discretion. SAARC members need to prepare a clear plan to identify a few priority sectors for trade liberalization under SAFTA. They must carry out quantitative assessments to reduce the tariff to 0-5% and improve bilateral relation with other SAARC countries, especially LDCs. Reducing trade barriers should increase Bangladesh's GDP by 17%, India's GDP by 15%, and Pakistan's GDP by 5%.⁶³⁴

7.5.8. Market Leaders' Superior Role

India and Pakistan have important roles in facilitating regional economic cooperation and integration. This is because India and Pakistan combined account for 90% of GDP, 80% of intra-regional trade, and 86% of the population in South Asia. India's trade with Pakistan is below 0.5% and Pakistan's trade with India is below 5% of overall trade. However, they have huge business potentials. These countries should come out their historic animosity, adopt trade

⁶³² Raihan (2014) suggested sensitive list liberalization based on trade potential, wherein 29 priority sectors have been identified to be common in the sensitive lists of India, Pakistan, Bangladesh and Sri Lanka. Most of the tariff lines protected under sensitive lists relate to textiles, electronic equipment, iron and steel, plastic and rubber products.

⁶³³ SAARC Ministerial Council (SMC) consisting of Ministers of Commerce/Trade of the SAARC countries is the highest decision-making body of SAFTA and is responsible for the administration and implementation of this Agreement and all decisions and arrangements made within its legal framework. Each SAARC contracting state chairs the SMC for a period of one year on rotational basis in alphabetical order. The SMC is supported by a Committee of Experts (COE), with one nominee from each Contracting State at the level of a Senior Economic Official, with expertise in trade matters. The COE monitors, reviews and facilitate implementation of the provisions of this Agreement.

⁶³⁴What If Trade Barriers Were Reduced in South Asia. (2012).

policies, and facilitate measures to increase their bilateral trade. These countries share a long-shared border. Therefore, adopting progressive policies will be highly beneficial for their economies. Informal trade between India and Pakistan is at 250 million USD to and indirect is at 4 billion USD through third countries, i.e., UAE, Singapore, Iran, and Afghanistan.⁶³⁵

Trust and confidence are key to mutual growth. To enhance this, SAARC members must have a unified and harmonized voice speaking of mutual prosperity. India, as the largest economy in this region, can dominate SAARC integration and development. India's influence can be a catalyst in furthering trade relationships between Member Countries. However, India has not always encouraged other countries trade policies at the level of SAFTA. India's business is not dependent of SAARC countries. The expectation is that Indian, being the leading economy, will lead towards integration and cooperation. India will gain business opportunities if this region achieves workable economic integration and cooperation. These steps will expedite India's growth and ensure its stability.

7.5.9. Superlative Application of Rules of Origin

A strict regime regarding rules of origin specificity, design, and application can make it cumbersome for LCD exporters to maximize on the preference scheme. Promoting integrated production structure in the recipient country required strict rules of origin. However, in the modern business environment to get the most benefits from bilateral agreements requires liberalizing the rule of origin. Seeking coherence in the rules of origin, for RTAs and preference schemes, will help business structure their production to take advantage of market opportunities

⁶³⁵Michael Kugelman Robert M. Hathaway, Pakistan-India Trade: What Needs To Be Done? What Does It Matter?, (2013) & Taneja et al. (2013).

these arrangements create. Further, 30% of SAFTA's rules of origin value-addition provisions require adjustment to better facilitate intra-regional South Asia trade expansion. The value addition of most LDCs products remains very low and the 30% value added provisions provides further export trade barriers.

7.5.10. Ensure Visa Free Travel for Superfluous Trade

Within this region, the procedure for obtaining a visa is very complex because the rules are not flexible and lack uniformity. Visa requirement's complexity and rigidity cause significant hindrances to intra-regional services trade, especially between India and Pakistan. The reviews and primary data of the respondents reveal these problems. Visa hurdles significantly hamper the free movement of persons and intra-regional trade.

To alleviate the situation, SAARC set up the Visa Exemption Scheme. This is a significant leap towards trade freedom. This scheme, first introduced in the fourth SAARC Summit in Islamabad, came into being in 1992. This scheme is limited to special travel documents for a certain category of dignitaries. Nonetheless, the SMCs are required to continuously revise the list of people entitled to special treatment under this category. Twenty-four categories of personnel qualify for this exemption including Members of Parliaments, Judges of the Higher Courts, businesspersons, journalists, sportsmen, senior officials of the government, and others.⁶³⁶ The visa exemption scheme is different from the free movement of persons provision of the EU. In the EU, any person can freely travel between EU countries. Tourists can roam around EU countries if they obtain a Schengen visa from any European

⁶³⁶ See more at. Please visit: <http://saarc-sec.org/>

country. SAARC stresses the free movement of persons but provides only for dignitaries. In the South Asian region, the free movement of the persons provision is not fully implemented.⁶³⁷

There are strict visa rules between South Asian countries, especially between India and Pakistan. SAARC countries cannot ensure visa free travel to its citizens. The free movement of persons and visa-free travel would enhance goodwill and foster peace within neighboring countries. Moreover, it would open new trade opportunities. SAARC countries' immigration authorities should reconsider this issue and review the provisions in order to facilitate free movement of persons within the region.

7.5.11. Ensure Assistance to Protect Revenue Losers

To facilitate intra-SAARC trade, SAFTA Article 8 focuses on setting up various instruments for protecting trade losers. In this region, enhancing technical assistance for building LDCs trade capacity is necessary for expanding trade and promoting economic integration. LDCs should focus on the technical assistance and cooperation arrangements to gain the most from SAFTA. It should be a priority design and address technical assistance without binding commitments. Specifically, LDCs should work on training and skill development, product certification, improving national capacity for anti-dumping legislation, measures promoting export and investment, developing tax policy regimes, revising and reforming trade policies, eradicating technical barriers to trade, adopting streamlined and modern SPS measures, policy related measures, safeguards, compensation etc. However, effective measures lack to assist revenue losers.

⁶³⁷ In the Chapter 4.2 of this dissertation, Visa related issues has mentioned clearly.

7.5.12. Ensuring Trade Remedy Measures Provisions

SAFTA lacks a specific provision for adopting anti-dumping or countervailing measures. Dumping occurs when a company exports goods at a higher price than normally charged in the local market. Countervailing results in an additional duty known as countervailing duty on some subsidized products. Such provision hampers domestic producers. Amongst SAARC countries, India is the only frequent user of anti-dumping measures.⁶³⁸ Similarly, in Pakistan, there have been fifty-three investigations, with measures imposed on twenty-four. There are anti-dumping measures against Bangladeshi and the Nepalese exporters from SAFTA. This is an important weapon for countries because they are targeting the most competitive producers. The relative lack of anti-dumping and countervailing duties may be due to the relative low value of intra-regional trade.

Furthermore, SAFTA does not contain any undertaking calling for abolition of additional trade remedy measures. SAFTA provides contracting states too much leeway to protect domestic industry from import surges. Moreover, contracting parties reserve the right to suspend the concessions when there is evidence that the imported products cause or threaten to distort the competition in the importing country's market. Generally, such measures follow an investigation by the public authority. The investigation must comply with GATT Article XIX and the WTO Agreement on Safeguards. The investigation must determine if there is a clear evidence of a surge of imported goods from the other contracting parties and if such imports cause serious injuries to the producers or are likely to distort competition within the market. There must be a

⁶³⁸ The data of WTO (2010), indicates as progress that India initiated 596 anti-dumping investigations and imposed anti-dumping measures in 419 of those cases from January 1995 through December 2009.

causal link between imports from the producers and the likelihood of injuries. The Article XIX requirement depicts that a surge in imports must be unforeseen and done away by SAFTA drafters. This provision should eliminate the difficulties with the WTO wording.⁶³⁹ Generally, in situations where safeguard measures are applicable against an exported product from more than one LDC contracting parties, LDC producers will be exempt provided their import does not constitute more than 15% of total import. In addition, the contracting parties must also show indiscriminate measure application. Unlike Article XIX (3), countries affected by safeguard measures cannot suspend comparable trade concessions to exports from the contracting party implied safeguard measures.

7.5.13. Launch an Innovative Oversight Institution

By virtue of SAFTA Article 10, the SMC is the highest SAFTA decision-making body. The COE assists the SMC. The COE is comprised of one nominee from each contracting party at the level of senior economic officials with expertise in trade issues. The COE ensures South Asian countries comply with SAFTA provisions. The COE is the ‘custodian of the treaties.’ The COE is responsible for overseeing the administration and implementation of legal frameworks within the ambit of SAFTA. SAFTA provisions do not precisely define the term ‘senior economic officials.’ However, senior economic officials are commonly senior government officials who have expertise in relevant trade matters. The COE simultaneously

⁶³⁹ The issue of the interpretation of this term arose in several GATT and WTO Reports, for instance, Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, WTO Doc. WT/DS98/AB/R (1999; Report of the Appellate Body); Argentina – Footwear Safeguards Measures on Imports of Footwear, WT/DS121/AB/R (1999; Report of the Appellate Body); United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia, WTO Doc. WT/DS177/AB/R, WT/DS178/AB/R (2001; Report of the Appellate Body).

monitor, review, and facilitate implementation of SAFTA provisions and other functions assigned by the SMC. However, the COE has failed to accomplish its responsibility.

To make the most of SAARC provisions there has to be an independent institution that will create a jurisprudence by which SAARC and SAFTA automatically become binding throughout all SAARC countries. The SAARC Secretariat can create a commission that has a similar mandate to the EC provisions and directives. Further, there has to be provisions by which SAARC countries incorporate the decisions of the commission in their state legislation. However, the SAARC Secretariat should supervise such commission for overseeing conformity and corollaries. There has to be a streamlined action plan that shall create and implement groundbreaking regulatory mechanisms. Furthermore, the countries need to adopt a joint approach to tackle unfair trade practices. Moreover, there has to be routine and effective review of the legal, technical, and administrative features of SAFTA in order to get the full benefit. NTBs need to be properly identified and eliminated to facilitate trade within this region. There has to be review not only to the Sensitive Lists and NTBs but also to the ROOs, compensation mechanism, and dispute resolution. Furthermore, there has to be effective use of technology for the combined value addition requirements and the issuance of origin certificate. It shall meet at least biannually and shall submit its report to the SMC after every six months.









7.6. Conclusions

The business potential of the South Asian region is huge. Better regional cooperation in the South Asian region promises large gains in welfare and growth. However, various obstructions stand in the way of realizing the true potential of this region. In trade liberalization, there are always winners and losers. Considering the bigger picture, short run procedures are

liable to lose and limited procedures that export will gain because of better input. This business environment causes domestic procedures to encourage increased productivity and consumers will be the ultimate gainers. SAFTA had a modest beginning. Despite this SAFTA has set the pace for tariff reduction for LDCs and non-LDCs Member States and laid down specific guidelines for implementation. SAARC formation was in the background of hostilities between South Asian countries, asymmetrical economies, and several other challenges. The intra-regional integration within this region is very limited. TLP is a step in the right direction. In spite of this, the intra-regional trade is below 5%. To alleviate the situation, the tariff reduction agenda must be complied in the time bound manner. Integration at customs level in SAARC seems to be a distant milestone. However, harmonization of the common external tariffs may mitigate the complexities of the rule of origin.

The major recommendations include moving towards a CU, adopting steps like elimination of tariffs and sensitive lists, reduction of NTBs by way of ensuring reporting, monitoring and eliminating NTBs, and moving towards a CET. Moreover, South Asian countries should come under the umbrella of harmonization of rules and standards under an MRA. Moreover, value chains focusing on the T & C can be established on a pilot basis. Other notable recommendations include promotion of intra-regional investment by pro-actively attracting flagship investors, facilitation of improved connectivity through experimental transit regimes based on corridor on a mutual basis, exploration of idea of joint borders with single clearance, promotion of service trade, and concentrate more on a liberal visa regime both the specialized category of people and general workers.

ANNEXURE 1: 1 IMPORTANT STATISTICS OF SAARC COUNTRIES:

Country	Capital	Area ⁶⁴⁰ (km ²)	Population ⁶⁴¹ (2017)	Density (km ²)	Nominal GDP ⁶⁴² (2017) (Bill)	GDP per capita ⁶⁴³ (2017)	GDP Growth ⁶⁴⁴
 Afghanistan	Kabul	652,864	34,169,169	53.3	\$20.57	\$559	3%
 Bangladesh	Dhaka	147,610	164,827,718	1,116.6	\$248.85	\$1,520	6.9%
 Bhutan	Thimphu	38,394	792,877	20.6	\$2.31	\$2,870	5.9%
 India	New Delhi	3,287,263	1,342,512,706	408.4	\$2450	\$1,850	7.2%
 Maldives	Malé	298	375,867	1,261.3	\$3.58	\$9,950	4.1%
 Nepal	Kathmandu	147,181	29,187,037	198.3	\$23.32	\$799	5.5%
 Pakistan	Islamabad	881,913	207,774,520	223.1	\$304.4	\$1,547	5%
 Sri Lanka	Colombo	65,610	20,905,335	318.6	\$84.02	\$3,930	4.5%
-	-	5221,133	1800,545,229	345	-	-	-

Source: World Bank ⁶⁴⁵

⁶⁴⁰ "Field Listing: Area". CIA. Retrieved 7 August 2011

⁶⁴¹ "Country Comparison: Population". CIA. July 2012. Retrieved 2 September 2012

⁶⁴² "World Economic Outlook (April 2017) - Nominal GDP". IMF. Retrieved 2017-08-26

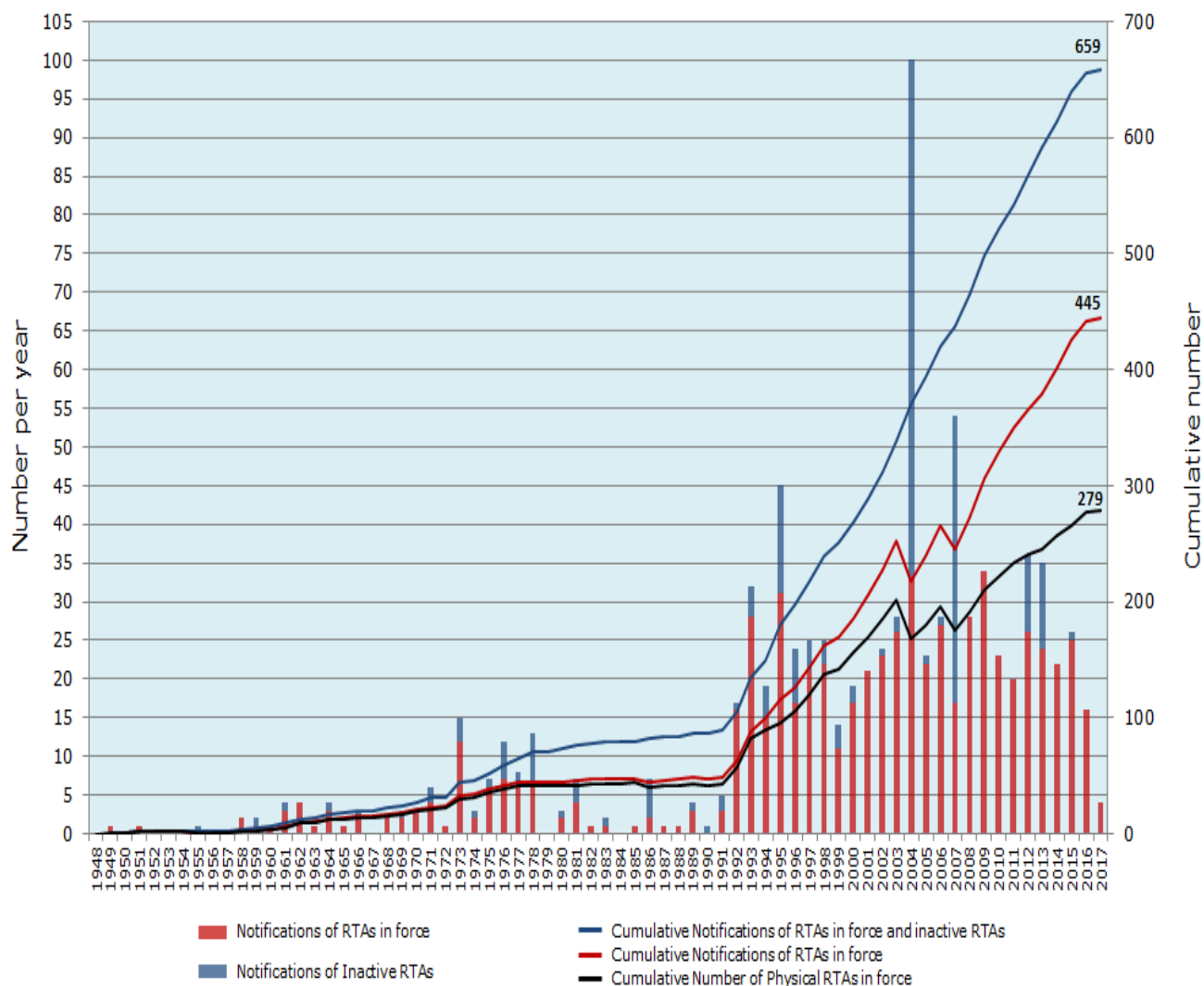
⁶⁴³ "World Economic Outlook (April 2017) - Nominal GDP per capita". IMF. Retrieved 2017-08-26.

⁶⁴⁴ "World Economic Outlook (April 2017) - Real GDP growth". IMF. Retrieved 2017-08-26.

⁶⁴⁵ "World Economic Outlook (April 2017) - Real GDP growth". IMF. Retrieved 2017-08-26.

ANNEXURE 2: 1 EVOLUTION OF RTAs GRAPH IN THE WORLD⁶⁴⁶

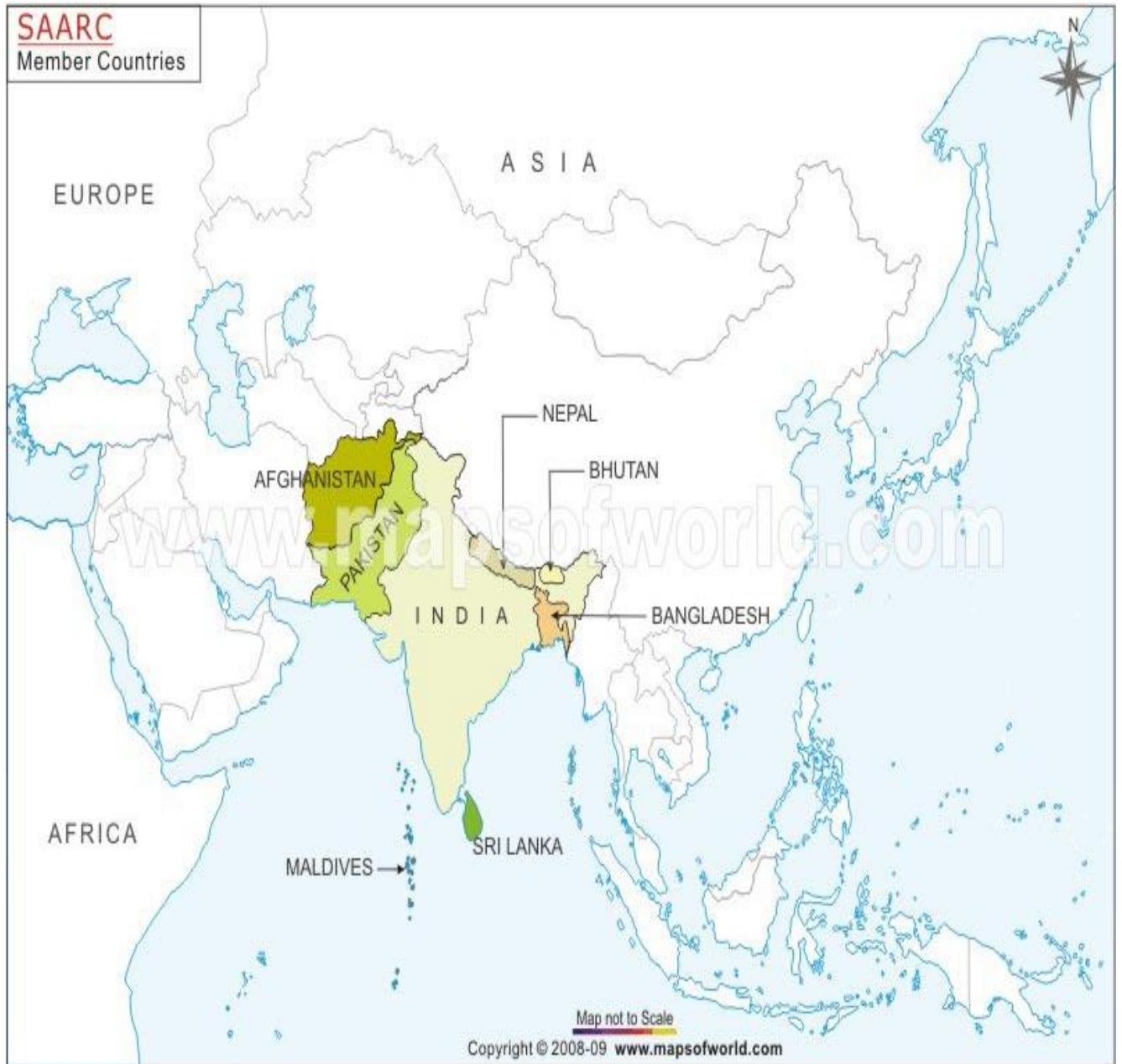
Evolution of Regional Trade Agreements in the world, 1948-2017



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. Physical RTAs: goods, services & accessions to an RTA are counted together. The cumulative lines show the number of notifications/physical RTAs that were in force for a given year. Source: RTA Section, WTO Secretariat, 20 June 2017.

⁶⁴⁶ See more at: https://www.wto.org/english/tratop_e/region_e/regfac_e.htm

ANNEXURE 3: 1 SAARC COUNTRIES MAP



ANNEXURE 3: 2 LIST OF SAARC SUMMITS

Number	City	Country	Date
1 st	Dhaka	Bangladesh	7-7 December 1985
2 nd	Bangalore	India	16-17 November 1986
3 rd	Kathmandu	Nepal	2-4 November 1987
4 th	Islamabad	Pakistan	29-31 December 1988
5 th	Male	Maldives	21-23 November 1990
6 th	Colombo	Sri Lanka	21 December 1991
7 th	Dhaka	Bangladesh	10-11 April 1993
8 th	New Delhi	India	2-4 May 1995
9 th	Male	Maldives	12-14 May 1997
10 th	Colombo	Sri Lanka	29-31 July 1998
11 th	Kathmandu	Nepal	4-6 January 2002
12 th	Islamabad	Pakistan	4-6 January 2004
13 th	Dhaka	Bangladesh	12-13 November 2005
14 th	New Delhi	India	3-4 April 2007
15 th	Colombo	Sri Lanka	1-3 August 2008
16 th	Thimpu	Bhutan	28-29 April 2010
17 th	Addu	Maldives	10-11 November, 2011
18 th	Kathmandu	Nepal	December 2014
19 th	Islamabad	Pakistan	-

ANNEXURE 3: 3 SAARC SECRETARY GENERALS

Serial	Name	Country	Tenure of Service
01	Abdul Ahsan	Bangladesh	16 January 1987 to 15 October 1989
02	Kant Kishore Bhargave	India	17 October 1989 to 31 December 1991
03	Ibrahim Hussain Zaki	Maldives	01 January 1992 to 31 December 1993
04	Yadav Kant Silwal	Nepal	01 January 1994 to 31 December 1995
05	Naeem Hasan	Pakistan	01 January 1996 to 31 December 1998
06	Nihal Rodrigo	Sri Lanka	01 January 1999 to 10 January 2002
07	Q. A. M. A Rahim	Bangladesh	11 January 2002 to 28 February 2005
08	Lyonpo Chenkyab Dorji	Bhutan	01 March 2005 to 29 February 2008
09	Sheel Kant Sharma	India	01 March 2008 to 28 February 2011
10	Uz. Fathimath Dhiyana	Maldives	01 March 2011 to 28 February 2014
11	Arjun Bahadur Thapa	Nepal	01 March 2014 to 28 February 2017
12	Amjad Hussain B. Sial	Pakistan	01 March 2017 to till

Annexure 5: 2 Research Questionnaire

Research Questionnaire: Electronically presentable

To begin, click “start Survey”. <https://kusurvey.ca1.qualtrics.com>

(Again, all information will be kept confidential.)

Part 01: Country and Occupations:

01.	In which country do you presently reside?	<ul style="list-style-type: none">a) Afghanistanb) Bangladeshc) Bhutand) Indiae) Maldivesf) Nepalg) Pakistanh) Sri Lanka
02.	What is your main occupation?	<ul style="list-style-type: none">a) Law Maker/ Politician (e.g. MPs)b) Academician (e.g., Scholars, researcher)c) Business Owner (e.g., MD/ Chairman/ Proprietor/ Director or CEO)d) Business Leader (e.g., leaders of FICCI; FBCCI; FPCCI);e) Lawyers (e.g., International business law practitioners)f) Law Executor(e.g., Government-Customs/Port or non-government-Bank)g) Trade related support service (e.g. Customs Broker;)h) Beneficiary (e.g., Wholesaler; Retailer)

		i) Other (please specify)
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Part Two: SAFTA Barriers to Trade

No.	Question	Response
03.	During the last 12 months have you experienced or engaged in trade with any SAARC country.	<ul style="list-style-type: none"> a) Import; b) Exports; c) Foreign Direct Investment (FDI) d) Government Service (e.g., Customs/Port) e) Trade operations (e.g. customs broker, bankers) f) Legislation of SAFTA g) Participate with SAFTA related issues (e.g. Attending Seminar) h) Others (Please Specify)
04.	What are the barriers that you did experienced before?	<ul style="list-style-type: none"> a) Tariff (e.g., Customs duty) <ul style="list-style-type: none"> 1. Ordinary Customs Duties 2. Other than Customs Duties b) Non-Tariff Barriers-NTBs (e.g., Import bans; general or product specific quotas, excessive documentation) <ul style="list-style-type: none"> 1. Conventional NTBs 2. Quotas; 3. Tariff rate quotas; 4. Licenses bars c) NTBs is in the form of Technical Barriers to Trade-TBTs? <ul style="list-style-type: none"> 1. Yes

		<p>2. No</p> <p>d) NTBs in the form of Sanitary and phytosanitary measures-SPS?</p> <p>1. Yes</p> <p>2. No</p> <p>e) NTBs in the form of Rules of Origins-ROOs and</p> <p>1. Yes</p> <p>2. No</p> <p>f) NTBs in the form of Customs Doc and formalities</p> <p>1. Yes</p> <p>2. No</p> <p>g) NTBs in the form of Bribery</p> <p>1. Yes</p> <p>2. No</p>
05.	During the imports, which level did you experience Barriers?	<p>1. Goods</p> <p>a. Yes</p> <p>b. No</p> <p>2. Services</p> <p>a. Yes</p> <p>b. No</p> <p>3. Intellectual Property</p> <p>a. Yes</p> <p>b. No</p>
06.	During the Exports, which level did you experience Barriers?	<p>1. Goods</p> <p>a. Yes</p> <p>b. No</p>

		<ul style="list-style-type: none"> 2. Services <ul style="list-style-type: none"> c. Yes d. No 3. Intellectual Property <ul style="list-style-type: none"> a. Yes b. No
07.	During the FDI which level did you experience Barriers?	<ul style="list-style-type: none"> 1. Inbound FDI <ul style="list-style-type: none"> a. Yes b. No 2. Outbound FDI <ul style="list-style-type: none"> a. Yes b. No
08.	During the Financial transaction, which level did you experience Barriers?	<ul style="list-style-type: none"> 1. Inbound Transactions <ul style="list-style-type: none"> a. Yes b. No 2. Outbound Transactions <ul style="list-style-type: none"> a. Yes b. No
09.	What is the most pressing problem regarding free movements of goods within the member countries?	<ul style="list-style-type: none"> a) Government reluctance about SAFTA; b) Imposition of national standards, testing rules; c) Complexity of foreign legal systems; d) Lack of mutual recognition of professional qualifications; e) Lack of Transparency in implementation of agreement; f) Non-tariff measures including technical and physical barriers.

		<p>g) Trade related officials are not able to handle the problem</p> <p>h) Business people are not aware about the opportunities exist under free trade agreement</p> <p>i) Business leaders are not cooperative</p> <p>j) The quality of foreign product</p> <p>Other (please specify)</p>
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10. NTBs in the form of VISA: During the visa application process, how satisfied were you with the following visa related issues:

Issues	Highly dissatisfied	Dissatisfied	Neutral	Satisfied	Highly satisfied	Not applicable
Time taken to process visa						
Service levels from visa office staff in your home country						
Immigration service on arrival at the border						

11. Please indicate your experience or level of services of the following trade support organizations.

Offices name	Highly dissatisfied	Dissatisfied	Neutral	Satisfied	Highly satisfied	Not applicable
VAT/ income Tax office						

Trade license issuing authority						
Import/Export license authority office						
Bank						
Local Chamber of commerce						
Port services						
Transport services						
Trade related Brokers (Customs Broker; Freight Forwarders; Agents)						

Part 3: SAFTA Regulatory Harmonize

12.	Do you think that due to lack of harmonization of regulations among different regions of a country, (e.g. each region has its own regulations in addition to the Federal one) you face problems in accessing markets of other partners?	<p>a) Yes</p> <p>b) No</p> <p>If the answer is YES, could you please name few problems?</p>
*13	Each SAFTA country may have its own regulations respect to particular good or service. For example, different countries have	<p>a. Yes (if yes, please share one example of how different regulatory standards posed a barriers to trade)</p> <p>b. No</p>

	different professional standards for licensing factors. Is this the lack of harmonization of regulators?	
14.	Do you believe the free trade agreement in South Asia (SA) makes trading across borders easier?	a) Yes b) No

Part 4: Religious Issues

15.	Due to religion, do you think the tariff schedule may change?	a. yes b. No
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Part 5: Outlook for SAFTA

16.	Do you think, there will any impact on cross border purchase/ sale if barriers will be removed?	a) Yes b) No Don't know/Non- response
17.	Is there any effect on price if barriers will remove? Or what would be effect of price competitiveness if barriers are removed?	a) Yes price competitiveness will increase. b) No change in level of competition on price No- there would be less competition on price
18.	Do you think, SAFTA can boost overall economic growth?	a) Yes b) No

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Part 6: SAFTA policy and Support

19. For your knowledge and or in your experience, how would you evaluate the SAARC countries administrative performance for solving trade barriers, when the problem identified?

Country	H D	D	N	S	HS	N/R
Afghanistan						
Bangladesh						
Bhutan						
India						
Maldives						
Nepal						
Pakistan						
Sri Lanka						

20.	What priorities ought to govern the decision to enter into negotiations for an	<p>a) Government awareness about the beneficial impact/economic benefit of entering such an agreement.</p> <p>b) Cost of doing business</p>
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	FTA or Customs Union?	c) Market access Demonstration effects of other RTAs d) Other (please specify)
21.	What are the possible criteria that needs consideration before entering an RTA/FTA?	a) Economic benefits? b) Size of the trade partner c) Complementarity of products? d) Neighboring Country e) Same membership of international organizations f) Democratic political government g) Relevant culture and practices h) Other (please specify)

22. Please evaluate the following factors of member countries regarding importance level for ensuring free trade agreement.

Factors	Highly Unimportant	Unimportant	Neutral	Important	Highly Important	Not Applicable
Political Commitment of the government (economic philosophy)						
Financial Capability (e.g., GNP)						
Legal Institutions						
Expertise in trade,						

customs and Rules of origin matters						
Strong Trade organization (e.g., chamber of commerce and industries)						
Level of Education						

23. An important Article 7 of SAFTA, where contracting States agree to consider, in addition to the measures the adoption of trade facilitation as well as other measures to support and complement SAFTA for mutual benefit. Please tick the following statement based on the performance.

Issues identified in Article 7 of SAFTA	Highly Dissatisfied	Dissatisfied	Neutral	Satisfied	Highly Satisfied	Not Applicable
Harmonization of standards, reciprocal recognition of tests and accreditation of testing laboratories of Contracting States.						
Certification of products by manufacturing country						

Simplification and harmonization of customs clearance procedure (member countries)						
Harmonization of national customs classification based on HS coding system (member countries)						
Customs cooperation to resolve dispute at customs entry points						
Simplification and harmonization of import licensing and registration procedures						
Simplification of banking procedures for import financing						
Transit facilities for efficient intra-SAARC trade, especially for the land-locked Contracting States						
Removal of barriers to intra-SAARC investments						
Macroeconomic consultations						
Rules for fair competition and the promotion of venture capital						

Development of communication systems and transport infrastructure						
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24. How important were the following factors during cross border trading?

Factors	Highly Unimportant	Unimportant	Neutral	Important	Highly Important	Not Applicable
Proximity of home country						
Personal Safety and security						
Quality of Product						
Cost of Product						
Labor cost						
Social life						
City/ Locations						
Opportunity to work						
Opportunity to further investment						
Opportunities for reputation						

Part 7: About yourself (Optional)

(Again, all information will be kept confidential.)

25.	Name:	
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26.	Are you?	I. Male II. Female
27.	Which age group do you belong to?	I. 21-30 II. 31-40 III. 41-50 IV. 51-60 V. 60+
26.	Contact information:	Correspondence Address: Email: Cell/ Phone Number:

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