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Review

Legal Cross-Border Trade vs. Illegal Cross-Border Trade: Possible Interventions of Regional Cooperation in South Asia for Sustainable Transnational Trade

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Cross-border trade among continents dates back to the pre-industrial era. During that period in the Asian continent, India was renowned for textile while Sri Lanka was well known for spices, gems and pearls. With the European domination over the southern part of Asia the cross-border trade was increased remarkably though it collapsed after the independence due to various reasons including political affairs of the countries. However, in the latter part of the twentieth century, nations of South Asia took a significant step to build up a solid cooperation among the countries in the region to face the common problems in the region and to dedicate to economic, technological, social, and cultural development emphasizing collective self-reliance by establishing the South Asian Association of Regional Cooperation (SAARC) in 1985. The main objective of SAARC was to promote the welfare of the people of South Asia, by expediting the economic growth and social progress, promoting active collaboration in economic growth and social progress. Although the SAARC members have expressed their unwillingness on signing a free trade agreement to overcome the problems that face cross-border trade within the region in 1993, SAARC countries signed an agreement in Dhaka, which is known as South Asia Preferential Trade Agreement (SAPTA) for lower tariffs within the region. In 2004, SAARC countries devised the South Asia Free Trade Agreement (SAFTA) which created a framework for the establishment of a free trade area to eliminate the trade barriers. The SAFTA treaty seeks to allow free cross-border movement of goods within the region, with the provision for a list of sensitive items for member countries to safeguard national interests. However, the countries in the South Asian region are still far from its real collective trade potential. Therefore, it is high time for the region to take further trade facilitation measures in order to achieve their highest economic potential. If the legally imported goods are less available in the local market it leads to an increase in illegal imports. Therefore, increasing the availability of foreign products at cheap prices,

undoubtedly, caused to decrease illegal cross-border trading of goods. The main objective of this study is to explore the issues relating to informal trade in the SAARC region and to find the possibilities to convert the informal business into formal business aiming at the economic development of the region. To achieve this goal, the paper focuses on the prevalence and composition of informal trade in the region and its relationship with formal trade. Further, this study spells out the reasons underpinning illegal trade in the South Asian region. Finally, the paper investigates the extent to which Regional Co-operation in South Asia will influence the shift of illegal trade flows to legal channels. This research is basically based on both library and fields research. The library research is based on reviewing of publications such as books, journal articles and reports written on cross-border trade, South Asian regional and bilateral agreement etc. Further, the information gathered from the internet is also used to complete this article. Field research includes interviews and discussions with Custom Officers and collecting data relating to this area. However, it is important to note that obtaining statistics relating to both formal and informal cross-border trade was one of main difficulties that the author had to face in the completion of this study.

Keywords: Trade facilitation, illegal cross-border movements of good, regional and bilateral agreements, South A

INTRODUCTION

Cross-border trade among continents dates back to the pre-industrial era. Spices, textiles and precious stones were the main commodities in the international commerce during the pre-industrial era. India was well known for the quality of its textiles, and was involved in efficient trade practices with Far and Southeast Asia for centuries. Although there are no authoritative sources to prove the existence of international trade between Sri Lanka and the rest of the world during that period, it has been said that Sri Lanka was famous for spices and precious stones such as gems and pearls during the Monarchs' period. Knox Robert, *An Historical Relation of Ceylon*, (M.D. Gunasena & Co. Ltd. Colombo, 1961) Reprinted in 1979.

Europeans worked their way into this commercial nexus in the early sixteenth century. The Portuguese were the first to arrive, having discovered a sea route from Europe to the East that allowed them to avoid the heavy taxes on goods sent overland through the Middle East. (This indicates that tariffs and transport difficulties were the main barrier for cross-border trade.) Next the Dutch and the British took domination of international trade and controlled the exports and imports in Southeast Asia. In the period from 1600 to 1800, cross-border trade considerably increased between European and South Asian traders, but collapsed after the independence due to various reasons including political affairs of the countries. However, in the latter part of the twentieth century, nations of South Asia took a remarkable step to build up concrete collaboration among the countries in the region to face the common problems in the region and promote economic, technological, social, and cultural development by emphasizing the collective self-reliance by establishing the South Asian Association of Regional Cooperation (SAARC) in 1985. Its members are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

The concept of SAARC was first adopted by Bangladesh during 1977, under the administration of President Ziaur Rahman. In the late 1970s, SAARC nations agreed upon the creation of a trade association consisting of South Asian countries. The idea of regional

cooperation in South Asia was again mooted in May 1980. The foreign secretaries of the seven countries met for the first time in Colombo in April 1981 to discuss the issue. The Committee that met again, in Colombo in August 1985, identified five broad areas for regional cooperation and established this particular body in the same year in Dhaka.

SAARC reached its 25th birthday in 2010. As said earlier, SAARC was established in Dhaka on 7th -8th December, 1985 with the (main) objectives of promoting the welfare of people of South Asia, by speeding up the economic growth and social progress, promoting active collaboration in economic growth and social progress promoting active collaboration in the economic, social, cultural, technical and scientific fields, strengthening cooperation in international forums on matters of common interest, and cooperating with international and regional organizations with similar aims and purposes.

Over the years, the SAARC members have expressed their unwillingness on signing a free trade agreement to overcome the problems that faced in cross-border trade within the region. However, India has several trade pacts with Maldives, Nepal, Bhutan and Sri Lanka. India-Bhutan Free Trade Agreement, India- Nepal Foreign Treaty of Trade, India-Sri Lanka Free Trade Agreement. India's trade agreements with Pakistan and Bangladesh were not successful due to political and economic concerns on both sides. In 1993, SAARC countries signed an agreement in Dhaka, known as South Asia Preferential Trade Agreement (SAPTA) for lower tariffs within the region, in other words to liberalize trade policies among the SAARC countries. Eleven years later, at the 12th SAARC Summit in Islamabad in 2004, SAARC countries devised the South Asia Free Trade Agreement (SAFTA) which created a framework for the establishment of a free trade area by eliminating trade barriers and scaling down tariffs. The objectives of the SAFTA treaty to promote and enhance mutual trade and economic cooperation among members would be achieved by

a) eliminating barriers to trade, and facilitating the cross-border movement of goods,

b) promoting conditions of fair competition and ensuring equitable benefits, taking into account their respective levels and pattern of economic development,

c) creating effective mechanism for the implementation and application of the agreement, for its joint administration and the resolution of disputes, and

d) establishing a framework for further regional cooperation to expand and enhance the mutual benefits.

South Asia is now looking forward to an Economic Union in 2020. The SAFTA treaty seeks to allow free cross-border movement of goods within the region, with the provision for a list of sensitive items for member countries to safeguard national interests. It is also envisioned that SAFTA will lead upto US \$ 30 billion approximate increase in intraregional formal trade within the period from 2007-2015. However, countries in South Asian region are still far from reaching its real collective trade potential. Nisha Thaneja, India's Informal Trade with Sri Lanka, Working paper 82, (Indian Council for Research on International Economic Relations, 2007).

According to some observations, illegal cross-border trade which is perhaps higher than the legal cross-border trade is one of the main critical factors that preventing South Asia from achieving its full trade potential. If the consumer goods are less available in local market, it leads to increase the imports. If there is no proper trade facilitations to import the goods legally, the illegal imports will be eventually increased. Increasing the availability of products (finished items or raw material) at cheap prices, undoubtedly, caused to decrease illegal cross-border trading of goods. Therefore, it is high time for the region to increase further trade facilitation measures in order to achieve their highest economic potential by making illegal cross-border trade into legal cross-border trade.

The main objective of this study is to explore issues relating to informal transnational trade in the SAARC region and to find possibilities to convert the informal cross-border business into formal aiming at the economic development of the region. To achieve this goal, the paper focuses on the prevalence and composition of informal cross-border trade in the region and its relationship with formal cross-border trade. Further, this study spells out the reasons underpinning illegal transnational trade in the South Asian region including the impact of tariff and non-tariff barriers on formal cross-border trade and implications of transportation costs and other costs that influence informal transnational trade. Finally, the paper investigates the extent to which Regional Co-operation in South Asia will influence the shift of illegal trade flows to legal channels.

Prevalence of illegal cross-border trade among SAARC countries

There is a need to investigate, the degree of the informal

cross-border trade in the region, what commodities are being subjected to illegally trade, who involve in this trade, the places in each country well-known for the trade in this nature, how large the official trade flows are and how they are related to unofficial trade flows in order to estimate the impact of illegal trade on the economy of each country in the region and to discover the means and methods to convert informal trade to formal trade. Various studies have estimated the extent of unofficial cross-border trade in the countries in the region at different times by focusing on each country individually, but not as to cover the whole region within a particular period. Sarvanathan, M. Contraband Trade and Unofficial Capital Transfers between Sri Lanka and India, (Economic and Political Weekly, India, 1994 July 23). According to these studies, India is the only country which shares its border with almost all the South Asian countries and due to its special geographical location, India is the central point for illegal trans-border trade in SAARC region. Karmacharya Binod K., Informal Trade in the SAARC Region: Nepal's Informal Trade with India, Country Report, (Nepal Council for Development Research, Kathmandu, 2002); See Further Sarvanathan Muttukrishna, , An Assessment of Contraband Trade and Capital between India and Sri Lanka, Kumaran Publishing House, Chennai and Colombo, 2001.

As far as the Indo Sri Lanka illegal cross-border trade is concerned, India's unofficial trade with Sri Lanka has certain features. They are: the illegal trade between India and Sri Lanka is a two-way operation which means that goods are smuggled from India to Sri Lanka and vice-versa; In contrast, the illegal trade between Sri Lanka and almost all other countries especially in the SAARC region is one way operation where goods are smuggled from abroad to Sri Lanka and not vice-versa. Further see, Taneja, N, Sarvanathan M, Karmacharya, B and Pohit S., Informal Trade in the SAARC Region: A Case Study of India, Sri Lanka and Nepal, Report Prepared for the South Asia Network of Economic Research Institutes, 2002 .

The value of such trade in both directions seems to be only marginally different; It is important to note that India's unofficial imports are almost 10 times greater than the official imports. See Schneider F, 2005, Shadow Economies of 145 Countries all over the World: Estimation Results over the Period 1999 to 2004, website: <http://www.econ.jku.at/Schneider>, visited January 2011. The total two-way unauthorized trade between India and Sri Lanka is more than the authorized trade between them and the two-way informal trade between India and Sri Lanka is the largest informal trade between Sri Lanka and any single country. Further see Taneja Nisha and Sanjib Pohit, , Characteristics of India's Informal and Formal Trading with Nepal: A Comparative Analysis, Indian Economic Review, Delhi School of Economics, 2002. C/f according to the customs

officials it is not.

The pattern of unofficial trade between India and Sri Lanka follows a different inclination from the illegal trade between India and other countries in the region. The unofficial trade between Sri Lanka and India is carried out only by air and sea. According to the Central Investigation Bureau, Sri Lanka, (approximately) 65 -70 percent of the total contraband trade is carried out by air and the rest is carried out by sea. Source, the interviews taken with the officials. This takes place largely through air passengers and sea through country boats belonging to both countries (not by ships). Informal trade by air takes place through air passengers who travel (frequently) only for the purpose of informal trade between the two countries. Most of the air passengers are of Sri Lankan origin. Thus, mostly Sri Lankans carry out the illegal trade between the two countries. They travel between Colombo to some (main) cities India; namely, Chennai, Trichy, Mumbai and Rameshwaram and control (run) the business from these cities. Chennai is the most renowned among these cities. In addition, goods which are procured from Delhi and Mumbai are transported by trains (this is mostly done by Indians) to Chennai and sent to Sri Lanka through illegal means. Here the smugglers can avoid entering into contracts such as CIF, FOB, Bill of Lading ex works FOR and FAS. In considering the illegal trans-border trade, three types of persons involved in the business have been identified. They are informal traders, carriers and officials such as airline and customs officials. The support given by these officials makes the trade easier.

A number of regular boats ply between India and Sri Lanka purely for illegal purposes such as smuggling of goods (and trafficking of persons) This is not covered in this research.. For instance, gold and silver are smuggled in large quantities by sea from Sri Lanka to India because smuggling of these high value goods is less risky by sea than air. In addition, bulky items such as electronic goods are also smuggled by sea in greater quantities from Sri Lanka to India. It needs to be noted that the informal trade by sea does not exactly take place from one particular identified place. According to the Central Investigation Bureau it is done from the coastal regions around Tuticorin and Rameshwaram in India and coastal regions around Wattala to Puttalam and Mnnar in Western Province in Sri Lanka. Source, the interviews taken with the officials.

The information further reveals that the total two way informal international trade between India and Sri Lanka is approximately 25% -30% of the formal international trade. Informal imports from India are around 40% -45% of formal imports, while informal exports are roughly 25% - 30% of formal exports. This large trade excess in India's favor in informal trade does not create a healthy economic environment in Sri Lanka. Source, for the informal trade - the interviews taken with the officials and for the formal trade - the statistics of Foreign Trade, now

comes under the Ministry of Economic Development, Sri Lanka.

According to the information gathered from the Bureau, textiles is the commodity/item which is illegally imported at large scale constituting 55% -60% of the total informal imports from India to Sri Lanka. It is followed by electrical and mechanical items constituting 20% of the total unauthorized trade. Other informally imported items are apparatus, food items, electronic items, sports goods, brass items and medicine. Informal exports by air consist of spices on a large scale which is around 35% - 40% of the total informal exports from Sri Lanka to India. The electronic items consists of 30%-35% and commodities such as cosmetics, cigarettes, liquor, and ceramics consist of 25% -35% of the total contraband trade. Source, the interviews taken with the officials. Rest consists with other items such as diamond, gems etc.

It is estimated that imported electrical, mechanical and groceries items carried by sea consists of 71% of total informal import to Sri Lanka by sea. The other items imported informally by sea are garments, tools and chemicals. Electronic items are the main commodity exported informally large scale by sea from Sri Lanka to India which constitutes of approximately 40% - 45% of total informal export by sea. The other items exported illegally by sea are spices, liquor, cigarettes and cosmetics which are of 55%-60% of the total illegal exports.

A common language, religion, culture, etc, play a significant role in facilitating trade across the border. Especially, speaking a same language makes all the related activities easier. According to the filed study, in Sri Lanka, 50% of the informal traders are Tamils including North East and Hill Country Tamils, 45% are Muslims and the rest 5% Sinhalese. At present mostly male persons are actively involved in informal cross-border trading. The female contribution to the illegal cross border-trading is less than 10%. Source, information obtained from the officials.

There is no such considerable empirical evidence to prove the contraband cross-border trade between Sri Lanka and other SAARC countries other than India. However, the information gathered reveals that some Pakistan nationals are involved in this trade and bring foreign currency especially US Dollars and illegal drugs such as heroin. This is done by air passengers. Source, the interviews taken with the officials.

Influential factors for informal cross-border trade

Several facts have influenced the increase of illegal cross-border trade. One of the identified contributory factors is high transaction cost (information cost, search cost and risk cost) in formal trade. A certain degree of trade related information such as product requirement, technology, expertise, knowledge, price, tariffs, industrial

trends, trade regulations and procedures are needed to carry out trade in an effective manner. However, there is no any strong mechanism adopted by SAARC nations to facilitate the smooth exchange of trade information among the SAARC countries. Similarly, searching the condition of the goods and selecting the best quality and insuring that goods are in transit is also essential in formal trade which is again at a high cost in cross-border trade. Trading partners involved in informal trade, provide all necessary assistance to reduce the above mentioned costs. Therefore, the low transaction costs of trade in the informal channels have forced the trades to select this particular stream in cross border trade. Nisha Thenija, India's Informal Trade With Sri Lanka, India Council for Research of International Economic Relations Working Paper 82, 2002.

The absence of proper multilateral transit arrangements Joint shipment / transport arrangement among all the countries in the region .

within countries in the SAARC region is another contributory factor for increased informal cross-border trade within the region. De P., 2008, Realizing the Gains from Full Regional Connectivity in South Asia: The Transport Costs Dimension, *Man and Development* 30(1) : pp.27-44. Although limited transportation exists for some landlocked countries such as India, Afghanistan, Bhutan and Nepal, it is not sufficient to reduce the transport barriers (and transport costs) within the region as a whole. (The present arrangement of transit in South Asia is bilateral, where India provides overland transit to Bangladesh, Nepal and Bhutan for their bilateral trade, and maritime transit to Nepal and Bhutan for their international trade.) See further, Das S., and Pohit S., 2006, Quantifying Transport, Regulatory and Other Costs of Indian Overland Exports to Bangladesh, *The World Economy* 29(9): 1227-42; Asian Development Bank , 2005, SAARC Regional Multimodal Transport Study (SRMTS) Manila: ADB. All connecting roads between India and Pakistan have been closed for security reasons and the tension between the two countries and most of the cross-border trades takes place via rail routes. Prabir De, Sachin Chaturvedi, and Khan Abdur Rob, Transit and Border Trade Barriers in South Asia : Prabir De Inclusive Growth and Trade Facilitation: Insights From South Asia (Brief No 16 Jan. 2009) ARTNeT Policy Brief ESCAP Asia Pacific Research and Training Network on Trade. Website: www.artetontrade.org visited January 2011.

Severe travel restrictions among some countries have aggravated the condition. For instance, Travel restriction among India, Bangladesh and Pakistan. Taylor, Benjamin J, and John S. Wilson. 2009. *As SAFTA Gains New Momentum, Trade Facilitation Should Remain Key Priority*. Washington D.C: World Bank. 2. Therefore, the traders who are in import and export trade are compelled to discover other markets with easy access. See the study completed by Polak, Jacob and Arnold Heertje

(eds). In 1993, *European Transport Economics*, Oxford, Blackwell. According to some studies, Prabir De, Sachin Chaturvedi, and Khan Abdur Rob 2009, Transit and Border Trade Barriers in South Asia,: Prabir De 2009 Inclusive Growth and Trade Facilitation: Insights From South Asia (Brief No 16 Jan. 2009) ARTNeT Policy Brief ESCAP Asia Pacific Research and Training Network on Trade Visited January 2011, www.artetontrade.org the countries in the region can utilize the geographical contiguity to improve cross-border trade if the region can provide proper regional transit arrangements to remove the transport barriers and travel restrictions. Refer, the Declaration of the fourteenth SAARC Summit, New Delhi, 3–4 April 2007, available at www.saarc-sec.org/main.php, visited January 2011.

Industrial disparity within SAARC countries is another reason which reduces the development of intraregional formal trade among SAARC nations which finally causes the growth of informal trade. Kanika Dua and Seher Abbas, "Plurilateralism and Trade Facilitation: The way Ahead for Intraregional Trade in South Asia", *Asian Journal of Public Affairs*, (AJPA) Vol.2 No. 2, 2010, pp.3-19. For instance, the Industrial disparity between India and Pakistan the two largest economies of the region. With the disparity in the levels of industrial development, a general opinion prevails among Less Developed Countries (LDCs) in the region such as Nepal, Bangladesh and Bhutan that promotion of trade will benefit the More Developed Countries (MDCs) among the SAARC nations such as India, Pakistan and Sri Lanka, at the cost of the LDC's development. Therefore, there is reluctance from the Less Developed countries to promote intraregional trade among the SAARC nations. Kanika Dua and Seher Abbas, Plurilateralism and Trade Facilitation: The way Ahead for Intraregional Trade in South Asia, *Asian Journal of Public Affairs*, (AJPA) Vol.2 No. 2, 2010, pp.3-19.

The political and foreign affairs differences among the SAARC nations have a considerable impact on intraregional trade trade. Especially, political deference between India and Pakistan is a major obstacle in all attempts to increase economic integration in South Asia. This situation also leads to increase the informal trade within the region.

The excessive government regulations and inefficiency of enforcement authorities also reduce the ease of doing business in South Asia, which has lagged behind in implementing technology systems in customs and administrative procedures. Until recently, customs procedures in South Asia were primarily focused on revenue collection and trade protection – there was no strong drive for increased efficiency and transparency. Steps have been undertaken to simplify and harmonize trade procedures, but South Asia still requires the most number of documents for cross- border trade. Taylor B.J., and Wilson, J.S., *As SAFTA Gains New Momentum, Trade Facilitation Should Remain Key Priority*,

Washington DC: World Bank 2, quoted from Kanika Dua and Seher Abbas, 2010, Plurilateralism and Trade Facilitation: The way Ahead for Intraregional Trade in South Asia, Asian Journal of Public Affairs, (AJPA) Vol.2 No. 2 pp.3-19. Inefficient officials in law enforcement agencies play a vital role in low intraregional trade in South Asia which force the traders to move towards unofficial channels in business. Ahmad Sadiq and Gani Ejaz, 2007, South Asia Growth and Regional Integration, Washington DC: World Bank, quoted from Kanika Dua and Seher Abbas, 2010, Plurilateralism and Trade Facilitation: The way Ahead for Intraregional Trade in South Asia, Asian Journal of Public Affairs, (AJPA) Vol.2 No. 2 pp.3-19.

The existence of high tariffs plays an important role in discouraging intraregional trade. Banik Nilanjan and Gilbert John, 2008, Regional integration and Trade Costs in South Asia Asian Development Bank Institute (ADBI) Working Paper No. 127. A classic example of the high tariffs and duties imposed by these countries are duties on non-agricultural goods which range from 10 percent in Sri Lanka to 21 percent in Bangladesh. The level of protection for agricultural goods is even higher and ranges from 25 percent in Pakistan to 100 percent in India. Panagariya, A. 2003. South Asia: Does Preferential Trade Liberalization make Sense, *The World Economy* 26: 1279-1291. The largest number of tariff peaks among the South Asian region is concentrated among the agriculture, automobile, textile and garment sectors. Banik Nilanjan and Gilbert John, Regional integration and Trade Costs in South Asia Asian Development Bank Institute (ADBI) , 2008, Working Paper No. 127 Some research scholars such as Banik and Gilbert Banik Nilanjan and Gilbert John, Regional integration and Trade Costs in South Asia Asian Development Bank Institute (ADBI), 2008, Working Paper No. 127 argue that higher tariffs within the region have neutralized benefits that could have been gained from having common cultural similarity, common geography and the advantage of common borders to improve intraregional trade within the region. Though the SAFTA Treaty provides a timeline for removal of tariffs, which spreads over 2006-16 with different time frames for LDCs and other members, it has not been adhered to. Kanika Dua and Seher Abbas, Plurilateralism and Trade Facilitation: The way Ahead for Intraregional Trade in South Asia, Asian Journal of Public Affairs, (AJPA) Vol.2 No. 2 , 2010, pp.3-19.

Cooperation in the region to enhance intraregional trade

The concept of economic liberalization has occupied the main focus of debate in development economics. All most all the countries in the world is (at least) a member to a regional (multilateral or bilateral) trade agreement (RTA) which focuses on the enhancement of trade opportunities

through liberalizing the trade in their economy. WTO website. Visited February 2011. The South Asian countries also made efforts to enhance the trade and investment flows with their neighbours by entering into regional trade agreements with the objectives of developing the export import trade among the countries, strengthening their trade potential and finally the eradication of poverty which is a common problem to the region. WTO website. Visited February 2011. More than 90% of trade of SAARC trade lies outside the region. The intraregional trade is less than 3% of the world trade, even though the seven SAARC countries comprise of 20% of the world population and offer a market over (approximately) one billion people. Therefore, it is not wrong to say that the regional (bilateral or multilateral) trade agreements within the region can play a vital role in developing the legal cross-border trade (intraregional trade or in other words regional economic integration) while combating illegal trade within the region.

The next attempt is to discuss some SAARC agreements which focus on economic integration. SAPTA, SAFTA and ISLFTA. After establishing SAARC, the first step towards economic integration in the region was taken at the Seventh SAARC Summit held in December 1993 by signing the SAARC Preferential Trading Agreement (SAPTA) by SAARC members. It was entered into force on 07th December 1995 with their desire. The aim of SAPTA was to promote and sustain mutual trade and economic cooperation within the SAARC region by agreeing to exchange tariff concessions on a number of products. Preamble of SAPTA. It is clear in the following basic principles underlined by SAPTA. They are:

- Overall reciprocity and mutuality of advantages so as to benefit equitably all Contracting States, taking into account their respective level of economic and industrial development, the pattern of their external trade, trade tariff policies and systems;
- Negotiation of tariff reform step by step, improved and extended in successive stages through periodic reviews;
- Recognition of the special needs of the Least Developed Contracting States and agreement on concrete preferential measures in their favour;
- Inclusion of all products, manufactures and commodities in their raw, semi-processed and processed forms. Article 3 of SAPTA.

The SAPTA Agreement made a distinction between the least developed countries such as Bangladesh, Bhutan, Maldives and Nepal and other developing member countries such as India, Pakistan and Sri Lanka. According to the agreement the negotiations for SAPTA are held on the basis of 'request and offer' basis, where the Exporting Party comes up with a 'country specific' request list of its exportable (real as well as potential) items on which it would seek preferential market access. The other Party would then make an offer on items from

'request list' and indicate the extent of tariff concessions in terms of Margin of Preference (MoP). At the end of each Round, these offers are multilateralised to all SAARC members. The least developed countries (LDC) get concessions on a large number of products with deeper MoP, without reciprocating with equivalent concession to other developing countries under the special and differential treatment provision of SAPTA. Article 10 of SAPTA. So far, four rounds of trade negotiations have been concluded under SAPTA covering over 5000 commodities. Ratna R.S. and Geetu S., research paper completed on "Making SAFTA a Success: The Role of India", under the grant from Commonwealth Secretariat London to CUTS International Jaipur, 2009.

Further, it has specified four approaches for tariff negotiations namely, product-by-product approach, across-the-board tariff reduction, sectoral tariff reduction and direct trade measures. The negotiations and agreement of tariff concessions by the contracting parties are to be an ongoing process where any Contracting Party can withdraw or suspend the concession due to economic problems of the Contracting Parties. The Agreement further provides for the adoption of additional trade facilitation measures to support the co – idea of SAPTA and balance the mutual benefit of the Contracting Parties. However, the criticism to SAPTA is that it had no major impact in changing the existing trade pattern (tariff cuts) of other countries including Sri Lanka. This is based on Weerakoon D and Wijayasiri J., Regional Economic Cooperation in South Asia: A Sri Lankan Perspective, International Economic Series No 6, Institute of Policy Studies, Colombo, 2001.

In addition to the limited number of concessions offered under the agreement, failure to deal with non tariff issues and restrictive rules of origin are some of the weakness of SAPTA which lead to a poor implantation of the agreement. Political affairs of the SAARC nations, foreign policy and tension between the two major economics, India and Pakistan weaken the SAPTA further.

Later, with the broader objective of moving towards a South Asian Economic Union (SAEU), the SAARC Member States signed the Agreement on South Asia Free Trade Area (SAFTA) on 6th January, 2004 at the 12th SAARC Summit held in Islamabad which came into force on 01st January, 2006. It forms a framework for the creation of a free trade area covering (approximate) 1.6 billion people in Bangladesh, Bhutan, India, Pakistan, Maldives, Nepal and Sri Lanka aiming at zero customs duty on the trade of practically all products in the region by the end of 2016. SAFTA has six core elements covering trade liberalization programme, rules of origin, institutional arrangements, safeguard measures, special and differential treatment for least developed countries (LDCs), and dispute settlement mechanisms in order achieve the above said objectives.

With regard to the reduction or removal of tariff under SAFTA, first, it required the developing countries in South Asia (India, Pakistan and Sri Lanka) to bring the duties down to 20 percent in the first two year period from the date of coming into force of the agreement that is ending 2007. In the final five year For Sri Lanka it is six years. Refer, the Article 7. 1. B. period, which is beginning from the third year from the date of coming into force of the agreement ending 2012, SAFTA aimed to deduce that 20% customs duty to 0% in a series of annual cuts by providing the opportunity to the least developed countries in South Asia (of Nepal, Bhutan, Bangladesh and Maldives) another three years (ending 2015) to reduce their tariffs to zero. Article 7. According to some encomiasts the removal of tariff is being spread over too long period of this nature leads to other bilateral trade agreement to take the superiority over SAFTA and deteriorate the core objective of the agreement.

The above said special and differential treatment for the least developed contracting countries Article 11. is a plausible point for SAFTA which make a trade balance between rich and poor members within the region, as well as improve intraregional trade. However, many agriculturally based commodities are listed under negative lists, SAFTA should have a mechanism that makes the members to reduce their negative list.

Although SAARC countries have signed SAFTA to expedite the action to remove tariff, non-tariff barriers (NTBs) and structural obstructions to free trade within the region, still SAFTA could not reach its full potential due the above said few weaknesses.

In the above discussion it is clear that regional agreements have wider scope in reducing trade barriers within member countries. This wideness perhaps entails discrimination against trade member States other than specific contracting parties. Basically these agreements merely remove tariffs on intra bloc trade in goods, but were not completely successful in covering all other obstacles, especially non-tariff barriers in trade in goods that led to an increase of illegal cross border trade in goods. Therefore, many countries prefer to sign bilateral agreements that are more effective and central. Agreement on India Sri Lanka Free Trade Area (ISLFTA) is an effective Joshi Vivek, Working Paper No: 04/2010 on An Econometric Analysis of India-Sri Lanka Free Trade Agreement March 2010. In his paper he says ISLFTA is an agreement on regional free trade area. Bilateral Read the preamble to the USLFTA agreement. This is contrast with footnote note 47. free trade agreement and one of the few effective South Asian agreements.

ISLFTA is a bilateral agreement signed by Sri Lanka and India in 1998 in New Delhi to expand domestic markets through economic integration, promote bilateral free trade arrangements between the two countries for strengthening intra-regional economic cooperation and the development of national economies and elimination of

trade obstacles between the two countries.

According to this agreement Sri Lanka was to receive a special and differential treatment. For that reason, Sri Lanka had a larger negative list, that identifies local products to be protected for which concessions are not given. There are 1180 items which are mainly agriculture or livestock items, rubber products, paper products, iron and steel, machinery and electrical items. India also has a negative list which contains 429 commodities including garments, plastic and rubber products among other items. Sri Lanka was given a longer period (eight years) for removing of tariffs and it also was agreed to give the liberty to reduce the negative list at Sri Lanka's comfort level. Therefore, on the Sri Lankan side 3932 tariff lines were made zero duty for Indian exporters over eight years. On the other hand, India's 4150 tariff lines made zero duty over a period of three years. Under the ISLFTA, India and Sri Lanka by 2009 offer duty free access to 4233 and 4024 tariff lines respectively. Department of Commerce website 2009, (<http://www.doc.gov.lk/web/index.php>) Dileepa Witharana, Senior Lecturer in the Faculty of Engineering Technology at the Open University of Sri Lanka (OUSL) in Nawala, 2010, AN ACT OF FAITH? TEN YEARS OF THE INDIA-SRI LANKA FREE TRADE AGREEMENT (ISLFTA) LAW & SOCIETY TRUST SRI LANKA, March 2010. As a result of this agreement now India is the largest source of imports and the third largest export destination for Sri Lankan products (after the United States of America and the European Union). The argument is that, given the asymmetrical proportions of the economies of the two countries, if not for the ISLFTA, Sri Lankan exports would not have been able to achieve their current level of market penetration. Prasad, Alok, (2009) in Dileepa Witharana, Senior Lecturer in the Faculty of Engineering Technology at the Open University of Sri Lanka (OUSL) in Nawala, 2010, AN ACT OF FAITH? TEN YEARS OF THE INDIA-SRI LANKA FREE TRADE AGREEMENT (ISLFTA) LAW & SOCIETY TRUST SRI LANKA March 2010. Although ISLFTA highly focused on removal of tariff barriers, no high attention given to eliminate non tariff barriers especially transit barriers and other infrastructure facilities which again open the path to increase the illegal cross-border between the two countries.

CONCLUSION

Trade is a good indispensable part of creating a sustainable future for any country. Similarly, successful intraregional trade within the countries in South Asia brings a sustainable prosperity to the SAARC region. Creating economic opportunities such as manufacturing goods, importing and exporting of goods (cross-border movement of goods) in South Asia will help the region to reach the goal of sustainable economic development in

the region. However, it is unfortunate that at present the intra-SAARC trade represents a very little value of projected total trade in the region. It is only 5%. See the presentation delivered by Robert O. Blake, Assistant Secretary for South and Central Asian Affairs at the 16th SAARC Summit held in Thimpu, Bhutan, 28th - 29th April 2010. Though regional and bilateral agreements are aimed at the development of legal cross border trade within the region, yet regional cooperation is not sufficient to combat illegal cross-border trade in a successful manner due to some weaknesses of the treaties. Further see, Joossens Luk Raw Martin, 1995 Business Management Journal, Vol. 310 27th May 1995. Therefore, we should look at the factors, to improve trade among SAARC members which really assists in converting illegal cross-border trade into legal channels.

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