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Department of Economic and Social Affairs
Division for Public Administration and
Development Management

**Globalization and the State:
Challenges for Economic Growth
and Human Development**



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- (iii) it advises interested Governments of the ways and means of translating policy frameworks developed in United Nations conferences and summits into programs at the country level and, through technical assistance, helps build national capacities.

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Preface

This report is a culmination of three major initiatives of UNDESA:

1. Findings of six country studies, Bangladesh, China, India, Mongolia, Philippines and Vietnam, that examined the relationships between globalization, growth and institutional capacities. These country studies were funded by the UNDP Asia Bureau with UNDESA providing the administrative and substantive backstopping.
2. Research outcomes of UNDESA's follow-up of WSSD (Copenhagen) that looked at the effects of globalization on growth and equity.
3. Findings of a UNDESA/ UNESCAP regional workshop, Follow-up of the World Summit for Social Development: State and Globalization and the Challenges for Human Development, Bangkok, Thailand, 17-19 December, 2003.

Globalization is providing new opportunities to countries around the world through economic liberalization, foreign investments and capital flows, technological exchange as well as information flows. Many countries have made significant upward movements in achieving economic development and in reducing poverty. However, the benefits of globalization and liberalization did not seem to have been shared equitably around the world, both across the nations and within the nations. For example, nearly 1.5 billion people lack adequate access to clean water. Inequalities between countries and among groups are increasing. People are facing new threats to human security, such as the financial turmoil in East and Southeast Asia during 1997-99 contributed to erosion of gains of poverty reduction in the region; insecurities in jobs and reduction of state services deriving from public sector restructuring, spread of HIV-AIDS, illicit trade in drugs and weapons, money laundering and environmental degradation. The poor people and the poor countries are being marginalized within the rapidly expanding global economy.

The role of the State is changing in many ways, in part as a response to greater economic integration. In the past years there has been a shift from control-oriented to "steering role"; shift from direct production of goods and services to strategic planning and an "enabling" environment; shift from government to governance with active participation of the civil society and the private sector; focus on the protection of public goods including the environment and human rights; increased focus on the issues of global governance; and matching the capability of the State to its role.

From resource constraints to geographical locations of countries, the reasons for an inequitable distribution of benefits of globalization vary from region to region and from one country to another. One factor, however, is constant—state capacity is a necessary condition to make use of opportunities provided by globalization and to protect the vulnerable groups and support the human resources development in a society. While the State should continue to create enabling environment for investments and rely on market mechanisms to achieve these objectives, its role in alleviating poverty, protecting the environment, and promoting human rights should not be undermined. Furthermore, it is essential for effectively managing violent conflicts, combating crime and corruption and for ensuring increasing gender equity and the advancement of women.

The aforementioned initiatives by UNDESA, namely the six country studies, a regional study and the regional level consultations held in UNESCAP in Bangkok during 17-19 December, 2004 reinforce the need for an enhanced state capacity, highlighting a number of areas:

- | New frameworks and tools for political, administrative and financial transparency and accountability including institutions and conventions against cross-border corruption, and measures to combat domestic corruption;
- | Human resource development with emphasis on capacity and new skills of public servants in such areas as trade negotiations, regional treaties, policy analysis to assess impact of globalization on the vulnerable groups and public goods;
- | Legal, judicial and regulatory frameworks for trade and investments including the protection of property rights and access to justice for the poor;
- | Capacity to assess the social and economic impacts of liberalization of trade and investment policies;
- | State capacity to negotiate with the WTO, regional organizations and other trade agreements as well as capacity to assess their impact on human rights and environmental protection;
- | Mechanisms and frameworks for establishing partnerships among the public sector, the civil society and the private sector; and
- | Access to and use of information technology in government - e-government as a tool to achieve a variety of ends.

The report emphasizes the importance of a two inter-twined aspects of state capacity and globalization. It focuses on tools and frameworks of accountability and transparency, as well as judicial reforms and regulatory frameworks to cope with rapid globalization in a manner that stimulates investors' trust and promotes trade, investment and growth on the one hand and on the other, initiate measures that are vital for protecting the interests of the poor and the vulnerable groups. More specifically, this report concerns with:

- | the relationship between the aforementioned two aspects of state capacity and the ability of the countries to promote trade, investment and information technology without a negative impact on human development;
- | the experiences and good practices at the country and regional levels with regard to the government responses to globalization including trade, investment, and developing countries' positions in regional and global fora;
- | the sharing of knowledge and experience among selected institutions in the region; partnership building and twinning arrangements between the national and regional institutions involved in the program and one of the leading institutions in the North involved in research and policy advice in this field;
- | sharing of related global and regional knowledge and experience available in the United Nations Department of Economic and Social Affairs and the UESCAP respectively; and
- | providing policy options to the country, sub-regional and regional level human development initiatives in globalizing conditions.

The report does not claim to provide answers to all the key questions associated with globalization, growth and human development nor does it present a comprehensive list of all the relevant issues. Rather, it attempts in a selective way, to highlight issues that are of immediate importance and presses home the message that improved state capacities are needed not only to stimulate growth, but also to ensure that the growth is inclusive enough to bring economic and social development to all in a manner that is equitable. UNDESA hopes that the report will come as an input into the policy deliberations of the governments.

UNDESA acknowledges the contributions made by Dr. Debapriya Bhattacharya, the UN DESA International Consultant and the Executive Director, Centre for Policy Dialogue, Bangladesh who synthesized the country papers and workshop discussions and prepared this report. The Department also acknowledges the contributions made by the authors of the six country papers; the inputs provided by the workshop participants at the Bangkok Workshop who shared many valuable insights; the UNESCAP, the partner institution of the Bangkok Regional Workshop; and the contributions made by Dr. Alexei Tikhomirov of the Socio-economic Governance and Management Branch, of the Division for Public Administration and Development Management, UNDESA who provided the administrative and technical backstopping to the entire process. But for his untiring support this report would not have seen the light of the day.

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ACRONYMS

ADB	Asian Development Bank
ADP	Annual Development Plan
AFTA	ASEAN- China Free Trade Area
AHTN	ASEAN Harmonized Tariff Nomenclature
AICEP	ASEAN-India Comprehensive Economic Partnership
AJCEP	ASEAN- Japan Comprehensive Economic Partnership
ALG	Alternative Law Groups
ASEAN	Association of Southeast Asian Nations
ATA	Air Transport Agreement
BAC	Bureau of Anti-Corruption
BB	Bangladesh Bank
BCDA	Bases Conversion and Development Authority
BCG	Boston Consulting Group
BCS	Bangladesh Civil Service
BESF	Budget of Expenditures and Sources of Financing
BFAD	Bureau of Food and Drugs
BFI	Board of Foreign Investment
BI	Bureau of Immigration
BIR	Bureau of Internal Revenue
BMBE	Barangay Micro Business Enterprise
BMRE	Balancing, Modernisation, Rehabilitation and Expansion
BOC	Bureau of Customs
BOI	Board of Investment
BOP	Balance of Payment
BOT	Build-Operate-Transfer
BPS	Bureau of Product Standards
BPTTT	Bureau of Patents, Trademarks and Technology Transfer
BSCIC	Bangladesh Small and Cottage Industries Corporation
BSMBD	Bureau of Small and Medium Business Development
BSP	Bangko Sentral ng Philippines
BTRCP	Bureau of Trade Regulation and Consumer Protection
CAB	Civil Aeronautics Board
CBI	Central Bureau of Investigation
CCDI	Central Committee for Discipline Inspection
CCI&E	Chief Controller of Exports and Imports
CCP	Chinese Communist Party
CDC	Clark Development Corporation
CEP	Close Economic Partnership
CESO	Career Executive Service Officer
CPC	Civil Procedure Code
CrPC	Code of Criminal Procedure
CSC	Civil Service Commission

CSO	Central Support Office [NEDA]
CVA	Custom Valuation Agreement
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DBCC	Development Budget Coordination Committee
DCCI	Dhaka Chamber of Commerce and Industries
DEDD	Duty Exemption and Drawback Department
DepEd	Department of Education
DOE	Department of Education
DOF	Department of Finance
DOLE	Department of Labor and Employment
DOST	Department of Science and Technology
DOT	Department of Tourism
DTDC	Domestic Trade Development Council
DTI	Department of Trade and Industry
EDC	Export Development Council
EDI	Foreign Direct Investment
EO	Executive Order
EPB	Export Promotion Bureau
EPS	Electronic Procurement System
EPZ	Export Processing Zone
EPZA	Export Processing Zone Authority
FAP	Foreign Assisted Project
FBCCI	Federation of Bangladesh Chambers of Commerce and Industries
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FIA	Foreign Investments Act
FICCI	Federation of Indian Chambers of Commerce and Industry
FIE	Foreign Invested Enterprises
FIFTA	Foreign Investment and Foreign Trade Agency of Mongolia
FPB	Export Promotion Bureau
FTA	Free Trade Association
FY	Financial Year
GATT	General Agreement on Trade and Tariffs
GDP	Gross Domestic Product
GoB	Government of Bangladesh
GOCC	Government-owned-and-controlled Corporation
GSP	Generalized System of Preference
GTEB	Garments and Textile Export Board
HG	Harmonized System
HLURB	Housing and Land Use Regulatory Board
IACC	International Anti Counterfeiting Coalition
IC	Insurance Commission
ICC	Investment Coordination Committee

ICC-CC	Investment Coordination Committee Cabinet Committee
ICC-TB	Investment Coordination Committee Technical Board
ICID	International Convention of Settling Investment Disputes
ICT	Information and Communication Technology
IDC	Industrial Development Council
IEC	Import Entitlement Certificate
IFC	Information and Facilitation Counters
IFC	International Finance Corporation
IPP	Investment Priorities Plan
IT	Information Technology
ITECC	Information Technology and E-Commerce Council
JATI	Judicial Administration Training Institute
JURIS	Judicial Reform Initiative Support
LEDAC	Legislative Executive Development Advisory Council
LFP	Locally Funded Project
LTFRB	Land Transportation Franchising and Regulatory Board
MARINA	Maritime Industry Authority
MCP	Major Capital Project
MFN	Most-favored Nation
MoC	Ministry of Commerce
MoF	Ministry of Finance
MOT	Ministry of Trade
MP	Member of Parliament
MTPDP	Medium Term Philippine Development Plan
MTPIP	Medium Term Philippine Investment Plan
MWSS	Metropolitan Water and Sewerage System
NARA	National Authority for Revenue Administration
NBDB	National Book Development Board
NBR	National Board of Revenue
NCC	National Computer Center
NCIEC	National Committee for International Economic Cooperation
NDO	National Development Office [NEDA]
NEA	National Electrification Administration
NEDA	National Economic and Development Authority
NGA	National Government Agency
NPC	National Power Corporation
NRO	NEDA Regional Office
NTB	Non-Tariff Barriers
NTC	National Telecommunications Commission
ODA	Official Development Assistance
PACC	Presidential Anti-Crime Commission
PCA	Philippine Coconut Authority
PEDP	Philippine Export Development Plan
PER	Project Evaluation Report

PEZA	Philippine Economic Zone Authority
PHILJA	Philippine Judicial Academy
PLDT	Philippine Long Distance Telephone
PNP	Philippine National Police
PTA	Philippine Tourism Authority
RA	Republic Act
RDC	Regional Development Council
RDO	Regional Development Office [NEDA]
SAARC	South Asian Association for Regional Cooperation
SBMA	Subic Bay Metropolitan Authority
SEC	Securities and Exchange Commission
SMED	Small and Medium Enterprise Development
SOE	State-Owned Enterprise
SOM	Senior Officials Meeting
SPCPD	Southern Philippines Council for Peace and Development
SRA	Sugar Regulatory Administration
TCC	Tariff and Customs Code
TEL	Temporary Exclusion List
TESDA	Technical Education and Skills Development Authority
TIDC	Trade and Industry Development Council
TIFA	Trade and Investment Facilitation Agreement
TREATI	Trans-Europe-Asia Trade and Investment Initiative
UNDP	United Nations Development Program
USA	United State of America
VAT	Value Added Tax
WB	World Bank
WEC	West-East Corridor
WEF	World Economic Forum
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Part A

Globalization and the State: Human Development and Capacity Building Needs - A Review of Asian Country Experiences

**GLOBALIZATION AND THE STATE: HUMAN DEVELOPMENT AND
CAPACITY BUILDING NEEDS - A REVIEW OF
ASIAN COUNTRY EXPERIENCES**

*Debapriya Bhattacharya**

I. INTRODUCTION

Globalization is not a new phenomenon from the historical point of view, but the process has greatly accelerated during the past decades. Economic deregulation, financial liberalization, increased flow of goods and services - underpinned by the developments in information and communication technology - have distinguished the new phase of globalization. These new dimensions of globalization have increased both opportunities and risks for the nations to achieve sustainable development for their citizens. This has particularly become a major concern as the gains and losses emanating from globalization have not been shared equitably within and among the countries.

Thus, to make the nations capable of realizing the opportunities and managing the challenges of globalization more efficiently, capacity building of individual countries has become one of the most fundamental prerequisites for ensuring competitive development. However, this process of capacity building of the state remains largely conditioned by the contextual realities of specific countries.

The Study Design

Admittedly, each country is managing the globalization process uniquely by way of evolving its own response strategy. With a view to assess the capacity building implications of this multitude of response strategies, the United Nations Department of Economic and Social Affairs (UNDESA) undertook six country studies in Asia. These studies were carried out in the following countries: Bangladesh, China, India, Mongolia, the Philippines and Vietnam. Subsequently, an Expert Group Meeting (EGM) was convened to discuss the findings of these studies. The present paper draws on the country studies and proceeding of the EGM to synthesize the outcome of the aforesaid initiative.

The conceptual framework deployed in the synthesis paper evolves around three major interrelated processes, viz. the new features of globalization, ability of the state to respond to the new demands emanating from globalization, and capacity building needs of the state for responding to the challenges of globalization. To develop the conceptual framework a review of relevant literature was done.

The key analytical approach deployed in the present study is based on comparative reading of the country studies. Cross-country analysis revealed the commonalities as well as the distinguishing features of the experiences. Data and information from secondary sources were scanned to create an issue-relevant country profile.

Guiding Questions

Remaining cognizant of the diverse geographic, economic, social and political differences among the sample countries, the study seeks to address the capacity building needs of individual countries within a common framework. In doing so, the study attempts to address a set of guiding questions.

First, are there any generic commonalities among these diverse countries in terms of their experiences regarding the process of capacity building of the state for addressing the challenges of globalization?

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¹ The country studies are presented in Part B of the volume. (Barkat, A., Hoque, M. and Chowdhury, Z. H. 2003; Ming, X. C. H. 2003; D'Souza, E. 2003; PIDS, 2003; Tru, P. Q. 2003; and Barkhuu, B. 2003).

² The report of the Expert Group Meeting is placed in Part C of the volume.

Second, are the differences in their experiences are basically an issue of sequencing of policy and institutional reforms predicated by their benchmark conditions?

Third, to what extent the observed policy and institutional reform initiatives are externally prompted and to what extent they are internally driven?

Fourth, is it possible to identify some best practices in these countries regarding building capacity of the state with emphasis on human development?

Fifth, what are the preconditions for successful replications of the identified best practices, if any, in other developing countries?

Layout of the Paper

Following the introductory section, Section II of the paper discusses the conceptual underpinnings of the process of globalization, highlights the new demands on the State's capacity to pursue an effective response strategy. This section also analyzes the evolving role of the national government in the era of globalization. Section III puts together a comparative picture of the six sample countries, sketching their selected globalization related features.

The subsequent three sections of the paper address three common set of issues which are of particular importance for developing capacity of the State for meeting the challenges and benefiting from the opportunities of globalization. Accordingly, Section IV analyzes the capacity of the State to promote trade and investment, Section V emphasizes on transparency and accountability for economic management, and Section VII focuses on the evolving legal and judicial framework of the sample countries.

Guided by the conceptual framework, review of the contextual background of the sample countries and analysis of the three overarching issues of regional experience, the concluding section (Section VII) identifies the major capacity building requirements for addressing the internal and external dimensions of globalization. The section also seeks to delineate the identified measures which are to be in pursued by specific actors.

II. THE CONCEPTUAL FRAMEWORK

II.1 Defining Globalization

The concept of globalization is popularly defined as expansion of global linkages among nations. Notwithstanding such simple definition, globalization is often considered to be "the most over used and under specified term in the international policy sciences".³ To some, it is a hideous word of obscure meaning, coined in the 1960s, that came into ever-greater vogue in the 1990s.⁴ Some have gone so far and to state that the term globalization "has now become so slippery, so ambiguous and so subject to misunderstanding and political manipulation, that it should be banned from further use, at least until there is a precise agreement as to its meaning".⁵ Such extreme positions essentially reflect the intensity of the theoretical contestations which we observe regarding securing the essence of globalization."⁶

³ Devetak, R. and Higgot, R. 1999. "Justice Unbound? Globalization, States and the Transformation of the Social Bond". *International Affairs*, July.

⁴ Llosa, M. V. 2000. "Liberalism in the New Millennium", in Ian Vasquez (ed.), *Global Fortune: The Stumble and Rise of World Capitalism*. Chapter 1. Washington DC: Cato Institute.

⁵ Helleiner, G. 2001. "Markets, Politics and Globalization: Can the Global Economy be Civilized?" *Global Governance*, July/September.

⁶ The other term which may contest in the recent time for such distinction is "governance".

Some have viewed globalization as the compression of the world and the intensification of consciousness of the world as a whole.⁷ Others have defined it as a process or a set of processes which embodies a transformation in the spatial organization of social relations and transactions - assessed in terms of their extensity, intensity, velocity and impact- generating transcontinental or inter-regional flows and networks of activity.⁸ However, it is very common to find more emphasis on economic liberalization, assessing globalization as a process of removing government-imposed restrictions on movements between countries in order to create an open, borderless world economy.⁹ Keeping in mind the growing flows of trade and capital investment, some¹⁰ indicate globalization as the possibility of moving beyond an inter-national economy, where the principle entities are national economies.

In contrast, holistic perspective has identified globalization "in three distinct but interrelated senses: first, to describe the economic phenomenon of increasing integration of markets across political boundaries; second, to describe the strictly political phenomenon of falling government-imposed barriers to international flows of goods, services and capital; and, finally, to describe the much broader political phenomenon of the global spread of market-oriented policies in both the domestic and international spheres."¹¹

Therefore, for such an extensively used term such as globalization, there does not appear to be any precise, widely agreed definition. Rather the extent of its meanings is increasing, taking on cultural, political and other connotations in addition to the economic aspects.

Although some have went on to distinguish globalization as a verb and a noun,¹² a mainstream consensus seems to be emerging regarding material manifestations of globalization in its current phase covering the last three decades. Understandably, such a phenomenon does not remain limited to the sphere of economics. However, a more technical definition of economic globalization would be "integration of national economies in the international economy through trade, direct foreign investment (by corporations and multinationals), short-term capital flows, international flows of workers and humanity generally, and flows of technology."¹³

Thus to explicate the scope of this study, the concept of globalization in this paper is interpreted as the integration of a country's local economic system with international markets and institutions through economic liberalization, foreign investments and capital flows, technological exchanges as well as information flows, where the factors of production are used on a world scale, instead of within the individual state economies.

The Chronological Perspective

Indeed, globalization is not altogether a new phenomenon. Proponents of historical perspectives inform us that evolution of globalization may be traced back to expansion o

⁷ Robertson, R. 1992. *Globalization*. London and Newbury Park: Sage. p. 8.

⁸ Held, D., McGrew, A., Goldblatt, D. and Perraton, J. 1999. cited in Ahamed, S. and Ehsan, M. 2005. "Illusion of Self Dependency and the Impact of Globalization on Bangladesh's Macroeconomic Policy". *Asian Affairs*. Vol. 27 (1). p. 24-45

⁹ Scholte, J. A. 2000. *Globalization. A critical introduction*. London: Palgrave.

¹⁰ For instance, Hirst and Peters. 1996. cited in Scholte, J. A. 2000. *Globalization. A critical introduction*, London: Palgrave.

¹¹ Lindsey, B. Against the Dead Hand. cited in Wolf, Martin. 2004. *Why Globalization Works*. Yale University Press.

¹² Tabb, W. 2004. *Economic Governance in the Age of Globalization*. Columbia University Press, New York..

¹³ Bhagwati, J.. 2004. *In Defense of Globalization*. Oxford University Press.

capitalism (usually taking the form of colonialism) during the period 1870s - 1930s.¹⁴ This period was marked by high degree of capital and labor mobility, together with trade boom - essentially result of reduced transport cost, rather than free trade. The second stage of globalization (1945-73) was characterized, inter alia, by emergence of post-colonial independent economies, disintegration of the macroeconomic regulation regime established through the Bretton Woods institutions, the first oil crisis, increasing mobility of private capital, and end of the "golden age" of growth of the industrialized countries. The present day connotation of the term globalization essentially refers to the third or the current phase of the process starting from 1973 onward coinciding with the intensive spurt of economic deregulation as well as privatization, financial and trade liberalization, coupled with revolution in the sphere of information and communication technology.

However, the theorists are not unanimous as regard the sequence of development of globalization. There are three major streams among the thinkers of globalization who are referred as the "hyperglobalizers", the "skeptics" and the "transformationalists".¹⁵

According to the hyperglobalizers, economic globalization is constructing new forms of social organizations that will eventually supplement the traditional nation state as the primary economic and political units of world society.¹⁶ Economic power are becoming effectively denationalized and diffused and nation states are becoming a transitional mode of organization for managing economic affairs. This school of thought reckons that globalization is creating a new order of relations in which states are either converging economically and politically, or are being made irrelevant by the activities of transnational business and market-driven economic policies.

On the other hand, the skeptics maintain that the current global economic interaction is just a heightened level of internationalization, that is, interaction between predominantly national economies.¹⁷ The skeptics argue that there were periods of high financial globalization in the past. In fact, there exists a substantial body of literature which tries to assess phases of globalization in a comparative framework.¹⁸ In this connection, evidence on the share of the current account balance in national income has been analyzed as a proxy for the extent of capital flows.¹⁹ This strand of literature holds that in comparison to the colonial era, the international economy has become considerably less global in its geographical embrace. Rather the economic activities are experiencing significant 'regionalization'. Skeptics also argue that the increasing internationalization of trade between some countries has led to the marginalization of others, notably the poor economies of the southern hemisphere.²⁰

¹⁴ See Ocampo, J.A. and Martin, J. 2003. *Globalization and Development. A Latin American and Caribbean Perspective*. Stanford University Press.

¹⁵ Ahamed, S. and Ehsan, M. 2005. "Illusion of Self Dependency and the Impact of Globalization on Bangladesh's Macroeconomic Policy". *Asian Affairs*. Vol. 27 (1), p. 24-45.

¹⁶ See Ohmae (1995) and Wriston (1992) for more on hyperglobalist arguments.

¹⁷ For more on skeptics arguments, see Hirst and Thompson (1996).

¹⁸ Obstfeld, Maurice and Alan M. Taylor. 2002. "Globalization and Capital Markets". National Bureau of Economic Research. Working Paper 8846. www.nber.org.

¹⁹ For comparative analysis on financial flows of past and present time, see Baldwin, Richard E. and Philippe Martin. 1999. "Two Waves of Globalization: Superficial Similarities, Fundamental Differences". NBER Working Paper 6904. January; Bordo, M. D., Eichengreen, B., and Irwin, D. A. 1999. "Is Globalization Today Really Different than Globalization a Hundred Years Ago?" NBER Working Paper 7195. June; and Collins, W. J. and Williamson J. G. 1999. "Capital Goods Prices, Global Capital Markets and Accumulation: 1870-1950". NBER Working Paper 7145.

²⁰ Cambridge, Jim. 2004. *Globalization and International Education*. Intercom 10. Bath: Centre for the Study of Education in an International Context. URL: <http://www.bath.ac.uk/ceic/archive/10cambridge>. Accessed: 31 December 2004.

Finally, the transformationalists consider globalization as the motivating force behind the fast socio-economic changes that is reshaping the modern societies and world order. According to this line of reasoning, globalization is "a phenomenon by which economic agents in any given part of the world are much more affected by events elsewhere in the world" than before.²¹ Thus, globalization as a powerful transformative force is making the nation states adapt the new circumstances and seek coherent strategies to be engaged with in an evolving world.

II.2 Yields of Globalization

Globalization has generated a wide range of benefits including greater freedom of choice, lower prices of goods and higher income for individuals. At the aggregate level, these have been paralleled by a more productive allocation of resources, enhanced specialization, diversification of risks and investment in areas of highest returns. This is not to say that globalization ensures prosperity for everyone. Indeed, given the asymmetrical nature of the process, a significant proportion of people and countries continue to remain excluded from the rewards of globalization. The exclusionary process has been underpinned by lack of assets, incomes and capabilities on the part of these marginalized people and countries. No wonder that export-oriented (i.e. globalization driven) growth in many countries has been coupled with further deterioration of income disparity. In fact, most recent econometric work based on cross-country and time series data has failed to establish any correlation between rates of poverty reduction and expanding trade volumes.²²

Thus, it becomes imperative for the government in the developing countries to take measures at two levels: first, for a more effective and balanced integration of their respective economies in the global economy and, second, to ensure a more equitable distribution of gains emerging from this integration among its citizens.

While anticipating measures on the part of the governments, one, however, should not forget the limits of domestic policy initiatives in the era of globalization. The current imbalance which we observe in the globalization process may be explained to a large extent by the rules of the game which are perversely set at the global level. Thus we observe that flows of commodities and capital are totally free, while movement of labor remains highly restricted. Similarly, while life-saving drugs are patented, traditional knowledge of developing countries does not enjoy any legal protection. As was mentioned earlier, the benefits have been disproportionately captured by rich countries and powerful transnational companies, while poor countries and poor people have been left behind. The gap between winners and losers is widening at an alarming rate.²³

Such a situation has led to a call for instituting a more accountable and inclusive globalization by way of reforming, among others, the multilateral institutions which set the rules concerning governance of globalization.²⁴ The protagonists of globalization contend that the uneven progress of human welfare results not from failures of the globalized markets, but from failures of politics and policies.²⁵ However, critiques of

²¹ Krueger, Anne. 2000. cited in Wolf, Martin. 2004. *Why Globalization Works*. New Haven: Yale University Press.

²² Ravallion, Martin. 2004. *Looking Beyond Averages in the Trade and Poverty Debate*. World Bank Policy Research Working Paper 3461.

²³ Oxfam. 2000. *Globalization: Submission to the UK Government's White Paper on Globalization*. London: Oxfam GB.

²⁴ Nayyar, Deepak (edited). 2002. *Governing Globalization. Issues and Institutions*. Oxford University Press.

²⁵ Wolf, Martin. 2004. *Why Globalization Works*. Yale University Press.

revealed globalization have convincingly argued that; similar to national economies, serious and extensive market failures afflict the global economy, and these call for provision of global public goods through collective actions at the global level.²⁶

In fine, apart from some marginal groups in the fringe, the "mainstream dissenters" of globalization are not advocating against globalization per se, rather urging for proactive policies which can facilitate accelerated and beneficial integration of the marginalized people and countries in the fast changing global economy. In this sense, a more balanced and equitable globalization is being considered as a powerful means in achieving sustainable development.

II.3 Hallmarks of Globalization on National Economy

Global and national trends have mutually reinforced themselves to provide momentum to the process of globalization. Complementary images of globalization can be witnessed in the national scene in the form of as the privatization of state-owned activities, deregulation of investment regime, trade liberalization and incorporation of global rules and standards in public affairs. Globalization has catalyzed at the national level transparency in corporate and public affairs as well as greater access to information which has been largely facilitated by internet and electronic governance. One may, however, consider protests against the fallouts of globalization - rising inequality sustained high level of employment and exclusion of primary stakeholders from the governance process - are also in a way national phenomenon.

Both the process and impact of globalization depend on how a domestic market absorbs the liberalization process. However, globalization and liberalization are not the same, though they are very frequently used as synonyms. While globalization is a process, liberalization is a response of individual state to that process. For example, globalization will proceed at a faster pace if economics liberalize their goods, services and factor markets (liberalization would also mean liberalized movement of natural persons, though liberalization enthusiasts are typically reticent about discussing this matter). Thus, the major challenge for the national government is to efficiently manage the liberalization process through conscious policy choices, with minimum negative impact on the domestic market.

In the era of globalization, national economies are exposed to a process of privatization where ownership and management of manufacturing and services sectors are transferred from government to private sector to increase competitiveness. In the privatization process, some countries have even gone beyond the usual domain of private sector. For example, in Bangladesh the privatization process has reached the sectors which have traditionally remained the preserve of the state sector, such as education, health care and public infrastructure.²⁷

Corollary to the process of privatization has been deregulation of the investment which has led to opening up new activities for private sector. As a part of this, many sectors have been opened up for the foreign investors as well. In such cases, non-discriminatory provisions were incorporated for national and foreign investors. For example, implementation of the "Most-Favored-Nation"²⁸ and "National Treatment"²⁹ approaches

²⁶ See for example, Rodrick, Dani. 1998. *The New Global Economy: Making Openness Work*. Policy Essay No. 24. Baltimore Johns Hopkins University Press; and Stiglitz, Joseph. 2003. *Globalization and Its Discontent*. New York: W W Norton Company.

²⁷ Sobhan, R. (ed.). 2005. *Privatization in Bangladesh: An Agenda in Search of a Policy*. Dhaka: CPD-UPL.

²⁸ Most-favored-nation treatment (Article I of the GATT 1994) requiring countries not to discriminate between goods on the basis of their origin or destination.

²⁹ The principle of providing foreign producers and sellers the same treatment provided to domestic

of the WTO have become routine. Flows of short-term foreign capital along with foreign direct investment (FDI) and cross-border borrowing have increased significantly. Introduction of a common regional currency, as in the case of the European Union, may be seen as a major contribution towards globalization.

Trade liberalization is another hallmark of globalization. During the past three decades, national governments took a number of reform initiatives to liberalize their trade regime. Among others, such initiatives include reduction of tariff rates and their dispersions as well as reduction of non-tariff barriers, such as import quota. For example, Bangladesh reduced the average non-weighted tariff rate from 47.4 percent in FY1993 to 15.6 percent in FY2004. As a consequence, Bangladesh's economy became more open to the global market, increasing the average trade-GDP ratio from 21.0 percent during the 1980s to about 26.0 percent during the 1990s. At present (FY2004), the trade-GDP ratio is about 32 percent.³⁰ Service sectors are now exposed to international competition. More international cooperation through bilateral, regional and multilateral agreements is also observed these days.

Common global rules and standards are developed as a result of globalization. Consequently, achieving a broad consensus on macro-economic policy framework becomes pertinent. There are multilateral rules for global trade, financial transactions, international dispute settlement procedures and common standards for products and processes that the national economies follow. Higher demands on universal social standards, e.g. labor and environmental studies, human rights, increased transparency in public affairs, more transparent and simpler regulatory systems, and increased global oversight for ensuring transparency and broader involvement of civil society are increasingly defining the national expressions of globalization.

However, market is a very influential component of globalizing economy and inefficient market liberalization can yield socially deleterious outcomes for a nation. Some even argue that markets encourage immorality and have socially immoral consequences. Therefore, appropriate safeguards and institutions along with appropriate policies, at national, regional and community levels, are necessary to minimize the risk of market liberalization.

II.4 New Demands on the State Capacity

In the past, the government performed largely a control-oriented role often focusing on direct production of goods and services. Integration of global economy and liberalization of domestic economy, coupled with digitization of information, are making new demands on the state capacity and, in response, state has also initiated changes in its role. For example, state now plays a "steering" role expressed through provision of strategic planning and an "enabling" environment, and dispensing governance with active participation of the private sector and the civil society.

The "new" state focuses on the protection of public goods including the environment and human rights, puts increased emphasis on issues of global governance. These evolving dynamics have precipitated a realization that presence of state capacity is a necessary condition to make use of opportunities provided by globalization and to protect interests of vulnerable groups in the society. The new demands on the state in the face of resurgence of globalization could be summarized as follows:

- | development of market and non-market institutions;
- | transformation from "controller" to "enabler";

³⁰ Bhattacharya, D. et al. 2005. *Bangladesh in the Global Trade Regime: Labour, Environment, Agriculture, Export and Trade Negotiations*. February. Dhaka: CPD.

- | concentration on provisioning of public goods;
- | emphasis on rule setting and enforcement;
- | greater engagement in international rule making;
- | participatory policy making.

With effective reinforcement of its capacity, the state can play a major role in the areas having far-reaching implications for human development. These include alleviation of poverty, reducing gender disparity, protection of environment, and promotion of human rights. These are exactly the areas where consequences of globalization remain conspicuous. Reinforcements of states capacity are thus needed in the following areas:

- | New frameworks and tools for political, administrative, and financial transparency and accountability including institutions and conventions against cross-border corruption, and measures to combat domestic corruption;
- | Legal, judicial, and regulatory frameworks for trade and investments including the protection of property rights and access to justice for the poor;
- | Capacity to assess the social and economic impacts of liberalization of trade and investment policies;
- | State capacity to negotiate with the WTO, regional organizations and other trade agreements as well as capacity to assess their impact on human rights and environmental protection;
- | Human resource development with emphasis on new skills of public officials in such areas as trade negotiations, regional treaties, policy analysis to assess impact of globalization on provisioning public goods for vulnerable groups;
- | Mechanisms and frameworks for establishing partnerships among the public sector, the civil society and the private sector; and
- | Access to and use of information technology in government - e-government as a tool to achieve a variety of ends.

II.5 State Response to Globalization and Capacity Building Schema

Globalization has a deep impact on the policy making process of a government which is manifested in the decisional, institutional, distributional and structural aspects of the policy making process.³¹ First, the decisional aspect of government policy is affected since government has to absorb the changes to relative cost and benefits of different macroeconomic, industrial and sectoral policies. Second, as regard the institutional aspect of government policy, the government has to take initiatives for an institutional reform to improve global competitiveness of the economy. It has to take into account the growth of global production network, multilateral economic surveillance and regulations. Third, the distributional aspect of government policy is also influenced with the emergence of globalization, since the government's policy making process is now much influenced by the global division of labor and wage competition across the economies. In this connection, negotiations over tradable and non-tradable sectors and benefits of skilled and unskilled labor forces are prime agenda for government policies. Four, as regard the structural aspects of government policy, globalization also brings some structural changes in the national economy since the government has to cope with the altering balance of power between the state and markets. Identifying the country's comparative advantage and areas of trade specialization figure high in the prime agenda for government policies in a globalized world.

³¹ Cerny, P.G. 1996. "What Next for State" in E. Kofman and G. Youngs (eds) *Globalization: Theory and Practice*. New York: Pinter. pp. 123-137.

There had been different attempts to provide a systemic analysis to the need for building state capacity in the context of governance related reforms.³² In this section, we have attempted to develop a schematic framework for understanding how different forces and actors interface to generate state capacity. Figure 2.1 presents the schema of the capacity building process along with its intrinsic components, forms and cycles from the human development perspectives.

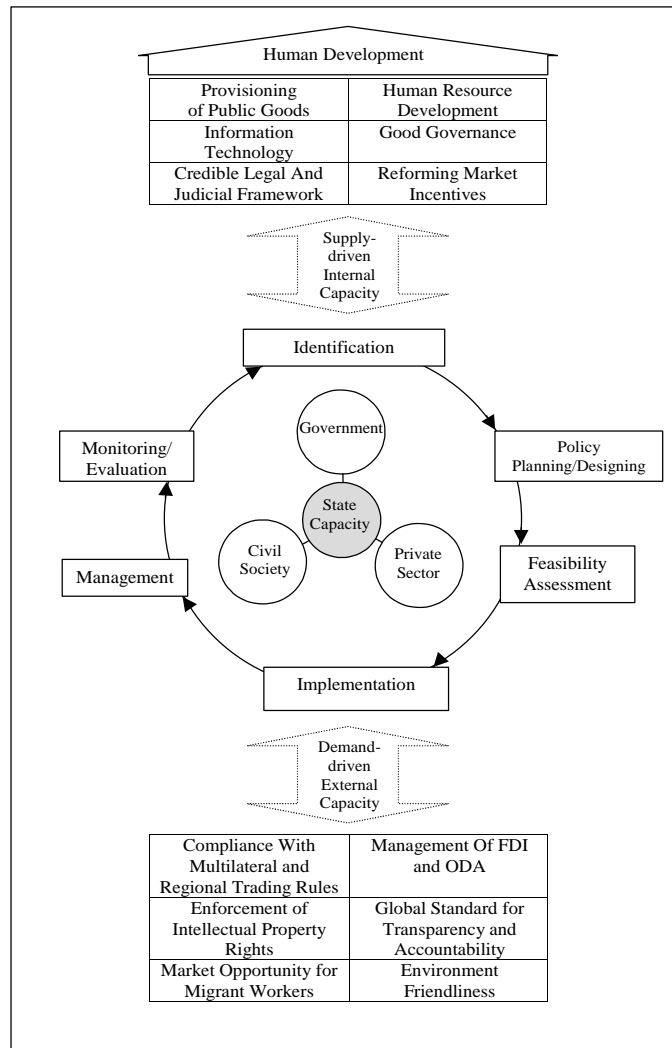


Figure 2.1: Capacity Building Process of the State

³² See for example, Painter, M. 2001. *Changing Asian Governance: State Capacity and Institutional Reform*. Available online at UNPAN.URL:<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN002418.pdf>. Accessed: 16 July 2005; and Levy, B. and Kpundeh, S. (eds). 2004. *Building State Capacity in Africa: New Approaches, Emerging Lessons*. Washington DC: WBI Development Studies.

Architects of State Capacity

Capacity building of the state is a complex process which involves multifaceted interactions between various internal and external components. Developing the capacity of the state does not necessarily mean developing the capacity of the government only. While government remains as an important architect of the state capacity, private sector and civil society also play a catalytic role for developing the state capacity. Thus, capacity building program takes place at three levels. First, the government reinforces its capacity at the central and local levels. Second, private sector undertakes capacity development at enterprise level as well as in the trade bodies. Third, civil societies are also endowed with capacity through strengthening of organizational formations and networks for policy analysis and advocacy.

Resources available with the corporate and not-for-profit sector may very complement the government's capacity to create the "national capacity". These partial complementarities may manifest in the areas of comparative advantage of the corporate as well as the not-for-profit sector. For example, the private sector may endow the government with market-related information which is critical for attracting foreign investment and expanding foreign trade. On the other hand, civil society can sensitize the government regarding the global standards of transparency and accountability, domestic implementation of which is vitally necessary for continued receipt of concessional foreign assistance.

Forms of Capacity Building Needs

In the backdrop of the state's evolving response to globalization, one may identify the capacity building needs in two broad areas, viz. the externally-oriented and internally-oriented capacity building initiatives. These two capacity building needs can also be categorized as under demand-driven capacity and supply-driven capacity.

Externally-oriented capacity building relates to compliance of multilateral trading rules, overseeing foreign investment and foreign aid-related practices, management of other capital and financial flows, development of overseas market opportunity for migrant workers, enforcement of intellectual property rights and mainstreaming of environment concerns. Since this externally-oriented capacity originates from the extra-national pressure to maintain a global standard in economic integration, it can be called the demand-driven capacity.

When a state government seeks to attract foreign investment or tries to export to other countries, it has to address some external expectations, such as compliance of major WTO rules and EU's sanitary and phyto-sanitary measures. Addressing these demands also enables a country to participate in various bilateral and multilateral trade negotiations and to obtain membership of different global trade bodies and regional trade blocks. The communication of this capacity building process works both ways creating a feedback cycle. First, the state receives signals from global market place (trading partners or global trade bodies) and responds to them. Then the external partner reacts to the state's response and sends feedback, leading to creation of a continuous loop.

Conversely, internally-oriented capacity building relates to developing domestic supply-side capacities for, inter alia, provisioning of public goods, development of human resources, firing effect to enabling and responsive civil service, and creation of a legal and judicial framework which is supportive of trade and investment. Since internally oriented capacity depends on the in-house competence of the state's internal organs, it can be called the supply-driven capacity.

Capacity Building Cycle

Both the sets of capacity building inducements, i.e. those related to supply-driven and demand-driven capacities evolve through a sequence of phases. As such the capacity building cycle comprise of the following phases: (i) Identification, (ii) Policy Planning and Designing, (iii) Feasibility and Assessment, (iv) Implementation, (v) Management, and (vi) Monitoring and Evaluation.

How creatively a government can precipitate a capacity building process depends on the ability to identify the existing and emerging challenges. At the policy planning and designing stage, a tangible program is formulated. However, the adequacy of the program is established through a proper feasibility assessment. But the challenge of giving material shape to the program largely depends on the skills of implementation. But once a capacity is generated, it needs to be efficiently managed and sustained. Finally, at the monitoring and evaluation stage, the program receives feedback from various stakeholders, which then either instills a new cycle or induces modification of the old.

Human Development Perspective

Though short-run objective of a state capacity building program is to integrate the national economy with the accessible globalization process, human development remains its ultimate focus. A state that aims to participate in and benefit from the economic integration and liberalization process of globalization must engage its capacity for human development. In this context, the aim of the state capacity would be to enable people to solve their own problems and sustain global changes, while having increased control over their own economic and political destiny. In other words, the capacity of the state to manage globalization means promoting human well-being as the end, with liberalized markets, economic growth and distributive justice.³³

Understanding this goal, the current study seeks to evaluate the ability of the nation states to respond to the new demands of globalization, and the capacity building needs of individual states for responding to the challenges of globalization.

III. AN OVERVIEW OF THE COUNTRY CASE STUDIES

In connection with the present study, a set of Asian countries was selected for indepth review of their governments' experience regarding managing globalization. These six sample countries are at dissimilar level of economic and social development with individual geo-physical attributes and demographic. They are widely disparate in terms of size, area and population. The respective degree of integration of these countries in the global economy is also very different.

Among the sample countries, Bangladesh is the only Least Developed Country (LDC), while Vietnam and Mongolia represent the "transitional economies". India and the Philippines are considered to be the "emerging economies", whereas China is a global economic power-house. The countries are at different scale of progress in terms of income, human development and political institutions. They maintain distinct policy orientations and have differential level of marketization of their economy.

Notwithstanding these wide variations, it seems that all the six selected countries are equipping themselves with a largely similar set of policy and institutional initiatives to confront the challenges of globalization.

³³ One may refer to UNDP. *Human Development Report 1999*. New York: Oxford University Press for an elaborating of human development consequences of globalization.

III.1 Salient Features of the Sample Countries

Geographic and Demographic Attributes

The geographic and demographic attributes of the sample countries have been reported in Table 3.1. In terms of total land area, China is the largest among the sample countries, while Bangladesh is the smallest. China is also the most populated country in the sample and its population of 1.3 billion is comparable to India's population of 1.1 billion. Nevertheless, the two countries have differing population densities, as India's land area is less than one-third that of China. Mongolia has the smallest population size of 2.7 million, and with an area of 1.56 million square miles remains the sample country with least population density. Incidentally, population growth rate is highest in the smallest country, Bangladesh (1.8 percent) and lowest in the largest country, China (0.6 percent).

TABLE 3.1
Geographic and Demographic Attributes

Country	Area (sq. km.)	Population (million)	Population Density (people/sq. km.)	Population Growth Rate (percent)
Bangladesh	143,998	152.6	1060	1.8
China	9,600,000	1,300.0	135	0.6
Mongolia	1,560,000	2.7	2	1.4
India	3,100,000	1,100.0	355	1.3
Philippines	300,000	82.8	276	1.6
Vietnam	329,247	83.6	254	1.3

Source: UN 2005. Population Growth Rate: HDR, 2002-2015.

Water bodies surround the Philippines archipelago and it has no land boundaries, whereas Mongolia is entirely landlocked.

Economic Development

Among the sample countries, China and India demonstrated most robust economic growth in the recent past - in 2003 their GDP grew at 9.3 percent and 8.6 percent respectively. Vietnam followed with an encouraging 7.2 percent growth. On the other hand, Bangladesh and Mongolia experienced a moderate 5.3 percent and 5.7 percent growth, while the Philippines registered a 4.5 percent growth rate.

Among these countries, the per capita GDP in 2003 was highest for China - \$1,272, and lowest for Bangladesh - \$404. Country-wise information on economic growth, inflation, income and poverty have been presented in Table 3.2.

TABLE 3.2
National Growth and Inflation

Country	GDP (million US\$)	GDP Per Capita (US\$)	GDP Growth Rate (percent)	Inflation (percent)	Population (percent) Living Below \$1/day (1999-2002)
Bangladesh	56,844	405	5.26	4.53	36.0
China	1,649,329	1,272	9.29	2.25	16.6
Mongolia	1,525	606	5.65	4.74	13.9
India	691,876	641	8.60	3.20	34.7
Philippines	86,429	1,041	4.52	3.68	14.6
Vietnam	45,210	550	7.24	5.41	17.7

Source: World Bank, World Development Indicators; 2003, Human Development Report 2003.

The openness of the economies of the sample countries, which is measured by the total of export and import as percent of their respective GDP, is substantial. Table 3.3 reports

comparative statistics on the degree of openness of the six countries. Mongolia's economy is "most open" as value of export and import together as percentages of its GDP was the highest, indicating foreign trade turnover as 1.5 times of its GDP (2003). India, with export at 14.5 percent and import at 16.0 percent of its GDP, was the "least open" economy among the sample countries, holding a trade-GDP ratio of 30.5 percent.

Level of foreign investment flow also greatly differs among these countries. In 2003, foreign direct investment (FDI) as percentage of GDP was highest in Mongolia (10.3 percent) and lowest in Bangladesh (0.2 percent).

TABLE 3.3
Trade and Fdi Flows

Country	Export (percent of GDP)	Import (percent of GDP)	Trade-GDP Ratio (Openness)	Net FDI Flow (percent of GDP)
Bangladesh	14.21	20.04	34.25	0.2
China	34.34	31.79	66.13	3.8
Mongolia	67.63	80.26	147.89	10.3
India	14.48	15.99	30.47	0.7
Philippines	48.27	50.74	99.01	0.4
Vietnam	59.66	67.64	127.30	3.7

Source: World Bank, World Development Indicators, 2003.

Social Indicators

From the social perspective, a range of performance was observed among the sample countries. In terms of the Human Development Index (HDI) and Gender-related Development Index (GDI) is considered, the Philippines ranks highest among the sample countries recording 83 (among 177 countries) and 66 (among 144 countries) positions respectively. Bangladesh, on the other hand, ranks lowest on both indices, at 138 and 110 place respectively. See Table 3.4 for details.

The Human Poverty Index is lowest in the Philippines (ranked 28) and highest in Bangladesh (ranked 72). While the Life Expectancy at Birth is the highest in China (70.9 years) and lowest in Bangladesh (61.1 years), the Adult Literacy Rates range from a low of 41.1 percent in Bangladesh to a high of 97.8 percent in Mongolia

TABLE 3.4
Social Indicators

Country	Human Development Index Rank	Gender-Related Development Index Rank	Human Poverty Index Rank	Life Expectancy At Birth (years)	Adult Literacy Rate (percent)
Bangladesh	138	110	72	61.1	41.1
China	94	71	24	70.9	90.9
Mongolia	117	94	38	63.7	97.8
India	127	103	48	63.7	61.3
Philippines	83	66	28	69.8	92.6
Vietnam	112	87	41	69.0	90.3

Source: World Bank, World Development Indicators, 2003.

Political System

The countries chosen for this study also represent a diversity of political systems. Bangladesh has a parliamentary democracy, with the president as the head of state and the prime minister as the head of the government. India is a federal republic, with the chief of state being the president while the head of the government is the prime minister.

Legislative decisions are taken by the bicameral parliament. China, on the other hand, is a communist state under the world's biggest political party, the Communist Party of China. The president is the head of state, while the premier is the head of the government with the National People's Congress administering legislative decisions. Vietnam is the second communist state in the sample, where, although the president acts as the chief of state and the prime minister is the official head of the government, the real power is held by the Secretary General of the Communist Party. Mongolia also has a parliamentary form of government, where the president is the head of state, the prime minister is the head of the government and the State Great Khural, which is the parliament, heads the legislative branch.

The Philippines is a republic where the president acts as both the chief of state and the head of the government. The head of the legislative branch of government is the Congress.

III.2 Country Overviews

Bangladesh

At the end of 1980s, Bangladesh embarked on market-oriented liberalizing policy reforms which were visible through its initiatives in reducing trade barriers and harmonizing operative and statutory tariff structures. The liberalization policy was pursued more vigorously during the 1990s.³⁴ With a reasonably stable economic growth, Bangladesh transformed itself from aid-dependent economy to a trade-dependent economy during this period which has given the state government more bargaining power to deal with other developed countries. The average trade-GDP ratio of Bangladesh increased from 21.0 percent during 1980s to about 26.0 percent during the 1990s. By the end of FY2004, the trade-GDP ratio was about 32 percent. Bangladesh, who is a WTO member since 1 January 1995, often speaks for LDCs at the WTO.

However, at present the key challenges to capacity building in Bangladesh are political will, commitment and stability. The other set of challenge relates to ensuring good governance, creation of conducive business structure, development of the capital market and better image building. So building an enabling business environment remains as a priority towards capacity building to allow Bangladesh to take advantage of globalization. Reinforcing state capacity and extensive reform is needed to help Bangladesh create a trade and investment supportive infrastructure and meet the challenges of globalization

China

China has been a member of WTO since 11 December 2001. The economic growth of China, which has been persistently high at an average 9.3 percent per year, has become more robust with its accession into the WTO leading to greater global market access. China has fully exploited to its advantage its vast reserve of low cost usable labor to attract foreign investment and technology to push economic development, higher efficiency and quality of economic growth. These measures have made the Chinese economy increasingly integrated with the world economy. China has signed the Framework Agreement with ASEAN on Comprehensive Economic Cooperation with the aim of establishing China-ASEAN Free Trade Zone in 2010.³⁵ To create an enabling

³⁴ As a result, average non-weighted tariff rate was reduced from 47.4 percent in FY1993 to 15.65 percent in FY2004. Average import weighted tariff rate was also reduced from 23.6 percent in FY1993 to 11.05 percent in FY2004. Source: Finance Division. 2004. Bangladesh Economic Survey. Dhaka: Government of Bangladesh.

³⁵ Peixin, Z. 2003. China and Globalization. Speech at Chinese Economic Association Annual Conference. 14 April, 2003.

environment for trade and investment, the Chinese government has enacted several anti-corruption laws, audit laws, and administrative supervision laws to strengthen their legal system, along with property rights laws and foreign trade laws.

The sheer size, momentum of growth and the competitive strength of China placed significant pressure on other low income countries, many of which compete in the developed country markets for same range of products. However, the fast growth of China has been a major contributor in the recovery in East Asia. Together with policy stimulus in other countries, China's performance lifted the region to growth of 6.7 percent in 2002.³⁶

India

India, a WTO member since 1 January 1995, opened up its economy in the early nineties, following a major economic emergency prompted by a foreign exchange crisis. Various reform efforts were undertaken for developing a market-oriented economy. Major measures initiated as a part of the liberalization and globalization strategy in the early nineties included scrapping of the industrial licensing regime, reduction in the number of areas reserved for the public sector, amendment of the monopolies and the restrictive trade practices act, start of the privatization program, reduction in tariff rates and change over to market determined exchange rates. For instance, the tariff rates reduced sharply over the decade from a weighted average of 72.5 percent in FY1992 to 24.6 in FY1997.³⁷ Globalization has helped India achieve remarkable growth over the past decade. As a successful bilateral negotiator, India may be revised also maintains effective economic relation with regional trade blocks such as ASEAN and BIMSTEC. However, the country's growing competitiveness and sheer size sometimes cause threat to its small neighbors.

Mongolia

Mongolia has been a member of WTO only since 29 January 1997. However, the unprecedented trade-GDP ratio depicts how fast Mongolia is approaching the world market. Impact of globalization is manifested in all spheres of political, economical, and social lives in Mongolia. The foreign investment and foreign trade sector has also been affected by the international openness. For example, in contrast to 1990 when the country has been trading only with the countries of COMECON, in 2002 the country expanded its trade relationship with 88 countries.

In this context, a number of internally and externally oriented state capacity building programs were initiated in Mongolia, many of which directly targeted human development. For instance, the "Good Governance for Human Security" Program,³⁸ initiated by the government and supported by UNDP, was launched in early 2001 with a view to achieving person-centered development in each and all of its aspects. However, reducing political influence on the administration, bringing diversity in its export basket and accelerating reform in the existing legal framework remain the major challenge for Mongolia's capacity building program. In the face of globalization, its foreign policy objectives reside in strengthening its position in the international community and with influential countries in the region and in the world, a network of relationships based on the interdependence of political, economic and other interests.³⁹

36 World Bank. 2003. *Global Development Finance 2003*. Washington DC: World Bank.

37 Balakrishnan, C. 2004 Impact of Globalisation on Developing Countries and India.' Available online: URL: <http://economics.about.com/od/globalizationtrade/1/aaglobalization.htm> . Accessed: 03 August 2005.

38 Embassy of Mongolia. 2004. *Mongolia: Four Decades at the United Nations*. Washington DC: Author.

39 Government of Mongolia. 2005. *Mongolia's Foreign Policy*. Ulaanbaatar: Author.

The Philippines

Like in most of the Asian countries, the momentum of market liberalization in the Philippines also took place during the 1990s. A WTO member since 1 January 1995, it is also an active member of the ASEAN. The liberalization effort of the government aimed at moving towards an open economic regime and integrating with the global economy was largely benefited from the interaction with its ASEAN members. The open economy of the Philippines now allows 100 percent foreign ownership in almost all sectors. Government corporations are being privatized while the banking, insurance, shipping telecommunications and power industries have been deregulated.⁴⁰

However, for the foreign investors, it supports a Build-Operate-Transfer (BOT)⁴¹ investment scheme, where the private investors never own the assets used to provide the project services. However, they construct the project and have the right to earn revenues from its operation for a period of time. As most sectors have been opened up for foreign direct investments, it has encouraged entry of foreign investors in telecom, roads, ports and in other major sectors.

Vietnam

Within the six sample countries, Vietnam is the only non-WTO member. Soon after its application for WTO membership on 4 January 1995, a Working Party on the accession of Vietnam was established on 31 January 1995 and till date it is an observer country in the WTO.

Over the last two decades, Vietnam has significantly liberalized its trade regime, and has concluded a number of trading agreements, highlighting its commitment to integration into the global community. By signing a series of bilateral and multilateral trade agreements in recent years, Vietnam has signaled its decision to accelerate economic reform. Reforming obsolete judicial and administrative system has been a priority area for Vietnam's capacity building effort. For instance, the Enterprise Law was a major step toward solidifying the domestic legal framework necessary for liberalization.⁴² With this liberalization effort, exports of Vietnam have grown rapidly, both in agricultural commodities and increasingly in the 1990s in garments, textiles and footwear. Trade reforms and commodity exports had had a beneficial effect on poverty, though gains were made across the board in Vietnam, rural areas still fared less well in poverty reduction than urban areas.⁴³ The consequences of declining central control over the economy as a result of unpredictable global markets have generated a serious concern among Vietnam's policymakers, particularly in the wake of the East Asian financial crisis.

The comparative overview of the sample countries clearly indicates that, notwithstanding their geo-demographic, socio-cultural and politico-economic diversity, all the countries have emphatically embarked on the path of globalization. All of them have also chosen WTO as their anchor point for setting the rules of global integration.

40 Board of Investment. 2005. *Doing Business in the Philippines*. Available Online. URL: <http://www.boi.gov.ph>. Accessed: August 4, 2005.

41 This structure is used where the public nature of the project - for example, a road, bridge or tunnel - makes it inappropriate for it to be owned by a private-sector company and therefore ownership remains with the public sector.

42 The Asia Foundation. 2001. *Vietnam's Entrepreneurs and Global Competition*. Hanoi: Author.

43 Thoburn, J. and Jones, R. 2002. *Globalisation and Poverty in Vietnam: An Overview of Ten Papers in the DFID Globalisation and Poverty research programme*. London: DFID.

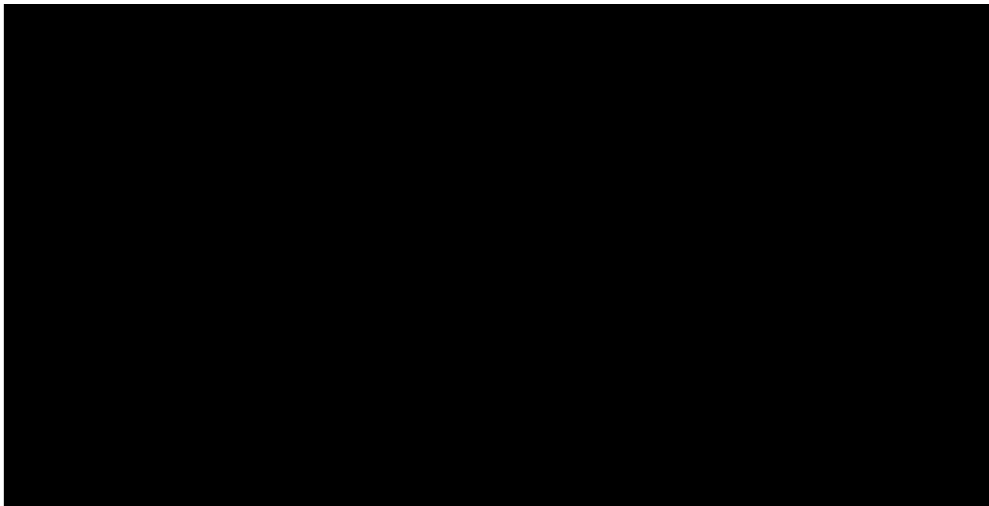
IV. REGIONAL EXPERIENCES: ADMINISTRATIVE CAPACITY OF THE STATE TO PROMOTE TRADE AND INVESTMENT

As regard the organization structure, leadership and strategic planning capacities, the six sample countries of the present study are at different levels of their respective administrative capacity. Administrative capacity will imply efficient management of resources in various administrative process required for delivering the outputs of government, such as public services enforcement of regulation and so on. Major challenge relating to the administrative capacity of the state to promote trade and investment is the lack of leadership and strategic planning skills. Underdeveloped human resource, inadequate mechanism to measure performance standards of management, absence of e-governance, and lack of capacity to negotiate at global level hinders the state governments from getting the maximum benefits of globalization. Since the size, location and economic capacity of these countries are distinct, their administrative capacity also differ in managing the trade liberalization effectively.

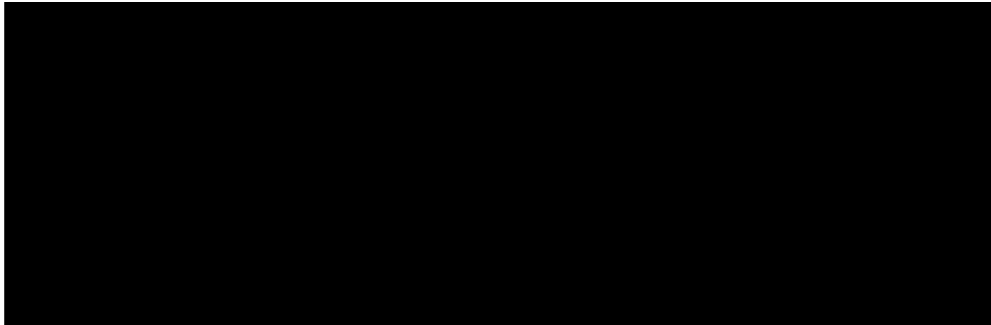
IV.1 Leadership and Planning Capacity

Most of the countries endure lack of leadership and planning capacities to assess impact of globalization on income and social indicators. They also suffer from inadequate understanding about the policy tools to influence the market decisions. Confusion about focal point for strategic planning, weak coordination and cooperation in information sharing among the government agencies also hinder these countries from properly approaching the process of globalization. Besides, low participation of the stakeholders in the planning process is a common feature in most of these countries.

One major reason for the weakness in strategic planning in Bangladesh had been forced change in regime with allegations of corruption and violation of democratic norms. On rare occasions where professionals meet and discuss on major issues like preparation of the annual budget, proposals coming out of such forums remain unattended by inaction of the Bangladesh government. Whereas in Mongolia, public management is currently being done through indirect measures of strategic planning and policy guidance, rather than through earlier direct measures of command and control. Since internet networking within the ministries is limited, very small number of officials is getting benefit of information technology at this moment in Mongolia.



In Vietnam, on the other hand, the collective leadership mechanism results in slow and ineffective decision-making. Strategic planning capacity of Vietnam is also obstructed by lack of coordination between the ministries. While the economy has restructured towards higher efficiency and competitiveness due to globalization, a lack of uniformed and common understanding has led to inconsistent guidance and coordination regarding the integration process. Regarding inter-ministerial coordination as a requirement for strategic planning, it seems the Philippines is doing better than Bangladesh, Vietnam and Mongolia. However, failure of the Legislative Executive Development Advisory Council (LEDAC) to coordinate the executive and legislative branches created a vacuum in the socio-economic planning process of the Philippines.



IV.2 Human Resources Development

The competence level of civil bureaucracy is appallingly low in most of the countries examined under the present study. Among others, low prioritization of state governments for HRD need, insufficient resources for human resource development (HRD), and inadequacy of training program - both in terms of quality and quantity - are responsible for the lack of human resource development. Besides, a large part of the government executives are found incompetent; they often continue to work for a long period because of their contracted tenure. There is also the need for training of top level officials who represent the governments in global trade negotiations.

In most countries, civil service offers very unfavorable compensation package which fails to attract meritorious candidates. The disincentive is further aggravated because of the promotion system based on length to service, not performance.

In Bangladesh, organizational requirements hardly play any role to determine training necessities, rather training of other similar organizations determines the course. Most of the time, the courses offered have little relevance to the recipients' job, having insignificant, if not no, effect on the recipients' performance. In Mongolia, on the other hand, the Ministry of Industry and Trade and relevant agencies are carrying out activities targeted to prepare human resource to match increasing demand for knowledge, experiences and policy analysis skills in the fields of foreign trade and investment. To promote public service professionalism, framework for selection of skillful personnel has been developed with some sort of bottom-up approach in Mongolia. However, political indicator is commonly used for selection and appointment of civil servant at any levels of public organization which has negative impact on public organizations efficiency.

In the case of Vietnam, HRD training is inadequate both in terms of quality and quantity that made it difficult for the country to perform well in its state management function in

international economic integration, especially in the field of trade negotiation. In the Philippines the career executive service officer (CESO) program of the Civil Service Commission (CSC) ensures competence and qualifications among civil servants. Also, there is the Technical Education and Skills Development Authority (TESDA) to complement the functions of the CSC on a broader scale with an objective to provide quality technical education and skill development to all sectors of the society.

It seems, without a comprehensive public administration reform, the scope for effective HRD will be rather limited.

IV.3 Performance Evaluation

Political influence on human resource management discourages potential and talented officials, since in many cases performance is measured by the perceived political affiliations of respective government officials. Besides, lack of political stability and frequent change in human resource policy also affects the state capacity to make optimal use of its human resource.

In the government or semi-government organizations of Bangladesh, prevailing system of performance assessment is done through the generation of Annual Confidential Reports (ACRs). Too often the ACR used for performance assessment of public officers is affected by personal relationship with the supervisor. In the case of the Philippines, performance evaluations sometimes become useless for senior officials. It is usual practice that due to a work protection right, government executives who have become no longer useful in their present positions are still continuing to be employed by the government.

Corruption, political pressure and nepotism are also widely prevalent in the administrative and personnel evaluation process of Mongolia, Vietnam and China.

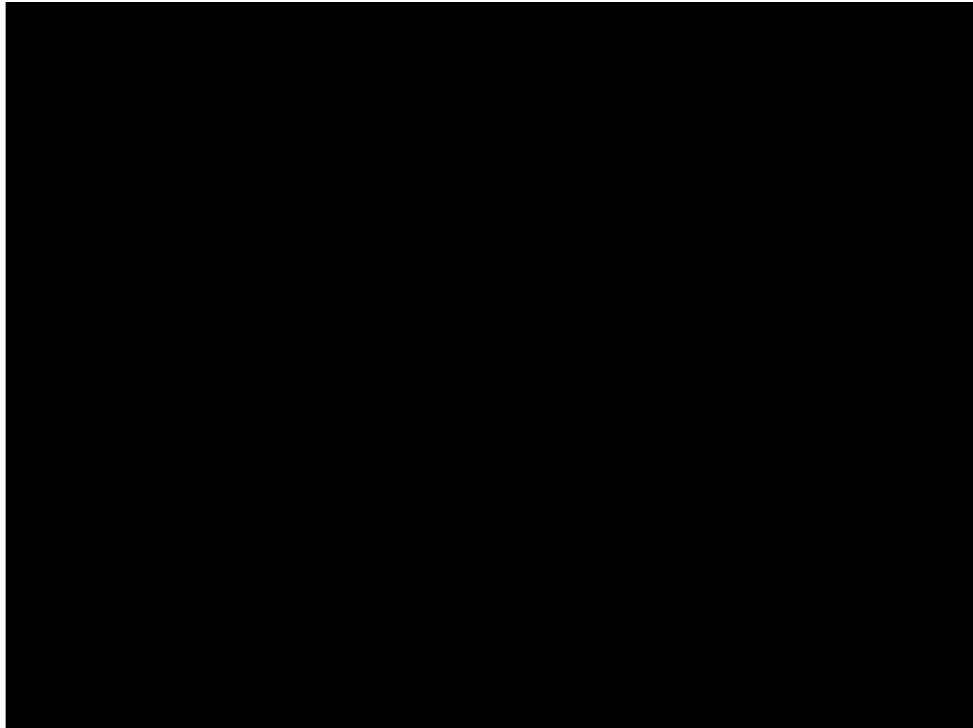
IV.4 E-governance

Except some spotted endeavors, e-governance is still a long way for most of the state governments. Information technology is not common in government operations related to promotion of trade and investment. Absence of appropriate legal framework to permit effective development of e-governance, lack of adequate cyber laws, legislation on privacy, digital signature, certification and authentication, and lack of properly trained human resources for information technology management undercut the government's decision to establish e-governance in the government structures. However, there are also some encouraging movements going on as regard introduction of ICT in promoting external trade and investment. Initiatives include establishment of trade database, web based dissemination of trade information, etc.

Efforts are evident in Bangladesh for the promotion of the use of ICT in government offices, although under loosely framed policies. Many of the ministries and other government organizations now have their own websites and provide useful information through these sites. Also, in the recent times, government has initiated projects to improve upon the situation and integrate ICT in the administration like e-policing and connecting the prime ministers office with different ministries for fast and efficient decision making.

On the other hand, use of websites is starting to play a role in information dissemination in Mongolia, particularly by providing direct communication facilities to public servants who are responsible for foreign trade and foreign investment. Though limited, certain works were conducted to develop administrative information system. Limited networking within the ministries has been developed. Modernizing state management through the application of information technology is an important aspect of Vietnam's current administrative reform. The government information network, CPNET, is still at an initial

phase of development, but efforts are underway to integrate all ministries, agencies and local governments' within a network.



On the other hand, the Philippines has made notable progress in establishing the use of IT in government operations. The National Computer Center (NCC) has been established with the task to promote the use of ICT in government. With an aim to establish e-governance, the government enacted the E-Commerce Act, requiring government agencies and their affiliates to have a functional website where people can have business transactions and have access to information and government services online. The Government Procurement Act directs all government procurement of materials and services to be centralized through a computer network infrastructure called the Electronic Procurement System (EPS) with an intention to maintain transparency.

IV.5 Negotiating Skill and Assessing Impacts of Liberalization

Proper negotiating skill at the government level as regard trade and investment is a crying need for the low income countries. For instance, in India, the primary resources of administration are information and negotiation skills. In many countries, lack of proper negotiating skill paves the way for the foreign investors to dictate trade terms to their advantage. For instance in Bangladesh, a low level of negotiating skill has given rise to terms of trade with foreign investors (particularly in the energy sector) which is unfavorable for Bangladesh. It also creates pressure on the balance of payments in the country. However, in recent times Bangladesh has initiated some capacity building programs for the senior government officials. The Mongolian government, in this context,

implemented several joint projects to develop personnel capacity at national level with WTO and other institutions. These measures were targeted to develop capacity building for developing multilateral collaboration and expertise.

Vietnam, on the other hand, is particularly lacking in good negotiators, legal experts, and good policy analyst and makers. One major bottleneck is the practice of foreign language. Public service professionals dealing with the international economic integration must be provided with good knowledge in English language, globalization and international trade.

In the case of Mongolia, low wage and salary, and low social guarantees cause the highly skilled government officials to lose their interest.

IV.6 Mechanism and Framework of Tripartite Partnership

Most of the countries also lack a proper and effective mechanism and framework for establishing partnership among the public sector, civil society and private sector. In the cases of Bangladesh, China and Mongolia, the strategic planning process has mostly been top-down, which takes little note of the preferences of the people at large. Though the coordination of the executive and legislative branches in the Philippines is administered by an advisory council, still the process of coordination of the two branches becomes dysfunctional sometimes. Though rare, interaction between the government and civil societies in Bangladesh sometimes takes place in dialogues organized by private organizations. Though technical and research organizations are manned by properly trained professionals, major decisions regarding research organizations are taken not in the merit of the case but in the larger interest of the government.

In Vietnam, the government's policy formulation process usually does not include the academic circle and the business community. In rare occasions when academic circles are consulted, their opinions are not sufficiently absorbed.

IV.7 Trade and Investment Related Administrative Supports

Providing administrative and legal support to the foreign investors and promoting domestic products to external markets is a fundamental area of concern for trade liberalization. In most countries, ministry of trade and foreign affairs are responsible for providing any such administrative support to the prospective investors. However, some countries have special government agency entrusted with such specific tasks.

Rigid bureaucracy and official hierarchy prevent decision-making at lower levels and is a significant factor which adds to the cost of doing business in Bangladesh. Widespread incidence of solicitation of bribes sometimes discourage foreign investment. Within this milieu, the Board of Investment (BOI) is competently dealing with foreign investment in Bangladesh. BOI has laid down several legal provisions for investment protection and governance. The Export Promotion Bureau (EPB) of the government also works for the promotion of exports both in the public and private sectors.

In Vietnam, the Ministry of Trade takes care of Vietnam's multilateral, regional and bilateral negotiating process and is responsible for non-tariff barriers, competition, anti-dumping policies and transparency. The Ministry of Finance in the country is responsible for commitments and negotiations on tariffs and custom procedures; whereas the Ministry of Planning and Investment is responsible for negotiations on investment, government procurement and services. In Mongolia, the Foreign Investment and Foreign Trade

Agency (FIFTA) is the principal government agency in charge of promotion and facilitation of foreign direct investment into Mongolia. FIFTA is responsible for coordinating assistance to investors wishing to establish business enterprises, by providing a local network facility that will enable them to comply with all registration procedures required in the formation of a business enterprise. In order to promote investment, the government of the Philippines has set up three major institutions to review, approve and implement projects, those are the Investment Coordination Committee (ICC), the Legislative Executive Development Advisory Council (LEDAC), and the Development Budget Coordination Committee (DBCC). The Department of Trade and Industry (DTI) leads the domestic investment activities, and the industry and trade promotions of the government. For foreign trade, the DTI leads the Export Development Council (EDC), which oversees the implementation of the Philippines Export Development Plan (PEDP). The EDC is an institution that has the potential to enhance the country's capacity to seize the opportunities that may result from increased trade and the coming globalization.

The foregoing review of the six sample countries reveals that the administrative capacity of those countries remains in general very weak, particularly given the attendant challenges emanating from the needs to attract foreign investment and promote foreign trade. In a number of countries, new institutional and policy initiatives were undertaken to provide one-stop service to foreign investors and ICT facility to government officials. However, many of these governments are unable to realize the full potential of these initiatives due to entrenched structural problems of the public administration (i.e. non-competitive incentive package, arbitrary promotion system and inadequate HRD policies). While a well thought civil service reform needs to be urgently introduced, all these countries will have to find ways and means to ring-fence their innovative initiatives to address the challenges of globalization.

V. REGIONAL EXPERIENCES: TRANSPARENCY AND ACCOUNTABILITY

Corruption is a considerable impediment to development and is especially damaging to the enhancement of state capacity to promote trade and investment. Transparency and accountability are key instruments in the fight against corruption. All the countries under review have strived to introduce transparency and accountability into many aspects of government and society. While some actions have been proved successful, others are yet to bear fruit and still many more have failed. This section summarizes the experiences of the six sample countries in implementing procedures for deepening transparency and accountability in the governance structure of the state to effectively confront the challenges of globalization.

V.1 Bureaucracy and Anti-corruption Laws

Anti-corruption laws play an important role in ensuring transparency and accountability in trade and investment activities. Though anti-corruption laws are in place in most of the countries, they remain largely ineffective due to too much bureaucracy and red tapism. Often provisions in the laws themselves act as barriers to the effective implementation of the laws. Additionally, measures have to now be taken not only against corruption, but also against the bureaucracy that impedes the hand of the law.

Bangladesh figures high in the list of the countries perceived to be corrupt which is prepared by the Transparency International. A Bureau of Anti-Corruption (BAC) existed in Bangladesh to combat higher-level corruption, but it was a largely ineffective body due to interference from the political authorities and reported corruption among its officials. Recently the government has replaced the Bureau with an independent Anti-Corruption Commission. However, all the personnel of the earlier Bureau have been reappointed in

the Commission. This has created a widespread apprehension about its effectiveness. Besides, prior permission from the Prime Minister is required before lodging a corruption case against a cabinet minister, and such permission is rarely granted.

Corruption is also a major challenge for the Chinese Government. In addition to the systematic enforcement of Criminal Law, Audit Law and Administration Supervision Law, there are the State Procurators Offices which act as the state organs for legal supervision. However, corruption within the bureaucracy has created disagreements over the effectiveness of governmental supervision organs which enforce anti-corruption laws.

Corruption is also pervasive in India and according to the Transparency International, the most corrupt sectors in descending order were found to be Police, Health, Power, Education, Rations, Land Administration, Judiciary, Taxation, Railways, and Telecom. A Central Vigilance Commission (CVC) has been established to investigate the corruption incidences in public services. However, the anti-corruption process is criticized for its ineffectiveness and slow process.

Also, in Mongolia, corruption and bribe has become real at all levels of state institutions and their negative impacts are increasing. In such a situation, the State Great Khural of Mongolia adopted Anti-corruption Law in April 1996. Authorities of implementing anti-corruption activities are generally devolved to police, prosecuting organizations and courts. Unfortunately, provisions of the law were not implemented absolutely. The reason for this is that the way of fighting corruption is not completely defined and authority and obligations of implementing organization are not set forth clearly. In the Philippines, The Department of Justice and the Office of the Ombudsman are two agencies involved in fight against corruption. Since the history of both agencies is littered with corruption and ineptness, this has fostered skepticism and ridicule among the general public as regard their effectiveness in curbing corruption.

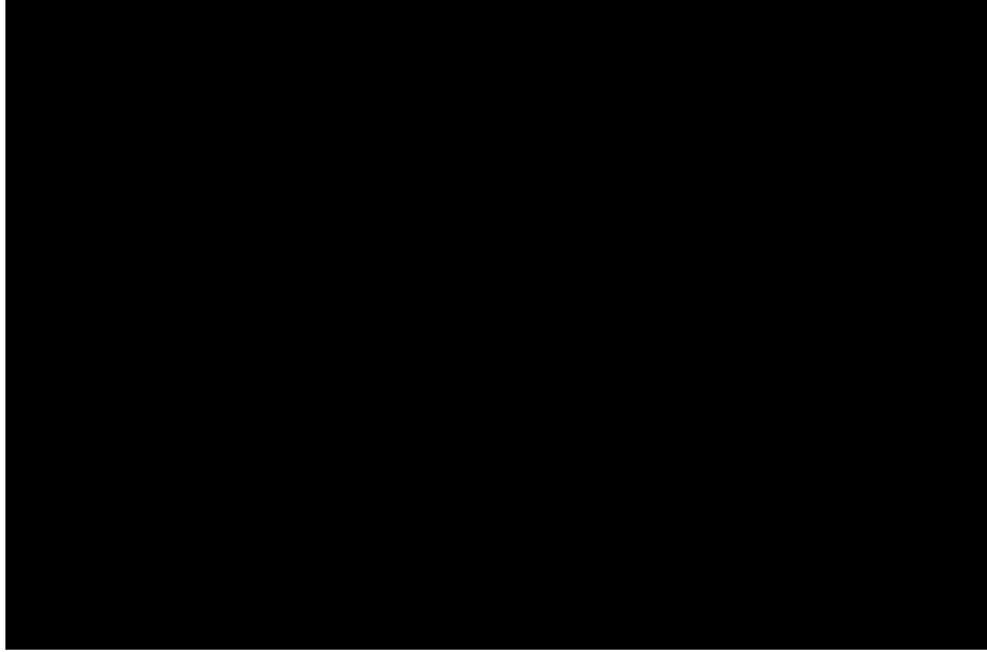
The Philippines courts are also well known for its slowness in litigation and taking action against corruption. Vietnam passed a number of ordinances and decrees to address corruption. However, the most featuring initiative in Vietnam was the establishment of Prime Minister's hotline to receive business complaints. Besides, in addition to the General State Inspectorate, several ministries now have units for tackling grievances and corruption. However, politicized and corrupt bureaucracy is the major impediment to anti-corruption movement.

V.2 Cross-Border Corruption and Enforcement

Though cross-border traffic is an elementary part of trade, there are few laws and fewer facilities in most countries governing cross-border activities. Because most of the countries do not yet have laws or legislations specific to cross-border corruption, and those that are in place suffer from ineffectual enforcement, opportunities on this avenue of corruption are rampant.

Bangladesh is yet to develop specialized laws to deal with cross-border corruption. In the absence of separate laws, Bangladesh extends its Anti-Money Laundering Act and Anti-corruption enactment to cover the cross-border citizens. The Chinese government, however, has been active in participating in international cross-border corruption efforts. Vietnam in this regard is still in the process of drafting the Anti-Money Laundering Legal Document.

In an effort to increase state capacity to meet the needs of globalization, the countries need to form and enforce stringent laws specific to cross-border citizens and activities in order to curb the corruption occurring there.



V.3 Other Enforcement Mechanisms

While in most cases the state governments have appointed high-level officials and institutions to curb corruption within the higher ranks, the presence of corruption in the anti-corruption institutions themselves acts as a barrier to the effective functioning of these facilities. Political authorities are also able to exert great influence on these anti-corruption institutions. Enforcement mechanisms become ineffective because of the absence of international accounting and auditing standards, dearth of qualified professionals to administer the mechanisms, difficulties of accessing information, and inaccuracy of data. Some countries have not yet adopted international auditing and accounting standards, which renders their enforcement mechanisms ineffective in the globalized trade environment.

Article 77 of the Bangladesh Constitution provides for the establishment of an Ombudsperson, who will be an independent high-level public official to receive complaints against government agencies and officials and to keep watch over and control persons under his/her jurisdiction. However, lack of political will hindered Bangladesh from appointing an Ombudsperson.

China has the unique feature that supervision organs are set in all governmental agencies, state-owned enterprises, hospitals, even schools. The mission of those supervision organs is to ensure that their workers are complying with laws and regulations. In Mongolia, authorities of implementing anti-corruption activities are generally devolved to police, prosecuting organizations and courts but implementation of the provisions of the law is not in any sense satisfactory.

India has taken empowerment of the public and e-governance as tools for curbing corruption. An example of e-governance is the Bhoomi (land) project, where in the state of Karnataka reduced the discretion of public officials by introducing provisions for

recording requests to alter land records upon sale or inheritance of land online. Another effective enforcement mechanism is the voice mechanism of the report card system which catches individuals involved in offering bribes and identifies the government agencies involved. The problem is well depicted in Vietnam's current situation, where international standards are yet to be introduced and there is a shortage of qualified accountants. Therefore, the country is unable to ensure these qualities in its trade and investment laws and regulations.

The regional experiences suggest that all the countries have recognized that corruption and lack of transparency are story impediments to effect participations in the process of globalization. While all the countries have enacted a large variety of anti-corruption laws, in most cases they remain ineffective due to lack of political will as well as due to inadequate progress in other complementary measures (e.g. implementation of global accounting standards).

VI. REGIONAL EXPERIENCES: LEGAL AND JUDICIAL FRAMEWORK

Establishment of a credible legal and judicial framework conducive to trade and investment sector development is a precondition for effective economic liberalization. A credible judicial framework requires reforming of obsolete laws, and enacting new laws to face the new situation as well as strengthening of the judiciary, including fully separating it from the executive organ of the state. A strong legal system not only acts as an arbiter of disputes between parties, it also serves to uphold the rule of law to the needs of the emerging market economy. However, a properly administered and fully operational rule of law and justice system remains one of the major challenges for the nation states in the face of globalization.

VI.1 Enforcement of Regulatory Framework

Absence of effective regulatory framework for trade and investment is one of the major obstacles in gaining from the globalization process for most of the countries. Different groups with vested interests take advantage of trade and investment related rules that are not well publicized or transparent in the concerned countries. Also, for most of these countries, unpredictability of tariff system and opaque non-tariff measures create difficulties for business enterprises and lack of confidence among the potential investors.

Vietnam, in this connection, has a unique experience in enforcing the regulatory framework. Parallel existence of two investment laws - one for the foreigners and the other for the domestic investors - has brought about discrimination in investment activities which is in contradiction with the concept of WTO's National Treatment. The legal framework is also weak in the fields of subsidies, anti-dumping and dispute settlement and competition policy. Lack of regulations in these fields, especially in anti-dumping and subsidies, is serious and causes difficulties in ensuring fair trade.

Conversely, in China, some so-called anti-corruption laws are not laws, but political and disciplinary norms formulated directly by the Chinese Communist Party or jointly by the party and governmental agencies. Thus, enforcement of regulatory framework is not apolitical.

In the case of Philippines, the government undertook several reform initiatives for improving and strengthening the legal and regulatory infrastructure for doing business in the Philippines. More specifically, taxation, foreign exchange, and securities regulation were revised supposedly to bring these closer to global standards. The reform initiative was intended to remove the Philippines from the international watch list of countries involved in money laundering. However, effectiveness of newly introduced laws and regulations remains largely dependent on honest-to-goodness political will.

VI.2 Independence of Judiciary

Lack of independence of the judiciary hinders deepening of good governance and thus to the economic development of a nation. In the reform process of judicial framework, effective independence of the judiciary constitute the major challenge for most of the countries. In some countries independence of the judiciary is yet to emerge, whereas in other countries it only exists formally.

Article 22 of the Bangladesh Constitution contains fundamental principle of state policy to the effect that "the state shall ensure the separation of the judiciary from the executive organs." Although there is the constitutional commitment for the separation of the judiciary, no positive steps have been taken till today for the separation of the judiciary from the administration. Though the Supreme Court, in its judgment, gave specific guidelines to implement the separation of the judiciary from the executive organ of the state, the Government of Bangladesh, by taking permission from the Supreme Court, has postponed the decision of separating the judiciary from the executive organ for fourteen times.

Vietnam's laws and judiciary practices basically do not grant independence to judiciary agencies for the last few years, the principle of independence of the court in judging has been more effectively recognised in the country. Similarly, in the Constitution of China independence of judiciary is stated as such that the people's court exercises judicial power independently, in accordance with the provisions of the law, and is not subject to interference by any administrative organ, public organization or individual. In India, on the other hand, interference from the politicians and bureaucracy in the selection, appointment, and transfer of the judges exists which results in unwanted obstacles in the way of fair judgment.

VI.3 Recruitment and Training Process

The countries vary in the process of appointment of judges. But unwanted influence in the appointment process and lack of proper training with an emphasis on the code of ethics is the most common problem faced. In Bangladesh, the Public Service Commission, an executive unit of the state, appoints the judicial officers, the judges of the Supreme Court are appointed by the President in consultation with the Chief Justice. A code of ethics exists. Training is given in the Judicial Administration Training Institute (JATI). The legal educational institutes of Bangladesh do not however teach its graduates the ethics or professional responsibility. In Vietnam, the judge is selected through the assigning system instead of the voting system. There is a lack of code of ethics which can draw compliance from judges and lawyers.

On the other hand, training of the judges in India takes place in quite a few state-level institutes. However, it is restricted mainly to repetition of subjects taught in law colleges with some emphasis on their practical relevance. Interference from the politicians and bureaucracy in the selection, appointment, and transfer of the judges exists and this undermines the independence of the judiciary in India. The non-filling of the posts of judges in time is due to political interference and bureaucratic indifference at best and meddling at worst. There are presently quite a few training institutes offering mainly foundation courses for Munsiffs and Judicial Magistrates and some refresher courses for Additional and Assistant District Sessions Judges. Whereas, in the Philippines, general lack of court resources and judges' training in the new laws hinder court proceedings, thus undermining outcomes.

On a more positive side, the incentives for judges in Vietnam have been improved as the lawyers increasingly engage in courts. And many courts have not only opened to the public, but also attracted the attention of the greater civil society. Therefore, judgments are becoming more and more prudent and unprejudiced.

VI.4 Judicial Performance and Access to Justice

Major factors undermining the judicial performance of the selected Asian countries are the delay in trial and the accessibility of the poor in the judiciary. One socio-economically embedded factor that hinders fairness of trial in general is the high costs of hiring lawyers.

In Bangladesh, access to the Government's support system for managing or attending legal suits by the relatively poorer sections of the population is extremely limited with the high cost involved in hiring lawyers. As such, the poor victims are often compelled to avoid litigation or to stop appealing or attending legal suits after short-run efforts. Again, in the legal system of this country, delay in the dispensation of justice has been a chronic problem. The mounting backlog of cases in almost all tiers of the judiciary is the main cause of delay in disposal of cases. However, the Civil Procedure Code (CPC) has been amended by way of amicable settlement between the parties to ensure quick disposal and the poor's access to justice.

China's legal aid system emerged in the mid-1990s, but yet to have a unified legal aid law in the state level, although many regulations have been adopted in central and local level. It is aimed at empowering the poor to seek justice rather fighting against corruption directly.

In India, a scheme of accreditation of NGOs for campaigns for legal literacy and awareness has been implemented with an aim to improve the accessibility of the poor in the judicial system. Up to the year 2000, about 3.2 million persons have been estimated to benefit from this legal aid, of which 0.7 million belong to the scheduled castes and tribes, 0.27 million are women, and 9,000 are children. Approximately 72,038 Lok Adalats (People's Court) have also been organized throughout the country where 12 million cases have been amicably settled. The process has been slow but it is an effective endeavor to improve the coverage of judicial services.

VI.5 Protection of Intellectual Property Rights

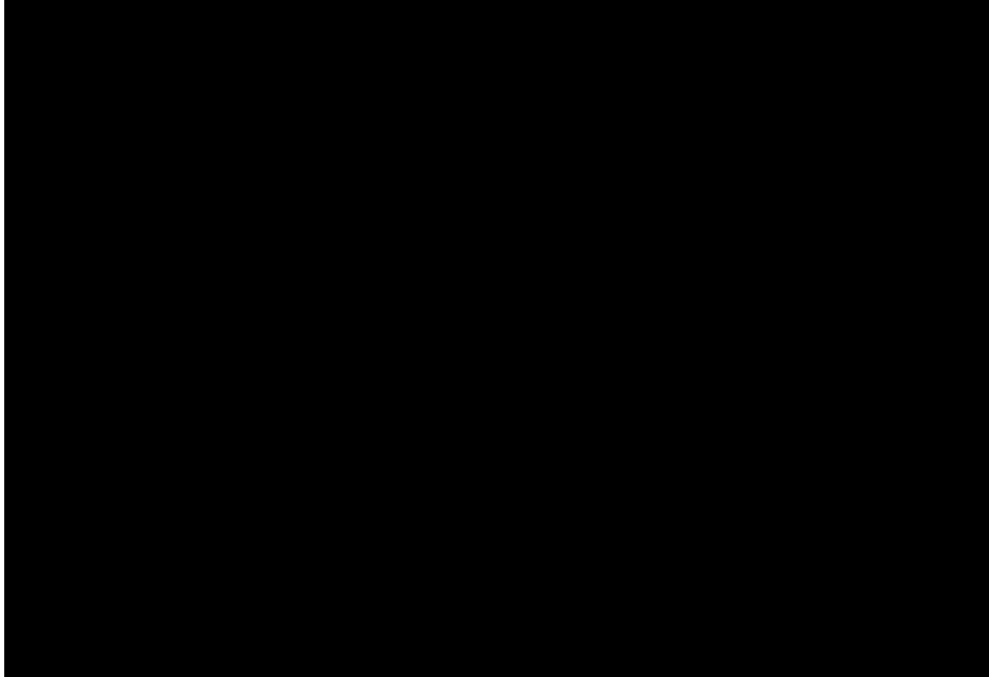
Enhanced trade and investment demands well-framed property rights laws and mechanism to protect property rights. Addressing this demand has been a major challenge for most of the countries. However, these countries differ in the stage of development for property rights laws and enforcement mechanisms. Bangladesh allows private ownership and investment in all sectors. But the mechanism to protect and enforce property rights is cumbersome and time consuming. The mechanism is also not transparent and is a point of serious concern to the prospective investors in this country.

There are a number of property rights laws in China. The Trade Mark Law was enacted in 1982 with two amendments in 1993 and 2001, the Patent Law was enacted in 1984, and the Copy Right Law in 1990. Nonetheless, major challenge for the China to attract foreign investors remains controlling of the outright violation of copyrights.

For Vietnam too, protection of property rights remains one of the weakest fields. Though legal regulation has been improved from its previous state, they are still insufficient and inconsistent. Law enforcement remains weak. The administrative management system and officers in intellectual property are not qualified to carry out their responsibilities due to the lack of professional capacity, morality and resources. The public awareness is generally limited due to their incomplete understanding, unfamiliarity with regard to personal rights of intellectual property.

In the Philippines, the government made some progress in the protection of intellectual property rights related to trade and investment activities. The Bureau of Patents, Trademarks and Technology Transfer has been revamped and renamed as the Intellectual

Property Office (IPO). Notwithstanding government's endeavor to protect and enforce rules that govern the use and misuse of intellectual property, implementation process remained very slow and frustrating.



There are several laws in Mongolia regulating property issues, though the main source is the Civil Law 2002. However, copyright protection in Mongolia is still in an infant stage with a fragile enforcement system.

A brief analysis of the judicial and legal framework in the selected Asian countries demonstrates a process of evolution. A large number of enactments have come into existence in most of the countries to protect, among others, private property and intellectual property rights. However, many of these legal initiatives are ineffective due to a deep lack of political will which is epitomized by the continued attachment of the middle and lower judiciary to the executive organ of the state. On top of this, routine corruption is reducing the poor's access to justice. Consequently, weak rule of law is inhibiting improved flow of foreign investment and greater export opportunities.

VII. CONCLUSION

The present day globalization is essentially manifested through the compelling forces of economic integration coupled with technological innovation. Setting the rules of the games in the fiercely competitive world, common global norms, procedures, and standards are being developed to facilitate flow of goods, services, capital and intellectual property. As a result, the national governments of the developing countries, including those in Asia, are under increasing pressure to cope with the new measures of global governance. However, these countries, for a variety of reasons including the quality of their capacity to deal with the process of globalization, have diverse capacity to attract trade, investment and foreign assistance. In many ways these countries also have to compete in the world markets for the same range of products.

As the developing countries are at varying levels of economic, social and political developments with widely divergent geo-demographic attributes, the costs of their national capacity building are not of the same magnitude. Moreover, to address the capacity building needs, understanding the benchmark situation in individual countries is necessary. Consequently, customized reform initiatives are required for each country to meet their specific capacity building need.

The case studies which were conducted in connection with present exercise confirm that most of the countries have already embarked on a process of capacity development which is geared to managing globalization. However, these national initiatives, while reflecting the ground realities, are yet to be fully effective in many cases. Further, human development, as the generic goal of capacity building, was found to be inadequately articulated from the perspective of democratizing the opportunities to equitably benefit from globalization.

Diversity Vs Uniformity of Interventions

In the race of globalization, the finishing line for all the countries is common, but the starting lines are different for each country. Hence, varied benchmark situations have conditioned the experience of individual countries in prioritizing their capacity building needs. For instance, protection of intellectual property is quite a new issue in Mongolia, whereas Bangladesh, India and Vietnam are saddled with copyright and trade mark protection laws. In contrast, China and the Philippines seriously lack an effective mechanism for enforcement of the existing laws.

Notwithstanding the fact that the countries are placed at various stages of global integration, generic commonalities were found in terms of their experiences in the process of capacity building of the state. For instance, the competence level of civil bureaucracy has been found to be wanting in most of these countries, resulting in a lack of leadership and planning capacities to assess impact of globalization on income and social indicators. Though negotiating skills of the government as regard trade and investment varied country to country, political influence on human resource management and limited use of e-governance had been found common in all the sample countries.

Most of the sample Asian countries do not have an institutional mechanism for establishing effective tripartite dialogue among the government, corporate and not-for-profit sector. Absence of full independence of the judiciary in these countries also termed out to be a common gesture.

To sum up, while the case studies do project a mosaic of experience in the concerned countries, there happens to be an extensive common agenda in the area of capacity building for capitalizing on globalization which all the countries are addressing.

Sequencing of Policy and Institutional Reforms

It has been established earlier that one of the major outcomes of acceleration of globalization relates to emergence of a set of common global standards and procedures which range from macroeconomic framework, trade rules and treatment of FDI to compliance of social clauses and environmental standards, and transparency in public affairs.

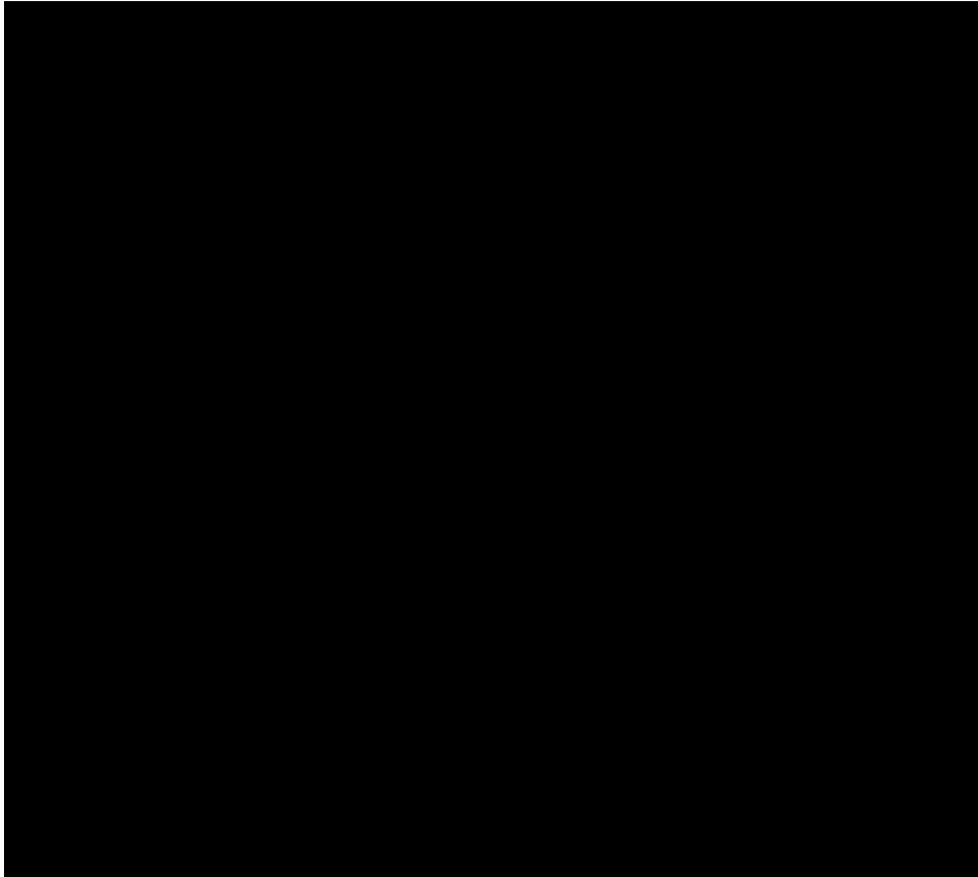
Thus, one observes a wide array of attempts to legislate new laws and rules, but they remain largely ineffective in the absence of proper institutional structure. Only those countries which have undertaken institution building effort, along with rules making, have been more successful in achieving a balanced global integration. The emphasis on institutional building is also relevant in case reforms undertaken in old institutions.

However, one needs to point out that the role of policymakers acquire a special significance in the transition economies. In this set of countries, one has to give policy guidance to define the space related to the private sector by ways defining the property rights through new laws.

Within the policymaking process one observes the overwhelming dominance of deregulation, liberalization and privatization related measures. However, for a more inclusive global integration the countries have to undertake appropriate labor market policy as well as human resource development policy. Regrettably, these issues got about no prominence in the policy package of most of the countries.

Finally, in response to global signals, most of the countries are engaged in the process of institutional reengineering. Experience suggests that while institutions dealing with external agents needs to created, but if the capacity of the supply-side related agencies are not strengthened other institutions are not going to function. For example, although many countries have set up new facility to process FDI, but in the absence of augmentation of the supply capacity of electricity, water, telephone lines, etc.

Thus, it appears sequencing of policy and institutional initiatives varies between transition and traditionally market economics. In fact, the sequencing within policies and institutions is also quite pertinent.



Demand-Pull Vs Supply-Driven Capacity

Since demand-pull factors defining capacity building needs of the state are almost the same for all countries, supply-driven factors acquire special importance in determining each country's competitive advantage. For instance, compliance of the EU's Rules of Origin and WTO's TRIPs Agreement are almost equally applicable for Mongolia and China. However, the supply-side factor, i.e. the internal capacity to respond to those exogenous demands is not same for these two countries. Capacity disparity of individual countries also impacts on the integration process. Benefits of trade are not equally distributed when these countries face each other in a bilateral or multilateral negotiation table, or interact in regional or global trade bodies like ASEAN or WTO. In this context, to make a level playing field for each country, external supporting is required to enhance the internal capacity of individual countries.

Findings of the study demonstrate that in most cases, the observed policy and institutional reform initiatives were initiated internally within the individual countries. External influence, however, mostly occurred in the forms of setting standard by importing countries and international bodies. Thus, the internal capacity building need was largely influenced by the previously set standards of international trade bodies and developed country markets. For instance, compliance of EU's sanitary and phyto-sanitary measures, and its rules of origin has been the mandatory criteria for exporting countries. Besides, foreign investment into these countries largely depends on compliance of major WTO rules, such as Most-Favored-Nation treatment, National Treatment and implementation of trade-related intellectual property rights. In fact, a large part of China's capacity building effort emanates from its WTO accession protocol.

Apart from these indirect influences, international trade bodies also conducted targeted programs in these countries to strengthen their capacity in managing globalization. For example, Mongolia implemented several joint projects with WTO to develop personnel capacity at national level.

In fine, if addressing the demand-driven capacity needs is a necessary condition, engagement in supply-side oriented capacity development is the sufficient conditions for improving a country's ability to benefit from the globalization process.

The Human Development Dimension

Despite the fact that economic integration is the prime expression of addressing the globalization process, the objective of such process is to improve human welfare. Thus, while economic integration remains as the locus of globalization, human development appears as the definitive focus of this process. Accordingly, while globalization is putting new demands on state capacity everyday, the major challenge remains however to ensure that the benefits of globalization reach all, particularly the poor and disadvantaged.

The state has a major role to play in making globalization work for common people. Sustainable development involves equal emphasis on the part of the government on human, economic and social development. Transparency and accountability in the public sector and the reform of judicial and regulatory systems are necessary to protect the interests of the poor and vulnerable groups. State capacity in this context is an essential provision to make use of opportunities provided by globalization and to protect and promote interests of vulnerable groups in the society. Though all the countries undertook specific capacity building initiatives to get the best out of the globalization, the benefits in most cases did not trickle down equally to common people. The reasons for an inequitable distribution of benefits of globalization however varied from country to country.

Though a number of targeted schemes were taken in several countries, no major breakthrough linking the excluded groups was visible. For instance, when Bangladesh began to respond to the globalization process with market liberalization, a number of measures were taken including reduction of tariff rates and harmonization of tariff structures. Consequently, a major structural transformation in the business and production was observed. During the 1990s, Bangladesh experienced an accelerated growth performance with an average 5 percent plus GDP growth rate. Unfortunately, this growth was not translated into equitable distribution of income and faster reduction of poverty. The poverty alleviation rate at the national level did slow down discernibly, while a significant worsening of income inequality at the national level was observed.⁴⁴ This implies that notwithstanding the overall improvement of per capita income, a large section of the population were unable to access better quality health and education services.

A common citizen is the end-user of state's globalization process. Therefore, before setting a capacity building program, it is essential for the policymakers to understand the impact of such initiative from the human development perspectives.

Scope for Replicating Best Practices

The case studies do indicate that a number of countries have been able to successfully develop some interesting capacity building models. This includes tariff harmonization and trade and investment promoting exertion of Bangladesh government (e.g. through BOI and EPB); combating corruption and enforcement of copyright laws by Chinese government; effective trade negotiation practice of India both in bilateral and multilateral arbitrations; externally oriented administrative and judicial reform initiatives of Mongolia; B-O-T investment scheme of the Philippines; and Vietnam's administrative reform initiative through e-governance.

It is an interesting question whether these models could be replicated in other countries. The issue of replication becomes particularly challenging as these models are outcomes of specific historical circumstances and unique experience of policy and institutional reforms. It is also true often "champions" have spearheaded creation of these successful initiatives. Thus, it is definitely a daunting task to regenerate such confluential factor in another country.

However, all these successful cases do provide us with some general lessons which can be useful while undertaking capacity building initiatives with a view to address similar problem emanating from globalizations. First, a combined effort is more effect than standalone exertion and thus a synergy is very important for state capacity building. Second, in the case of weak institutions, role of leaders with a critical mass is very important. In fact, leadership's essential role is to create and expand the opportunities that empower people to sustain globalization changes. Third, since there is no one best way of development, adaptation through trial and error process is always desirable. Fourth and finally, it has to be all done through a participatory process which will essentially bring the stakeholders in the policy planning, implementation and evaluation process. However, this experience may be further modified through exchange of views among the Asian countries to generate a more indigenized regional model.

⁴⁴ Bhattacharya, D. 2005. State of the Bangladesh Economy in the Fiscal Year 2004-2005: Second Reading. June Dhaka: CPD.

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Part B
Country Studies

STATE CAPACITY IN PROMOTING TRADE AND INVESTMENT: THE CASE OF BANGLADESH

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*Mozammel Hoque***

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I. INTRODUCTION

Globalization is not new to the civilizations that lines in the world. However, what is new is the pace of its growth. Fifty years ago, the world traded around a billion dollar a day; today, the same one-billion-dollar-trade is happening every 90 minutes. Globalization is multi-dimensional and that it can be broken down into numerous complex processes that have dynamism of their own, resulting in both varied and often interrelated unpredictable effects. Hence, it has given rise to concerns in both developed and developing countries. Many developed countries fear competition from low-wage labor abundant countries, while local firms in developing countries find it difficult to compete with foreign firms with better technology, stronger capital base, and superior productivity, and especially against Multi-national Corporations (MNCs) based in and supported by powerful states. Although, theoretically it has been proved that globalization and social progress are positively correlated, the answer to the question is NOT straightforward "YES". Had it been yes, we would not have to go through this exercise. In other words, different countries can reap different amounts of benefits from globalization, which is primarily determined by each country's capacity to deal with unforeseen outcomes.

There is no denying that globalization is a multi-faceted and complex process, and is increasingly integrating this world economy. While globalization and economic liberalization are bringing economic benefits to developing countries, these countries are also being exposed to new types of risks. For example, Shang-Jin-Wei noted, "the sudden reversal of capital flows, such as a recall of loans by international banks or a massive sale of emerging market stocks by international mutual funds, can spark or at least contribute to currency crises such as those in Asia and Latin America."¹

Developed countries with good governance capacity are well suited to protect and safeguard its consumers from the negative externalities of globalization. On the other hand, weak governance in developing countries not only restricts them to reap maximum benefits out of economic liberalization, but also remains the country vulnerable from both anticipated and unexpected outcomes.

Following the introductory part, this paper is organized as follows. The second section delineates administrative capacity of the state in promoting trade and investment, the third section describes corruption laws and its enforcement mechanisms, the fourth section explains the legal and judicial framework to support property rights laws, and the final section identifies key recommendations that should be studied in-depth for further economic development of Bangladesh.

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¹Wei, Shang-Jin, 2001, Corruption and Globalization, Policy Brief, No. 79, April, The Brookings Institution, Washington D.C.

II. ADMINISTRATIVE CAPACITY OF THE STATE IN PROMOTING TRADE AND INVESTMENT

II.1 Political Leadership and Strategic Planning Capacities

II.1.1 Political Leadership

Bangladesh is governed by a parliamentary democracy, where general elections are constitutionally required, at least once, in every five years. There are 300 elected members in the Parliament called the Jatiyo Sangsad. A candidate in the national parliamentary elections may contest a maximum of five seats in any one election, but may only hold one seat. By-elections are held in constituencies that are relinquished by MPs (members of the parliament) first having been elected from multiple seats. The parliament elects the country's President, who is responsible for largely ceremonial activities, to a five-year term.

Political leaderships in Bangladesh have often been marked by overwhelming short-lived popularity, being followed by mostly violent change of governments where the earlier government usually falls victim to the snare of allegations of corruption and violation of democratic norms. The country has established a parliamentarian form of government in 1991, after a long spell of frequent change of governments mostly characterized by coup de tat and military dictatorships. There is little information on whether the movement toward establishment of a democratic government has contributed to promotion of trade and investment in Bangladesh.

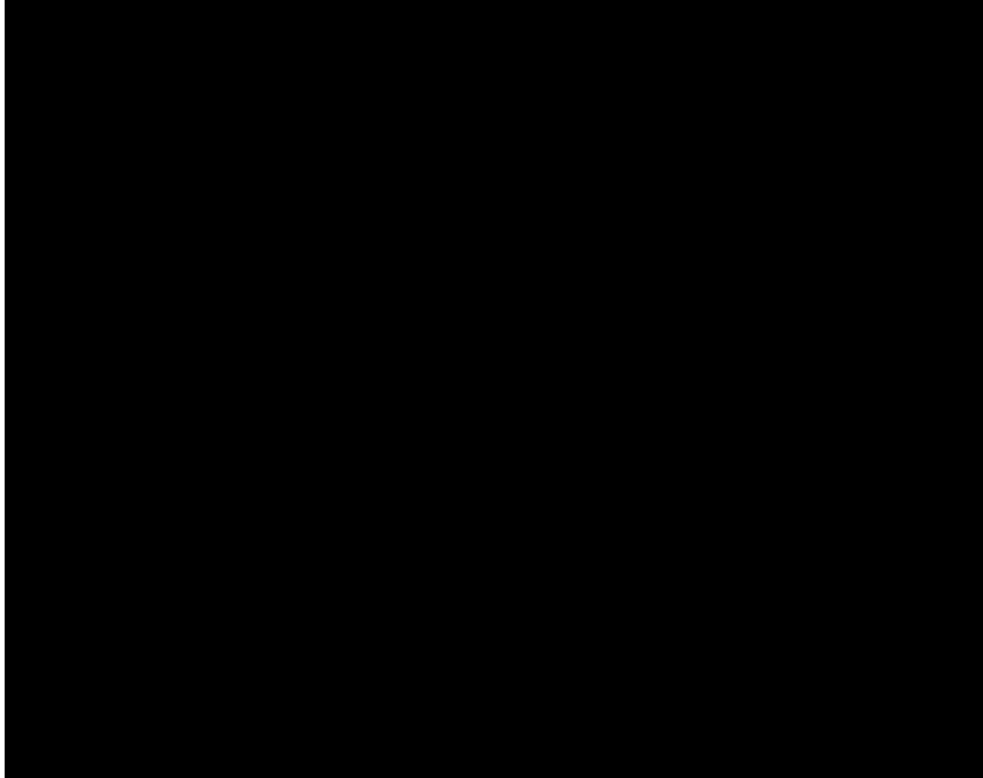
The first government of Bangladesh during 1972-1975, at the helm of its love for mass welfare and social equity, missed the essence of professional improvement in its administration of various enterprises that were nationalized. The spirit of service dominated that of profit maximization, and the loss of individual ownership of these large enterprises replaced by state-owned management led to non-competitive business and finally loss of market at home to the newly emerging entrepreneurs and abroad. Since then, until the year 1982 there had been several changes of governments that showed little improvements in a limited number of business sectors, where the positions of ministers were held by professional and technocrat incumbents. This positive contribution made by certain technocrat advisers-cum-ministers in the militarily-led cabinet since 1976 was short-lived, especially due to the induction of political leaders in these positions by way of efforts for democratization of the government that had entry into power by way of a process of coup de tat. The administration during 1976-1980 moved toward privatization or disinvestment of a number of state-owned enterprises apparently trying to engender competitive business in the country for competing in a market economy, following the terms and conditions determined by the donors as well.

The longest-lived regime in Bangladesh had been the 1982-1991 regime that politically followed most of the processes of democratization after a coup de tat as its predecessor did. Despite the serious efforts that it needed to stabilize itself in the seat of power, it has been reported that there had been some, though limited, improvements in the scenario of trade and investment during that period.

Therefore, although there had been such improvements in trade and investment, there had also been numerous reports of lack of transparency and accountability in the newly approved investments made by the members of that military regime or people having access to that

regime. Several instances of lack of transparency and accountability that took place during that regime may be at least apparently validated by indication of the fact that many senior members of that regime are being repeatedly convicted of such irregularities, even in the recent days.

The above paragraphs provide an analytical portrait of the changes in governments and concurrent policies and initiatives regarding countrywide trade and investment. The major political phenomena that led the country to its present state may be summarized as shown below.



In Bangladesh, there is no possibility of having any major bilateral or international political issues affecting the country's business climate. But frequent strikes (hartals) have long been a deeply embedded culture as a crude and cruel instrument for negotiations in Bangladesh politics. Strikes have been called frequently until recently (up to the year 2001) by various political parties as well as trade unions and the associations of workers and businesspersons in diverse sectors on petty issues, as a way to press hard their demands, impeding business operations widely. Following a campaign of long-stretch hartals, the Awami League won a majority in parliamentary elections in June 1996, forcing its predecessor to step down. The first two years of that Awami League Government was characterized by relatively few hartals or other disruptive agitation programs. There were 27 days of nationwide general strikes in 1999, and 13 full or part days of general strikes in 2000. In the first six months of 2001, there were 22 days of nationwide strikes during the build-up to parliamentary elections. The

business houses in Bangladesh have partially adjusted to the hartal culture, but the disruptions inflict a severe cost on the economy and on individual businesses. Parochial focus on partisan allegiance and political confrontation by both the ruling and opposition parties contribute to poor governance, reducing the government's ability and willingness to focus on economic reforms and policy implementation. The Awami League government stepped down on July 13, 2001, successfully completing their five-year term. Both politics and business conditions still continue to be affected by prevailing lack of good governance and a relatively low-level ability of the agencies involved in promotion of trade and investment.

The government during 1996-2001 tried several times to minimize the frequency and impact of strikes in various ways- the most innovative and significant among them being the attempt for application of the law preventing political parties from calling strikes. Awami League mentioned, as one of their mottos during its rule in 1996-2001, that they were committed to forego calling strikes once they would be placed in the position of the oppositionists. Awami League, since its immediately departure from power (in 2001), has so far complied with its commitment to minimize meaningless strikes. Records on strikes in the past prior to 2001 had been disappointing for the businesspersons. The Bangladesh Country Commercial Guide FY 2002 published by the US Trade Centre in June 2002 reads, "The [GoB] continued its gradual improvement of tax procedures and reduction of evasion in order to increase revenues instead of adding new taxes, although it does attempt to widen the value-added tax base. The government did not make reductions in overall tariff rates, as in past years, but did reduce import duties on some raw materials in an attempt to stimulate industrial activity and boost sluggish exports. The main opposition party boycotted the session and staged a one-day general strike to protest the "anti-people" budget, even though social sectors affecting the poor were treated relatively favorably in the budget."

Therefore, although hartals are quite frequent in Bangladesh, there have been no incidents of politically designed damage to foreign business or installations over the past few years. Hartals (Strikes) or blockades called by political parties, in general, affect businesses by keeping workers away with the threat of violence and blocking transport, resulting in productivity losses. Arson to vehicles and other property from vandalism and looting of shops has occurred during such programs. Strikes, besides causing productivity losses, have significantly led to obstacles to domestic investment as well.

II.1.2 Strategic Planning Capacities

Bangladesh had been blessed with its First Perspective Plan (1995-2010). Besides, there were several five-year and bi-annual plans also. At present, the planning process is more myopic, and there is no perspective plan.

TABLE I
National Plans in Bangladesh: 1973 - 2007

Plan	Period
First Five-Year Plan	1973-1978
Two-Year Plan	1979-1980
Second Five-Year Plan	1980-1985
Third Five-Year Plan	1985-1990
Fourth Five-Year Plan	1990-1995
Participatory Perspective Plan	1995-2010
Fifth Five-Year Plan	1997-2002
Sixth Five-Year Plan	2002-2007

The planning process has mostly been top-down, taking little note of the preferences of the people at large. However, with regard to the preparation of the annual budget, there is the provision for participation of members from various walks of life (in Dhaka, the capital city only) invited to discuss the draft annual budget. In almost every such case, the usual practice has been not to modify the annual budget after such open forum discussions. As in the case of the large flock of nationalized banks, the usual practice for their budgeting is partially bottom-up, but that process is limited within the bank managers. At close of a financial year, they are asked by their supervisors to chalk out the budgets for their respective offices. Subsequently, these managers chalk out their respective annual budgets by themselves or by consulting their veteran assistants, if any. There is no concept or practice of sharing with the local beneficiary savers and investors. In addition, the management in such banks seems not aware of the need for participatory bottom-up approaches to planning. The same holds true for other departments of the Government. But there has been some progress toward participatory planning countrywide. Donors' emphasis on participatory planning have often resulted in the pursuit of such planning processes by the Government. One such example is the policy formulation for small and micro enterprises as carried out by the Bangladesh Planning Commission in the year 1999 under its project titled FONAP-NEGIB (Formation of National Action Plan for Non-Formal Employment Generation in Bangladesh).

II.2 Human Resources Management

Most of the public sector organizations, particularly the nationalized banks and various ministries have training institutes of their own. But these run on bureaucratic lines—a training scheme manual includes the type and number of courses to be offered during the year, the target group, the resource persons, expected expenditure, etc., are drafted and put up by the junior level officer, and this goes through the official tier up to the Head of the Division for approval. After approval, the manual and course routines are meticulously followed. However, these courses have three drawbacks:

- (i) the courses offered in one institution are usually chalked out in line with what other similar institutions are offering, and thus the efficiency level and particular training needs of that organization are hardly considered;
- (ii) nomination of participants to the courses is done in a haphazard manner, there is no fixed selection criteria; and
- (iii) the training cannot be called “on-the-job-training” because the courses offered have little relevance to the participant's on-the-desk job.

Result. HRD training does not play an effective role in improving the efficiency of the target group.

Transfers. Transfers are mostly on the basis of seniority within a category. It is treated as a routine affair which has no relevance to organization's need for transfers. Again, transfer of women officers entails particular problems, and this gives opportunity for discrimination against women, because generally transfers are associated with promotions, so no transfer (as in the case of women), and no promotion.

Post-training placement. Available information suggest that under the management culture prevailing in these organizations, training and posting are generally uncorrelated. For example, an officer of the Ministry of Finance is sent for higher studies in economics abroad. A few months or a year after completing his degree, he is transferred to, say, the Ministry of

Communications or Ministry of Science and Technology. So the foreign training is completely lost upon him.

II.3 Negotiating Skills Required to Effectively Participate in Multilateral Agreements and Regional Treaties

One of the prerequisites of standing to gain from foreign direct investment (FDI) or multilateral treaties for a country is having adequate skills at the negotiating table. This means having proper knowledge of in what areas FDI is beneficial in terms of comparative advantage, what are the international and domestic market conditions for that product, what are the safety measures, etc. in the treaties, what is the position of competitors, etc. Unfortunately, however, in most cases lack of proper negotiating skills paves the way for the foreign investors to dictate terms according to their advantage. However, of late, Bangladesh is gaining some expertise in this respect.

II.3.1 Outcome of Low Level Negotiating Skills

The outcome of a relatively low level of negotiating skills has given rise to terms of trade with participating countries or investors unfavorable for Bangladesh and several perplexities in the balance of payments of this country. Bangladesh Bank sources mentioned that the balance of payment of Bangladesh during 2000-2001, 2001-2002 and 2002-2003 is shown in Table II.

TABLE II
Balance of Payments of Bangladesh, 2000/2001 AND 2001/2002

Items	2000/2001 July-June (In Million US\$)	2001/2002 July-June (In Million US\$)	Items	
			Absolute	Percentage
Current Account	-1018	240		
Trade Account (Net)	-2011	-1768	243	-12.08
Exports*	6419	5929	-490	-7.63
Imports (FOB)	-8430	-7697	733	-8.70
Services (Net)	-914	-499	415	45.40
Income (Net)	-264	-319	-55	20.83
Current Transfers (Net)	2171	2826	655	30.17
Capital and Financial Account	839	481		
Capital Account	432	410	-22	-5.09
Financial Account	407	71	-336	-82.56
Direct Investments	174	65	-109	-62.64
Portfolio Investments	0	-6	-6	
Other Investments	233	12	-221	94.85
Errors and Omissions	-47	-356		

* Excluding local sales by EPZ enterprises.

Source: Bangladesh Bank.

II.3.1.1 Balance of Payments of Bangladesh, 2002-2003

Exports from Bangladesh

The decade of 1990s saw a vital role played by the garments and knitwear sectors in the recovery of the manufacturing sector. The system of bilateral quota with developed country markets was a great panacea for phenomenal growth rate in the export of garments since 1994. The quota regimes of these countries limit the exports of many competing Asian suppliers. In addition, a relatively light load of government regulations, provision of customs bonded warehouses for imported fabrics, back-to-back letters of credit that enabled the foreign banks

to finance raw material inventories, all contributed generously to the growth in export of garments. All textile quotas in 2001 were given a 10 percent increase over the 2000 limits and a 13 percent increase for 2002. Despite these healthy interim performances in this sector, it is less clear as to what would be the situation here in the long-term, as the quota system under the Uruguay Round Agreement on Textiles and Clothing phases out. In absence of the quota system under the World Trade Organization (WTO) in 2005 and subsequent years Bangladesh's garment export sector will be under increasing pressure to correct deficiencies and improve its performance and quality. Retention of such a performance rating would necessitate focus on the major areas, such as finance, customs, port, and transportation systems.

Exports on the first seven months of FY2003 amounted to US\$3.7 billion– an increase of 5.4 percent from the corresponding period in FY2002. The major reason for this increase was large increases in frozen foods, agricultural products, jute and jute goods, and knitwear and hosiery products. Export earnings from tea, readymade garments, and leather have continued to decline. The US economy's sluggish nature, lack of growth in Japan and the European Union, and a relatively higher value of the currency as compared to Bangladesh's Asian competitors have constrained export growth. Exports in FY2002 and FY2001 stood at US\$5.9 billion and US\$6.4 billion, respectively. Innovations at the end of the entrepreneurs operating in or assisting the export base were less active, leading to failure to diversify the export base, with garments and knitwear continuing to account for around 75 percent of the total export earnings. In June 2003, the Government introduced a system of lower rates of interests for loans to the garments and frozen food sectors and offered cash incentives for some exports, and established a managed float of the currency in June 2003.

The amount of annual imports by US from Bangladesh remained static over the last several years, mainly due to a generous quota regime for the garment and knitwear sectors. In January-December 2002, the US imported nearly US\$2.1 billion in merchandise from Bangladesh, slightly lower than the US\$2.4 billion imported in 2001. In January-April 2003, exports to the US reached US\$711 million compared to US\$693 million for the same months in 2002. Approximately, 33 percent of Bangladesh's annual exports travel to the US.

Exports to Bangladesh

Exports to Bangladesh for the first six months of FY2003 at US\$3.8 billion were nearly identical to the same period in FY2002. Large increases in imports of rice, edible oils, and petroleum products have offset declining imports of petroleum, textiles, and capital goods. In FY2002, Bangladesh's imports totaled US\$7.7 billion.

US exports to Bangladesh stood at nearly US\$307 million in calendar year 2001 and US\$269 million in calendar year 2002, with raw cotton, edible oils, wheat, generators, and textile-related machinery being the key exports. During the period January to April 2003, U.S. exports reached US\$67 million compared with US\$111 million for the same months in 2002. Imports of US cotton will increase if prices remain competitive.

Current and Capital Accounts

Remittances by Bangladeshi workers abroad increased resulted in improvements in the current account. There was also a decline (to US\$624 million) in the trade deficit during the first six months of FY2003 from US\$788 million during the corresponding period in FY2002. The current account (minus aid grants) had a surplus of US\$523 million during the first six months of FY2003. Sharp decreases in direct investment and medium–and long-term loans have been offset by the improved current account.

Reserves

As of June 2003, Bangladesh had total foreign exchange reserves amounting to approximately US\$2.0 billion, showing a gradual increase over the last few years mainly from increased worker remittances. This is enough to provide payment for about two months of imports. The Government has taken a number of steps, such as establishing banks and exchange houses overseas and stepping up enforcement of its Money Laundering Prevention Act 2002, to increase the volume of remittances through official channels.

The causal relationships among the bleak situation of balance of payments, the low-level skills of Bangladesh counterparts in negotiations with foreign countries, and the structural or long-term barriers in negotiations can be further validated, as discussed below.

II.3.2 Skills in the Government Machinery

The foregoing description on the balance of payments is the cumulative reflection of the negotiation skills of the Government in promotion of trade and investment. In reality, emphasis on international economic relations in the ministries of foreign affairs and finance is only a relatively recent phenomenon. At home, both policy formulation and execution of policies have been dominated by priority to vested interests of the ruling party members or political interests. Scrapping off of a million-dollar-project by a ruling party on the ground that it was initiated or patronized by another party's government in the past is a common feature of major investment decisions. Economic benefits for the mass people or national economic development are less considered in such major decisions. A highly debatable step like this is the cancellation of the permission to transmit of a highly popular private TV channel on the basis of a verdict from the court. The alleged TV channel has been termed as one that did broadcast politically biased propaganda. Sharply contrasting is the report that such allegations against this TV channel during the October 2001 Elections were also brushed aside as untrue by the Media Unit of the European Union Election Observers in a project with UNDP. The High Court has, again, asked the Government in June 2003 to explain why the TV channel's broadcasting has been stopped.

On another level, the lack of seriousness of negotiating government personnel (low-paid bureaucrats) on the tables of negotiation with the foreign trade and investment counterparts has been another common aspect of Bangladesh's weaknesses in negotiations. Reports of the relatively larger portions of time abroad being given by the negotiating government personnel by reducing time given to official matters have appeared repeatedly in the media.

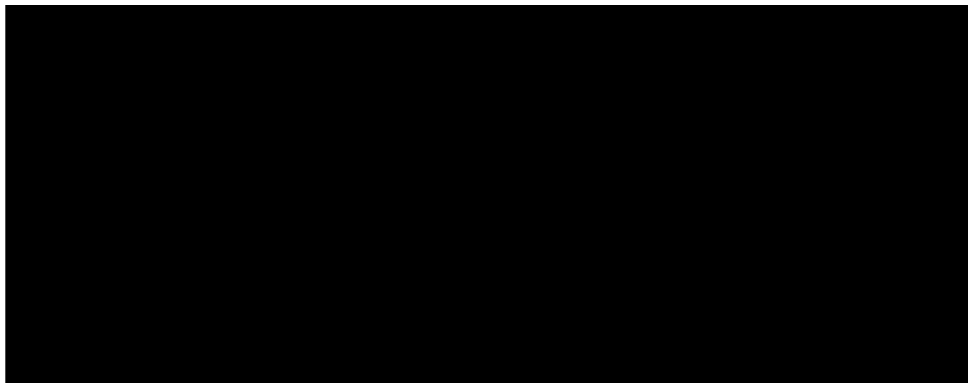
There are two other elements that lurk as an inherent characteristic of personnel management in the governmental mechanism hampering growth of professionalism for efficient negotiations, such as:

- (i) There is the informal system that any government personnel having completed his/her tenure for at least three years in a particular position renders him/her usually liable or likely to get transferred to another office or position. It has been observed that such transfers at this given frequency are not always congenial for enhancing efficiency for two reasons:
 - 1 The said incumbent does not get enough opportunity (time) to attain skills required for negotiations with the foreign counterparts, if any, in an efficient way; and
 - 2 Changes in approaches to negotiations on particular issues also take place frequently with frequent transfers of incumbents handling the particular issues in an office.

- (ii) Low-paid government personnel compete seriously for positions that are likely to be lucrative by way of allowing opportunities for taking bribes or for other irregular and hidden benefits. Cases of irregular transfers and promotions within the Government's rules for flexibility commonly create resentments among some group or the others. Reports of superseding of one personnel by the other are rife in the media. One or more of particular factors commonly act in favor of some of such cases of superseding, such as:
- | Expressed or real allegiance to the ruling party;
 - | Expressed or real allegiance to the immediately past ruling party;
 - | Payment of bribes to the transferring or promoting authority for placement in the coveted position.

Shortage of participation of the business class in various negotiations has often weakened the negotiating personnel. With exception of the time of the preparation of national budgets, there are only few occasions when various groups of traders or investors are invited to participate in discussions with the foreign counterparts. Even secretary-level discussions have been a development of the recent years.

Moreover, there are also reports that the views and ideas of the business class expressed in a few policy formulation sessions often remain unheeded to and not reflected in various policy papers. One recent example of low profile and late consideration of businesspersons' preferences is given below.



A non-critical indication of the growing tendency against consideration of the views of the large lot of business class is the increasing number of supplications submitted by various groups of traders and investors to the Prime Minister and published boldly on the front pages of the newspapers. In such supplications, the business class requests the Prime Minister to reduce the weight of certain regulations or to provide subsidies to them. These issues often emanate from lack of participation and full expression by the businesspersons in different tables of negotiation, both at home and abroad.

II.3.3 Long-Term Issues in Negotiation

While the negotiation skills of the government personnel are relevant factors for creation of an efficient environment for the investors to perform, there are also certain long-term factors that weaken the position of Bangladesh in negotiations on international trade and investment.

A generally weakened economy, coupled with long-term issues of interest to the stronger economies, leaves little scope to utilize the personal skills of negotiating personnel from Bangladesh. An analysis of these long-term stumbling blocks is also necessary.

(i) Preference of Counterparts for ad hoc Agreements

When a bilateral agreement on certain issues is not reachable by Bangladesh and a neighboring country, the neighboring counterpart has frequently resorted to ad hoc arrangements to keep on carrying out trade transactions with Bangladesh. Such steps erode the capability of the country's entrepreneurs to build up sustainable relationships with their foreign counterparts. Such preferences for ad hoc agreements on the part of India have frequently stopped Bangladesh from trying to strike balance of payments with India, against whom Bangladesh's position has been unfavorable for a long time.

(ii) Demand for Transit and Transshipment Facilities

The issue of whether Bangladesh will permit transit and transshipment facilities to India through Bangladesh's land has been a long-standing issue of disputes between these two countries. Reports indicate diplomatic pressures having been built up by India over Bangladesh in various sectors for leverage to make Bangladesh agree to allowance of transit and transshipment facilities to India for transportation of goods to its seven north-eastern states. As such, it has been difficult for the Bangladesh negotiators to negotiate well on the table with their Indian counterparts.

(iii) Unreliable List of Exportable/Basic Goods Disclosed by Negotiating Foreign Counterparts

Sometimes a foreign counterpart would come up with a long list of items, which Bangladesh may be allowed to export duty-free to that country. A little analysis often shows that most of those items are not basic to Bangladesh or she can never produce such items and rather imports huge quantities of those items. In the first half of 2003, several talks for FTA (Free Trade Agreement) took place between India and Bangladesh. At close of the first leg of such talks, India put forward more than one hundred items which (as India maintained) Bangladesh could have liberty to export duty-free to India. Trade analysts were reported in the press saying that only a little more than one dozen of those hundred items were being produced by Bangladesh as basic or exportable to India.

(iv) Trade Gap Heavily Tilted toward Bangladesh against the US

In sharp contrast to the trade balance with India, Bangladesh is in a highly favorable situation as against US. As of June 2003, US had a total investment of US\$1.2 billion in different sectors. At the same moment, Bangladesh had a record of total annual exports of US\$2 billion against total annual import of a mere US\$300 million. The issue of the necessity for balance in trade transactions with the US surfaced heavily in the talks between the Secretary of State of the US with Bangladesh's Foreign Minister in June 2003.

(v) Debatable Issue of Export of Gas

Though a significant number of oil and gas exploring companies are already working in Bangladesh for drilling, exploration and development of gas fields, the most discussed topic of international economic cooperation has been the issue of if Bangladesh should or will export gas. The subsequent question has been if and how export of gas would become truly profitable for Bangladesh. India and US have been strong supporters of export of natural gas from Bangladesh, especially via a gas pipeline which the US authorities eager to construct as soon as possible. Various civic and professional institutions have also been vocal on their stand

on the issue of export of natural gas. Bangladesh Economic Association (BEA), in one of its workshops in early 2002, has firmly stood against the export of gas. While the decision of the export of gas still remains un-voted by the common citizens in Bangladesh and the Government has not reached a firm decision on this issue, it has been difficult to negotiate well with a number of foreign counterparts on issues of trade and investment.

II.4 Policy Analysis Capacity

The Ministry of Commerce (MoC), Board of Investment (BOI), and Export Promotion Bureau (EPB) are directly involved in promoting trade and investment; Bangladesh Bank (BB) acts as a facilitator. The MoC and the BOI disseminate information for prospective investors and arrange seminars, both at home and abroad, to promote Bangladeshi products abroad. Often trade delegations, including government officials as well as local entrepreneurs in the private sector, are led abroad by the Minister for Commerce for promotion of exports and find markets abroad. Regarding FDI, it is noteworthy that Bangladesh offers better facilities and incentives for investment than many South Asian countries. However, the reality is that despite all this, its neighbors continue to be the major recipients—China tops the list, followed by India and Pakistan.

What is Deterring FDI in Bangladesh?

Lack of stability, frequent shift in policy, high administration cost, corruption and lack of good governance, poor infrastructure, narrow market size, among others, gives the wrong signals to prospective investors.

Bangladesh is a signatory to various international treaties relating to investment. However, the picture ends there. The people involved in channelising FDI more often do not know what issues are covered by these treaties, and as such the risks of investment remain. For example, Bangladesh is a signatory to Multilateral Investment Guarantee Agency (MIGA), a offshoot of the International Finance Corporation (IFC), which seeks to promote investment in developing and third world countries by covering country investment risks. But unless the coverage of MIGA operations in Bangladesh is advertised to the prospective investors, rapid flow of foreign investment will be a far cry.

The lopsided international trade of Bangladesh is evident from one glaring instance of bilateral trade: Trade with neighboring India. India exports Tk.1200 millions worth of goods and services to Bangladesh annually. Bangladesh's annual exports to that country, however, amount to a meager Tk.70 million. Reasons contributing to this scenario are lack of marketing skills, insufficient decentralized decision-making, etc. For instance, the "one-stop service" of the BOI, where a prospective investor was supposed to get all facilities provided by the BOI—land purchase/rent, registration, electricity and gas connection from one desk at the BOI office, fizzled out due to this process. The representatives of the line Ministries were not given authority to grant facilities such as electricity connection, etc. The procedural delay in getting the abovementioned facilities to the investor naturally discouraged him, and in most cases, drove him away.

The Board of Investment brings out a comprehensive investment guide named "Bangladesh Investment Handbook". It provides a variety of useful information for would-be investors such as investment climate and incentives, a proposed list of sectors for investment, business set-up roadmap—the steps and procedures involved from 'intention to invest' to 'commercial operation'—and what assistance the BOI can give in this regard; costs of doing business in

Bangladesh; comparison of costs between Dhaka and neighboring foreign cities like Bangkok, Hanoi, Jakarta and Karachi in respect of sub-heads like worker, industrial land purchase/rent, electricity rate for business use, etc.

Although the BOI handbook is quite exhaustive and full of propaganda about investing in Bangladesh, but it falls short of attracting FDI to desirable levels due to certain vital shortcomings.

Firstly, it does not contain sufficient sub-sector-specific or product-specific information such as size of the product market, what extent of the market Bangladeshi exports constitute, who are the competitors, what is the minimum outlay, what are the sources of raw materials, etc., information which is of prime importance to any would-be investor in a product.

Secondly, although the Handbook gives an indication of the supposedly costs of doing business in Bangladesh as compared to neighboring or competitive countries, it does not address the situation squarely. Investors explore opportunities in a country from the viewpoint of where they can get the most competitive edge. Things such as the difference in time lags across countries between registering with the investment authorities and going into commercial operating, and the snags in between, are important factors for their consideration. It needs not to be expressed that Bangladesh is quite lagging behind others in this respect. This is an offsetting factor for many prospective investors.

Another important reason for poor FDI is lack of “the view from the other side.” From the investors' perspective, despite all the incentives and allurements laid out, a multinational enterprise before investing in a country will always try to get first hand information from his country mate who have already invested in that country, just like before tasting something new, a person will asks others who have tasted it, how it tastes. The signals a prospective investor get from existing investors about their business experience in Bangladesh more often than not discourages prospective investors from investing here. This image and reputation problem retards the positive decision making of investors.

Rigid bureaucracy and official hierarchy prevent decision-making at lower levels, and is a significant factor in adding to the costs of doing business here. Thus, the representatives of the concerned Ministries and organizations involved in FDI in the one-stop service could not give on-the spot decisions to a would-be investors' roadmap, such as sanctioning of land, electric connection, equity, etc. Such issues had to be relayed back to their respective Head Offices and decisions came there. The undue delay caused by this process was a sufficient deterrent to the FDI. Table III shows FDI trends in Bangladesh in recent years.

TABLE III
Investment Projects (Local and Foreign) Registered with BOI

Year	Local Investment Registered		Foreign Investment Registered			Total
	No. of Units	US\$ (Million)	No. of Units	US\$ (Million)	No. of Units	
1996/97	1247	1108	138	1054	1385	2167
1997/98	1448	1137	140	3440	1588	4577
1998/99	1535	1183	161	1926	1696	3109
1999/00	1428	1324	135	2119	1563	3443
2000/01	1788	1420	80	1271	1868	2691

As the above table shows, the number of investment units has increased significantly during 1996/97-2000/01. But the contribution made by such investments to the total economy of the country has been erratic and not grown enough. However, the participation of foreign countries in the growing investments in Bangladesh during 1981-1991 to 1991-2001 has been shared by foreign investors. Figure 1 well validates this fact.

Figure 1: **BOI Registered Investment Proposals: Trends in Local-Foreign Share**

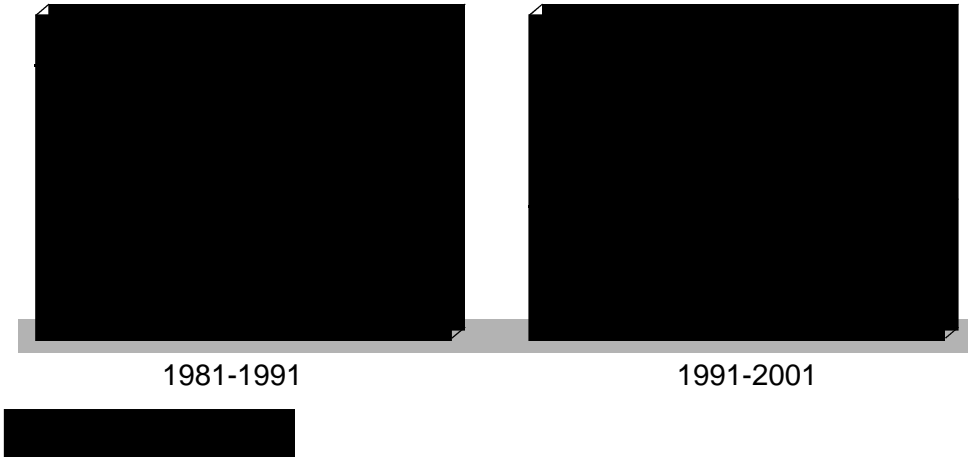
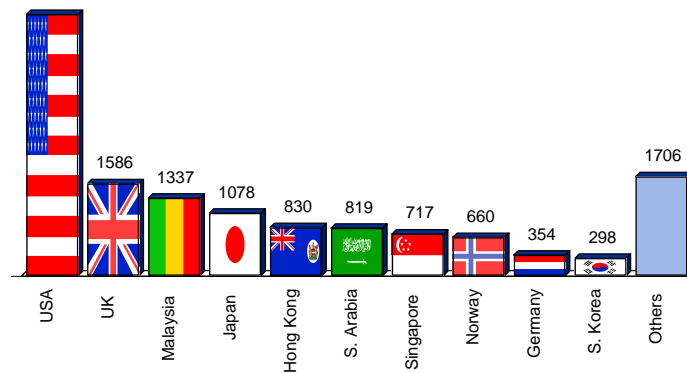


Figure 2: **FDI Inflow into Bangladesh-1991 to 2001: Distribution by Source Country (In Million US\$)**



However, though the above data have been disseminated by BOI on various occasions, information related to how many of these registered investment units have come into operation and how many have been continuing their operations are not readily available with BOI. Knowledgeable quarters maintain that a very negligible portion of such registered investment units are into operations at any given point of time. Directives and initiatives for promotion of foreign investment have usually taken the shape of sales-oriented as a result of lack of tendency to look critically on the ramifications of the reasons for failures at the end of the overall domestic policy and practice scenario.

II.5 Performance Standards for Management Development

The prevailing standard for performance assessment of officers in state- owned enterprises (SOEs) like the Central Bank, Nationalized commercial banks, sector corporations and other

government/semi-government entities is the confidential reports—usually in the form of Annual Confidential Reports (ACRs) of officers. The ACR of an officer is, according to laid down practice, given by his immediate superior officer and countersigned by the next higher authority—or in cases where relevant-by the CEO of the Division/Department. Various traits of an officer such as capability to do assignments singly and group-wise, overall honesty and integrity, quality of work, etc., are graded qualitatively in most organizations, although there is marking system in a few organizations. ACRs are a crucial factor in an officer's promotion to the next grade.

The chief drawback in such a system of performance assessment is that since it is based on qualitative judgment, it may vary in direct relation to the liberal/conservative attitude of the reporting official. Thus, while an officer may get an 'excellent' report in his ACR, his colleague in another Department with similar efficiency level may get a very "good" or just a 'good' report because of the conservative attitude of his boss. Again, external influence in writing ACR cannot be ruled out. The general effect of such reporting system has been that the "favored" person receives promotion, while his efficient and honest colleague stay behind, and ultimately the morale and efficiency of the personnel, in general, deteriorate.

II.6 Public Service Professionalism

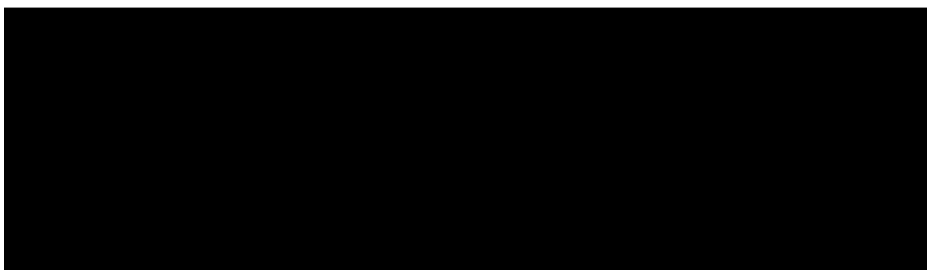
Recruitment in "purely government" services - government officers in various ministries, teachers in government colleges, doctors in government hospitals - is through qualifying in a centralized exam conducted by the Bangladesh Public Service Commission (BPSC). Recruitment in Nationalized Commercial Banks (NCBs) is through qualifying in exam conducted by the Bankers' Recruitment Committee (BRC). Recruitment in other state-owned enterprises such as sector corporation, nationalized industrial units, etc. is generally through direct advertisement and recruitment by the concerned organization. Focus on discipline of study is uncommon, and mostly restricted to research organization and departments like research departments of the central bank and NCBs, BJRI, BARI, BRRI, Atomic Energy Commission, etc. The general impact of such uneven focus is that while technical and research organizations are manned by dedicated—and quite often honest-professionals, their respective controlling ministries are run by people coming from different disciplines, who have a bird's eye view of the subject. Thus, major decisions regarding a research organization or institute are taken, not solely on the merit of the case, but in the larger interest of government priorities, ADP sectoral allocation, etc. The trade-off that arises almost always goes in favor of the concerned Ministry unless the CEO is able to swerve decisions his way because of his personal standing (senior most officer, etc.).

Professionalism in purely government service is limited to as long an officer is posted to a certain Ministry or a certain desk. An officer with M.A. in economics may be posted to the Ministry of Finance (MOF) for some years, then to the Ministry of Telecommunications, and so on. A negative effect of this system is that officers trained abroad in one discipline, say Economics, lose their knack to practice what they have learnt in the foreign training when they are transferred to another Ministry or Department, which has no relevance to the training.

Finally, professional efficiency and sincerity is also considerably hampered by poor salary structure of the government officials. Although they do receive noteworthy real benefits, the meager take-home salary forced them to look for supplementary sources of income. This way their devotion to work is divided. For those who cannot find avenues to supplement earnings, the ensuing frustration works as a factor that eats into their morale and work efficiency.

It was found by the principal author of this study, while carrying out an assignment for UNDP/UNOPS on Poverty Mapping and Development Possibilities of Sub-district level in 2003 at Gaibandha District that the Deputy Commissioner, his accompanying government personnel as well as those who came from the upazila (sub-district) level were less aware of what the preferences

of the local businesspersons were. Nonetheless, these government personnel appeared to perform in the least for the private entrepreneurs. Excepting issuance of trade licenses from pourashabhas or municipal authorities and occasions of meetings for concerted efforts to tackle natural disasters (e.g., floods, cyclones, etc.), the local level administration had almost no communication with the private entrepreneurs regarding economic development of the area, or even, as to how to utilize the ADP allocation in the area. The necessity to communicate with the local businesspersons did not surface in the course of normal discharge of duties by the government personnel. One of the prominent businesspersons said (others expressed full agreement) "people in the government administration call us in meetings when some high officials or ministers come, and the purpose of calling us is to arrange finance to meet the cost of visit. "Another businessperson said," You are the first group (of researchers) who has invited us to talk about our concerted efforts in development hand-in-hand with the Deputy Commissioner." Knowledgeable informants have also reported that training curriculum of PATC (Public Administration Training Centre) do not contain issues/topics about roles and functions of the local administrators in accelerating local development, resource mobilization, and dealing with potential investors and associated stakeholders.



II.7 Information Technology in Government Operations

The Government has a loosely framed policy of encouraging use of IT in government offices. The large-scale distribution of personal computers (PCs) to various ministries and departments is evident enough, but there is little concerted effort to use IT in a way so as to improve efficiency of the officers and the quality of their work. Of course, any Ministry or Government bank can boast of the numerous courses on hardware/software participated by its officials, but that is all. Just like the fate of local and foreign trainings, officials are neither investigated upon to ascertain whether they have resorted to using computer in their daily work at the end of their computer training, nor are they given any extra recognition or benefit for using PC. It is a fact that in most government offices PCs are used just as a substitute for typewriters-there is little venture to use PC for econometric analysis or graphical representation. The real users of PC-research institutes/Departments like research departments of the central bank and the nationalized banks/BJRI, BARI, SPAARSO-also do not get adequate computer facility on pretexts such as paucity of funds allocated to purchase of PCs, conservative attitude of officials, etc. However, it is to be noted that despite the overall dismal picture, some GOB organs like BOI, EPB, MOF, BB, etc. have made ample use of IT and Internet. Most of them have their own websites with detailed information not only about their own organization, but also about Bangladesh as a whole. Thus, any would-be investor living abroad can get access to information about Bangladesh, its climate, infrastructure, possible avenues to invest, etc., by accessing these websites. For instance, the BB website allows users to download the Bank's latest Annual Report as well as other statistics such as exports, imports, bank regulations, foreign exchange regulations and remittance facilities, etc.

In July 2003, the Government initiated a project to introduce certain fundamental changes to the administrative system including e-policing and connecting the Prime Minister's Office with the key

ministries, divisional commissioners and police administration. It was stated in a press release that the project would also prepare guidelines and implements for online payment of income tax and utility bills, registration of land, ownership change, birth, death, marriage, vehicles, insurance, driving license and posting of agriculture and commodity pricing information and international standard training. The government will spend Tk.1831.70 million for the "Support to ICT Taskforce Program" aimed at improving the efficiency, transparency and accountability of the Government using the information communication technology (ICT). The Government has already allocated Tk.13 million in the Revised Annual Development Budget for fiscal year 2002-2003 and Tk.250 million in the ADP (Annual Development Plan) for fiscal year 2003-2004. As part of strengthening e-governance, an optical fibre local area network (LAN) will be set up at the Planning Commission connecting 472 locations, including the Planning Division, the Planning Commission, the Implementation, Monitoring and Evaluation Division, and the Economic Relations Division. Under the project, an alternate communication network will be set up. It will provide maximum reliability and security of communication and enhance speed and efficiency in decision-making and follow-up of compliance status. The e-policing system will be established at five police stations in the capital for communication between citizens and police in all possible ways including online filing of general dairy and first information report.

II.8 Existence of Investment Councils and their Laws for Governance

BOI is the topmost governmental agency looking after foreign investment. It has laid down several legal provisions for investment protection and governance. BOI was established as per the Investment Board Act of 1989 for promotion of both domestic and foreign investments in the private sector. The Prime Minister is the head of BOI having members drawn in from various relevant ministries, the Governor of Bangladesh Bank, and Presidents of FBCCI (Federation of Bangladesh Chambers of Commerce and Industry) and BCI (Bangladesh Chamber of Industries). The chief executive officer of BOI is its Executive Chairman.

The major functions of BOI are:

- (a) Providing necessary facilities and assistance in the establishment of industries;
- (b) Implementing investment-related governmental policies;
- (c) Preparing investment schedule;
- (d) Registering private sector industrial projects; and
- (e) Identifying competitive investment sectors and facilitating investment by providing information and services.

At BOI, the *major facilities available* are:

i) Pre-investment Information and Counseling

BOI provides all types of necessary information for undertaking the initial move toward investment. Professionals having knowledge and expertise in investment behavior provide counseling to intending investors in person in BOI Office, over phone, via e-mail and fax and express mailing.

ii) Special Welcome Service to Foreign Investors

To the benefit of the foreign investors, BOI maintains a Welcome Service Desk at the Zia International Airport operating round-the-clock. It assists in obtaining necessary immigration and Visa on Arrival or landing permit, hotel accommodation and counseling arrangements.

iii) Investment Implementation and Commercial Operations

Once the intending investor decides to invest and forms a company, BOI provides following specific facilities and comprehensive services on confirmation of registration of the company with BOI:

- | Obtaining industrial plot;
- | Obtaining utility connections;
- | Registration/approval of foreign loan, suppliers' credit, PAYE (Pay as You Earn) Scheme, etc.;
- | Importing of machinery and raw materials;
- | Obtaining work permit;
- | Remittance of royalty, technical know-how and technical assistance fees.

II.8.1 Terms and Conditions of Investments of Different Sizes- Whether Domestic or Foreign

Under the Foreign Private Investment (Promotion and Protection) Act, 1980

- (i) The government may sanction establishment with foreign capital of any industrial undertaking which is likely to contribute to the development of capital, technical and managerial resources of Bangladesh or strengthen to balance of payments of Bangladesh, increase employment opportunities or the economic development of the country in any other manner,
- (ii) The Act also lays down that the terms of sanction of any foreign private investment will not be unilaterally changed so that it is accorded a less favorable treatment than similar local private investment,
- (iii) Foreign private investment shall not be expropriated or nationalized, except for public purpose against adequate compensation,
- (iv) The transfer of capital in respect of foreign private investment is guaranteed.

II.8.2 Export Policy

The Export Policy 1997-2002 had been designed to operate in the imperatives and opportunities of the market economy with a view to maximizing export growth and narrowing down the gap between import payment and export earning. The principal objectives of this policy were:

- | To achieve optimum national growth through increase of export in regional and international market;
- | To narrow down the gap between the country's export earning and import payment through achievement of the export targets;
- | To undertake timely steps for production of exportable goods at a competitive price with a view to exporting and strengthening existing export markets and making dent in new markets;
- | To take the highest advantage of entering into the post Uruguay liberalized and globalized international market;
- | To make our exportable items more attractive to the market through product diversification and quality improvement;
- | To establish backward linkage industries and services with a view to using more indigenous raw materials, expand the product base and identify and export higher value added products;
- | To simplify export procedures and to rationalize and solidify export incentives;
- | To develop and expand infrastructure;
- | To develop trained human resources in the export sector;
- | To raise the quality and grading of export products to internationally recognized levels.

The following strategies were planned to be undertaken to attain the objectives of the export policy 1997-2002:

- | Simplifying export procedures and helping the private sector achieve efficiency;
But tendency of the government personnel to hatch personal profit from giving services to the entrepreneurs has stopped the policy short of benefits to them.

- 1 Enhancing technological strength and productivity, and facilitating reduction of cost and attaining internationally accepted standard of quality of exportable products, and thereby consolidating their competitiveness;
Though the government's bureaucracy often delays production processes in numerous export-oriented enterprises, the entrepreneurs themselves have to tackle such situations by way of their staff's and workers' extended work hours and cost acceleration. In such situations, the entrepreneurs make up for such cost accelerations by way of obtaining cash credit from their banks, but, of course, resulting to reduced profits.
- 1 Ensuring maximum use of local raw materials in the production of export goods and encouraging establishment of backward linkage industries;
- 1 Participation in the international trade fairs, specialized fairs, single country exhibitions abroad and also sending out trade missions, with a view to consolidating our position in the existing market and creating new markets;
- 1 Encouraging export of new category high value-added readymade garments and also encouraging the concerned trade associations for establishment of a Fashion Institute;
The Fashion Institute has been established by BGMEA. The rate of enrolment of students has not been satisfactory because of the fact that the cost of education/tuition is quite high and unbearable for the intending students. The Government has not come forward to patronize or support the establishment and/or operation of the Institute in any way.
- 1 For promotion of high value-added leather and leather goods export: Providing various facilities including bonded warehouse facilities for import of materials such as raw hides, pickled, wet blue, crushed and finished leather, components and chemicals etc. to 100 percent export oriented leather industries;
- 1 For promotion of export of shrimp extension and modernization of traditional/semi-intensive method of shrimp cultivation and ensuring quality as per buyer's requirements;
- 1 For promotion of export of jute and jute products undertaking extensive publicity of jute and jute products as environment-friendly natural fibre and diversification of the uses of jute products;
However, Adamjee Jute Mills that used to consume 17 percent of the total raw jute of the country has been closed on two grounds, that is, (a) perpetuated financial loss and (b) donors' terms.
- 1 For promotion of export of tea undertaking programmes for establishing brand name and developing linkage with established blending and distributing agents;
- 1 For promotion of export of agro based products undertaking programmes for raising quality standard and expansion of market;
- 1 For promotion of export of electrical and electronic goods (including computer software and data entry) building and ensuring conducive infrastructure;
However, the lack of connectivity with the transoceanic fibre optic network has retarded both profitable investments and export of software, its overseas market being captured by more efficient entrepreneurs from countries like India.
- 1 For the promotion of export of engineering consultancy and other services and sub-contracting involving, in a bigger way, Bangladesh missions abroad obtaining contracts;
- 1 Organizing regularly international trade fairs and product-specific fairs within the country;
- 1 Making appropriate development and expansion of infrastructure conducive to export;

However, strikes/hartals, accompanied by unhealthy industrial relations practices, closure of ports due to strikes by port workers' trade unions, and unscientific flag rules often clogged the export sector with suspension of activities. In May-June 2003, several foreign flag vessels refused to anchor and load and unload at the Chittagong Port because they were required to procure a waiver certificate from the Ministry of Shipping. In a June 22, 2003 parliamentary session, the Ministry of Shipping tabled and got approved a new ordinance that includes a waiver clause as the Bangladesh Flag Vessels (Amendment) Bill 2003. Under the new ordinance, major foreign operators will be allowed to load and unload cargoes at Bangladesh ports without taking waiver certificates for two years.

- | Arranging for necessary technical and practical training for development of skilled manpower in the export sector.
There are certain institutes that grow now and then; but the level of tuition fees is usually very high and unaffordable on the part of the intending students.
- | Ensuring maximum utilization of financial and other assistance extended by the World Bank .
- | Extending technical and marketing assistance for development of new products and for finding appropriate marketing strategies;
- | Taking necessary steps to assist procurement of raw materials by the export-oriented industries at world price.

II.8.2.1 Export Promotion Council/Committee

A National committee on export has been formed. The highest-level committee on export promotion is headed by the Prime Minister and consists of the Ministers for Foreign Affairs, Finance, Commerce and Industries, Planning, Jute and Textile as well as senior government officials and representatives of important trade associations. The committee reviews the export situation, provides necessary directions and readily resolves problems. For immediate attention and action on export-related problems, a task force has been formed under the chairmanship of the Minister for Commerce. With a view to exchanging ideas with Chambers of Commerce and Industries, Exporters' Associations and private sector organizations in formulating export policy and strategies, and up lamenting policy decisions, an export council has been formed. A task force shall also be formed to recommend practical measures for export increase and monitoring the implementation of incentives and facilities of thrust sector and crash program items.

II.8.3 Industrial Policy

II.8.3.1 The Vision of Industrial Development

The Industrial Policy envisages an industrial sector where manufacturing will account for at least 25 percent of the GDP within a decade. It also envisions production of labor-intensive manufactures with skill upgradation, to catch its competitive edge, with, at the same time, a niche of high-tech industrial sub-sector.

II.8.3.2 Objectives of Industrial Policy

The main objectives of Industrial Policy, 1999, are to expand production base, promote private sector and FDI, generate female employment, diversify exports, develop indigenous technology, etc. The Industrial Policy also outlines a range of broad strategies which include measures such as removal of all regulatory barriers to FDI, privatization of public SOEs as soon as possible, development of the capital market, development of the infrastructure including port facilities, transport and communication and human resource development, give special incentives to develop small and cottage industries, encouraging “Build-Operate-Transfer” (BOT) and “Build-Operate

Own” (BOO) in these sectors, rationalization of tariff, encourage research and development and transfer of appropriate technology, availability of long-term industrial credit, etc.

II.8.4 Tax Holiday and Other Facilities

- (a) Tax holiday. According to the investment policy, tax holiday facilities are available for an existing industry for 5 or 7 years depending on location of enterprise. If the enterprise is located in Dhaka or Chittagong Division (excluding three Hill Tracts Districts of Chittagong Division), tax holiday facilities are for 5 years, and if it is located in Khulna, Sylhet, Barisal and Rajshahi Divisions or the three Hill Tracts Districts, then tax holiday facilities are for seven years. National Board of Revenue (NBR) issues the certificate.
- (b) Depreciation allowance. Accelerated depreciation allowance can be enjoyed by a new industrial undertaking in lieu of tax holiday anywhere in Bangladesh @ 100 costs of the machinery, but for the first year only. From FY2002-03, initial depreciation allowance has been reintroduced to cover certain percent of the costs of machinery as also on the factory.
- (c) Duty exemptions and concessions on machinery. No import duty is charged for 100 percent export oriented industry. For capital machinery and spares, import duty is up to 10 percent of their value. For other industries, import duty is charged at 5 percent advalorem on capital machinery and spares. VAT is not payable for imported machinery and spares.
- (d) Avoidance of double taxation. Double taxation for foreign investors can be avoided on the basis of bilateral treaties to avoid double taxation. NBR arranges the tax avoidance facilities.
- (e) Remittance. Remittance of royalty, technical know-how, technical assistance fee allowed for foreign investors. BB gives remittance approval.
- (f) Repatriation. Full repatriation of invested capital, profit and dividend is allowed for foreign investors. BB gives the approval.

II.8.5 EPZ Rules and Incentives

Export Processing Zones (EPZs) have been created in Bangladesh to assist establishment of export-oriented industries. Necessary infrastructural facilities, including communication and utility connection, have been provided to the investors by EPZ. The types of investment allowed in EPZs are of three types, namely: fully foreign-owned (Type A), joint venture projects by foreign investors and Bangladeshi investors living in Bangladesh (Type B), and fully locally-owned, by Bangladeshi investors living in Bangladesh (Type C).

As Annex-III reflects, every government in Bangladesh has been all-out to extend all possible support to the EPZs toward gearing up exports. While the first EPZ was established in Chittagong in the year 1983, further establishment and growth of EPZs have taken place at other zones of the country, such as Dhaka, Comilla, Ishwardi, Mongla and Nilphamari. The total investment made by 23 countries in these six EPZs now stands at US\$550.73 million. The total goods exported from the EPZs in FY2001-2002 were worth US\$1.2 billion, that is, around 18 percent of the country's total exports during the corresponding period. In addition, 123,927 workers (31 percent of them female) are employed at the EPZs.

In the present context, Bangladesh is required to make huge structural adjustments to adapt to the new global trading pattern, following introduction of WTO measures after 2004. Besides, Bangladesh enjoys large amounts of GSP facilities with USA. Bangladesh exported goods worth US\$43 million, under GSP facilities, to USA in FY2001-2002. However, the Government of Bangladesh is now swinging between two likely practical choices:

- (a) Bangladesh's choice to resume trade unionism in EPZs following an commitment made by the Government to AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) in the early part of 2001; and
- (b) Threats poised by the foreign investors in EPZs saying that in case of resumption of trade unionism in the EPZs, they would stop their operations in the EPZs and sue the government, because Government had committed to them earlier in writing that trade unionism had no space in the EPZs.

Therefore, however well the EPZs may have operated and contributed to the country's growth of trade, investment and employment, it is yet to be reckoned shortly as to how far effective the EPZs remain in promoting business in Bangladesh. The Government has a lot to contribute in this direction by way of its economic diplomacy.

II.8.6 Incentives against Exports

Every year Tk. 6000 million to Tk. 7000 million is given to exporters as cash incentives. The budget for FY2002-2003 provided Tk. 6020 million for this purpose. The current budget for FY 2003-2004 contains Tk. 14000 million in subsidy, a large portion of which will be spent as incentives.

Earlier, the Government had divided various exportable commodities into a number of groups following the item-wise benefits to be drawn by the country from item-wise exports. On conclusion of export of a specific amount of a specific item, the exporter had the right to apply to the Bangladesh Bank, through exporter's bank, for incentives in the form of IECs (Import Entitlement Certificates) on the basis of which the exporter could import various importable items to the tune of a certain percentage of the total f.o.b value of the exports made. During the last few years, the earlier rule has been out of practice. The rule up to the middle of June 2003 had been for the exporters to receive cash incentives against exports (e.g. refund of VAT, etc.). Since the third week of June 2003, a new rule has been introduced to provide incentives to the exporters. The change in the type of incentives has been changed reportedly because of the Government's felt need to check misuse of export perks under the modality followed up to the middle of June 2003. There are allegations that export perks were misused to a significant extent by certain exporters using forged documents or raising unlawful claims and giving bribes to concerned officials (Example: Section II.1- The Corruption Scenario). The newest order passed out in June 2003 states that from now onwards, no export incentives would be given in the form of cash but banking instruments, which would be used as a priority to adjust loans of the exporters.

Under the new rules, the EPB has been made responsible for monitoring. A government-appointed auditor at EPB will monitor the system until EPB develops an oversight mechanism. The commercial banks have been advised by the Bangladesh Bank to follow a total of 14 rules in regard to giving of export incentives. The new rules enjoin on the exporters of high-priced cloth (US\$2 per meter, and at least 10,000 meters of cloth) will have to receive certificates from the watchdog entity (EPB) before shipment. Otherwise, they will not be entitling to the incentives.

III. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

III.1 The Corruption Scenario

Bureaucracy's infestation with corruption is all pervasive. This point is one of the most serious concerns made by the prospective foreign investors in Bangladesh. According to the World Bank's estimates, corruption reduces growth rate by 2-3 percent each year. Transparency International has listed Bangladesh as the nation with the highest level of corruption for two consecutive years. Both domestic and foreign investors frequently report their obligations to pay extra fees for obtaining

such government services as allotment of post office boxes, provision of telephone lines, various licenses, customs clearance, etc. Examples of higher-level corruption are those that take place frequently in the fair awarding of public and private tenders, as in case of insider trading in the stock market. In this regard, business people consider Bangladesh customs to be among the worst, a thoroughly corrupt organization in which officials routinely exert their power to influence the tariff value of imports and to expedite or delay import and export processing at the ports. A mandatory pre-shipment inspection system of import valuation was introduced in 2001 to help reduce discretionary power of customs officials, and lower costs and improve efficiency at Bangladesh's trade entry points. Annoyed over the introduction of this new system, the customs officials have the first to say that the valuation system is weak.

The US Trade Centre in Dhaka, in its Country Commercial Guide 2003-2004, claimed that an American firm had tried unsuccessfully to gain from Customs Inspector's approval for its US\$225 million container project while the US shareholder of a private television station had to protest the Government's revoking of its license. There is delay in payment of dues as well. As for instance, a US exporter was waiting to be paid for wheat shipment it made eight years ago and international oil companies were owed US\$150 million in payment. The report also identified poor implementation of the country's liberal investment policy as the main drawback. A press report published in *The Daily Star* (June 30, 2003) narrates the story of corruption in the Duty Exemption and Drawback Department (DEDD). In the reported incident of corruption, three cases were filed against four officials of the DEDD. *The Daily Star* (June 30, 2003) narrates the story of this corruption case as follows.



III.2 Anti-Corruption Laws

In Bangladesh, the Prevention of Corruption Act 1947 (Act No. II of 1947) is the basic law against corruption. The Criminal Law Amendment Act 1958 (Act No. XI of 1958) was enacted in the Pakistan period (on September 23 1958) with certain objectives and for more speedy trial of public servants.

The Prevention of Corruption Act 1947 has been included in the Schedule to the Criminal Law Amendment Act 1958. The Act of 1958 *empowers the Government to withdraw the case on any charge against all or any of the accused persons, with scope of application of the principle of "pick and chose"*

Section 6(5) of the Criminal Law Amendment Act 1958 requires sanction by the Government for prosecution against a public servant. Sometimes sanctions are withheld or refused by the

Government in its discretion. In fact, the Director General of the Bureau of Anti-Corruption cannot start a corruption case against a Cabinet Minister without prior permission of the Prime Minister. Hence, the World Bank(WB) and International Monetary Fund (IMF) are hammering for setting up of an independent and neutral Anti-Corruption Commission in Bangladesh.

III.3 Ombudsperson System

Article 77 of the Bangladesh Constitution provides for establishment of an Ombudsperson who will be an independent high level public official to receive complaints against government agencies, officials, etc. and to keep watch and control over persons under his/her jurisdiction. Moreover, Ombudsman Act No. XV of 1980 had been enacted long ago, but almost every government of this country has so far avoided appointment of an Ombudsman, so that corrupt big fishes of the ruling party are not apprehended.

III.4 Conventions against Cross-Border Corruption

As mentioned earlier, the Prevention of Corruption Act 1947 (Act No. II of 1947) enacted in 1947, and the Criminal Law Amendment Act 1958 (Act No. XI of 1958) enacted on September 23, 1958 together form the gamut of prevalent anti-corruption enactments in Bangladesh. To date, Bangladesh has not been blessed with any legislation, specifically against cross-border corruption. However, these anti-corruption enactments cover the citizens in Bangladesh as well as the cross-border citizens. In absence of a full-fledged enactment for prevention of cross-border corruption (as in the case of the Foreign Corrupt Practices Act of 1977 in the USA), the Prevention of Corruption Act 1947 and the Criminal Law Amendment Act 1958 are serving the interests of the country to a possible extent.

III.5 Agencies and Institutions Involved

A Bureau of Anti-Corruption (BAC) exists to combat higher-level corruption, but it remains a largely ineffective body due to reported corruption among its officials and lack of independence from the political authorities. At the May 2003 Development Forum, the Government pledged to replace the Bureau with an independent Anti-Corruption Commission.

III.6 Enforcement Mechanisms

BAC is itself popularly believed to be a corrupt organization. Even if the popular belief is not considered acceptable, at least it may be safely concluded that the BAC has not been able to create any impact whatsoever on the country's effort to curb corruption. There has not been any instance of crackdown on corruption initiated by BAC. Unlike independent commissions against corruption in the developed countries, BAC's activities are confined to investigating allegations of corruption only. It has no mandate for preventive or public educative function. It is a government department having no independence of action, although BAC has been armed with enough powers to fight corruption in all spheres of public life. There are a large number of acts, ordinances and rules under which BAC operates and these are quite adequate and powerful legal instruments for BAC to combat corruption. But an anti-corruption agency, to be effective, must be independent of executive control. In Bangladesh, BAC is controlled by the Prime Minister's Office. The officials at BAC, from the top level to the bottom, are transferable in the manner the officials of other government departments are controlled and administered. No Government in Bangladesh has been seen initiating cases against any member of the ruling party. The agency does not have full power to decide on the basis of its findings as to if the case should be quashed or referred to the alleged's department for departmental action or be sent to a Court of Law. It is a mandatory requirement for BAC to seek permission from the Prime Minister before sending a case of middle to senior level officer to a Court of Law. As of now, the quality and skills of the investigating officers is usually

sub-standard, and the overall recruitment system in BAC requires transparency. Finally, political will and commitment is seriously lacking in BAC, for which this institution cannot work independently.

IV. LEGAL AND JUDICIAL FRAMEWORK

The roots of the development of the legal system of Bangladesh go back to ancient times of the Indian Sub-Continent. It passed through various stages and has gradually developed as a continuous historical process. The process of evolution has been partly indigenous and partly foreign, and the legal system of the present day emanates from a “mixed” system that has a structure, certain legal principles and specific concepts modeled on both Indo-Mughal and English Law.

Bangladesh took its birth as an independent and sovereign state on December 16, 1971. In order to ensure continuity in all legal spheres in independent Bangladesh, the Laws Continuance Order 1971, effective from March 26, 1971, legalized and made effective all the existing laws inherited from Pakistan subject to the Proclamation of Independence, 1971. Thereafter, the judiciary of the country was set into motion with the appointment of the Judges of the High Court of the country on January 11, 1972 by a Presidential Order No. 5 of 1972. Subsequently, by Presidential Order No. 91 of 1972, the Appellate Division was established before restoration of the original 1972 Constitution of Bangladesh. The 1972 Constitution of Bangladesh has set up, at the apex of the Judiciary, the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. It is the sole supreme court of the country. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the Chief Justice of Bangladesh. In the recent years, some development took place in the legal system of Bangladesh. These are the Ombudsman Act 1980 (Act XV of 1980); the Administrative Tribunals Act 1980 (Act VII of 1981); the Income Tax Ordinance 1984 (Ordinance XXV of 1984); the Land Reforms Ordinance 1984 (Ordinance X of 1984); the Family Courts Ordinance 1985 (Ordinance XVIII of 1985) and the Companies Act 1994.

The Law Reform Ordinance 1978 was promulgated amending the Civil and Criminal Procedural Laws, laws related to Court Fees and the Law of Arbitration- based on recommendations of a Law Committee set up in 1976. At present, there is a permanent Law Commission in Bangladesh to suggest suitable changes of existing laws as necessary so that the changed laws can meet the demands of the modern time.

IV.1 Regulatory Framework for Trade and Investment

IV.1.1 General Scenario

Governmental regulation of trade and investment since the early 1990s has been decreasing. Donors' advice, the wave of growing global trend toward market economy and a stronger domestic move toward democratic freedom made it possible for Bangladesh to opt for liberalized policies for promotion of trade and investment. Despite political commitment to the policy of liberalization, various legislations failed to trigger significant trade and investment because of non-implementation of a number of regulatory changes. The stumbling blocks toward implementation of many of the policy changes have been the following:

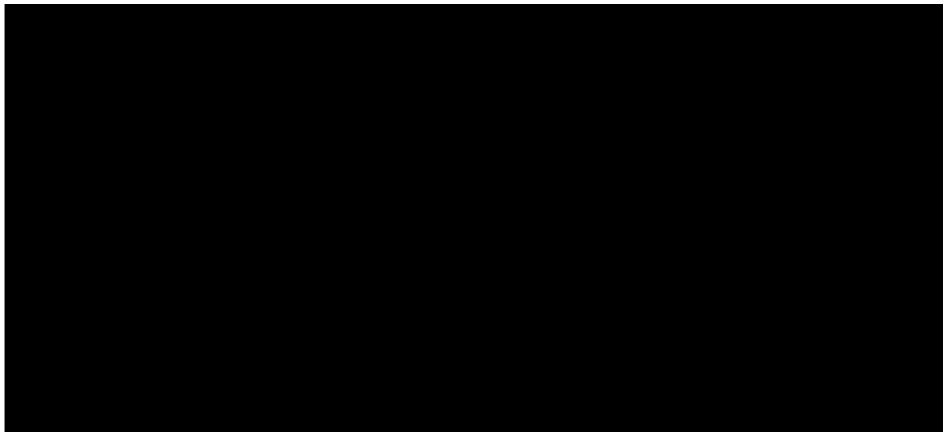
- | Apparent commitment of the bureaucracy and the political parties to reforms for deregulation of businesses has been ineffective in the face of opposition from many groups in the economy, including influential members of the business community having broad access to trade and investment through ownership or otherwise. Proliferation of enterprises has thus been stifled.
- | Members of various chambers of commerce or industry are also the manufacturers in protected industries and well-connected commission agents pursuing government

contracts. They, therefore, call for a greater voice for the private sector in government decisions and for privatization, but at the same time many support protectionism and subsidies for their own industries.

The vicious culture of un-regulated political party nominations in national elections and other elections coupled with faulty election rules and faulty application of even certain correct election rules have opened the way for the richer business class people having vested business interests to find a way to power or affiliation with the ruling party. Finally, these classes of people influence policy formulation for regulation of businesses from the viewpoint of their own interests, often hindering open competition in domestic or foreign investment in this country.

Rules pertaining to trade and investment in Bangladesh are usually not well-publicized or transparent. This lack of transparency is practiced by bureaucrats, businesses, professionals, trade unions and political parties having vested interests in a system by way of using confidentiality as an essential norm in policy formulation. Businessmen have to seek support for action from the bureaucrats, but bureaucrats' support is impossible without the recommendations or intervention of the higher political levels. The poorly paid civil servants have regarded business people as exploitative, and regard themselves as having a near monopoly on economic acumen and patriotism. Despite fear from risks to their careers from illegal activities, the incidences of solicitation of bribes from foreign investors are rampant. Public administration reforms in Bangladesh has not yet been able to bring about optimum honesty and transparency in the bureaucracy, which is central to policy formulation and practices toward improved environment for trade and investment.

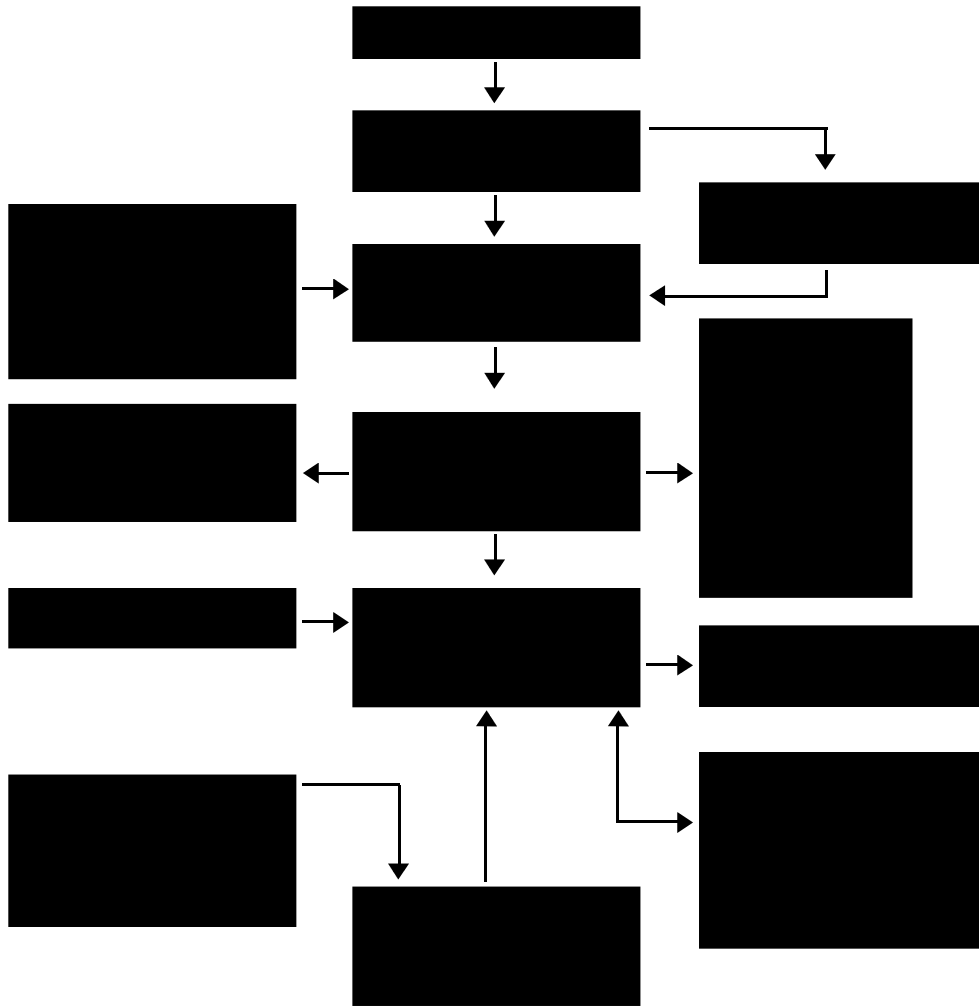
Generally speaking, the country's laws and regulations and their implementation are impediments to investment. Unfriendly treatment of businesses by some of the government officials and other negative elements in the investment scenario always add to the start-up and operational costs, risks, and broadly reduces the effectiveness of government's otherwise praiseworthy investment incentives. Here follows a report on how the government rules and their application have proved ineffective at times, even for the domestic investors.



IV.1.2 Concerned Offices and Regulations

Though the sole responsibility of promotion of trade and investment in Bangladesh rests on the Ministry of Industries, various activities in regard to trade and investment are regulated by the

Government through mainly three ministries, that is, Ministry of Industries, Ministry of Commerce, and Ministry of Finance. On another level, there are a number of departments and directorates that operate as autonomous bodies performing specialized tasks toward both promoting and regulating trade and investment under the guidance of their respective ministries. The Parliament, with its related sub-committees and the lawmakers at large, stand out as the supreme law-making body for any legislation related to trade and investment or any other issue. The following flow diagram shows the required process for establishment of an enterprise in Bangladesh by any expatriate and/or for establishment of a very large enterprise by any Bangladeshi national. This diagram indicates the regulatory institutions assisting GoB for promotion and regulation of trade and investment in this country.



As of today, the following are some inexhaustive examples of the agencies involved in regulatory, facilitative and promotional activities for engendering trade and investment.

Sl. No	Name of Agency	Major Functions
1.	Ministry of Industries	<p>Facilitatives</p> <p>Promotional</p> <p>Counseling, and Environmental Clearance</p> <p>Clearance for Infrastructure and Utility Facilities and Registration for Foreign Borrowings, Technology Transfer Fees and Expatriates' Work Permits</p> <p>Infrastructure and Utility Facilities</p> <p>Testing and Advisory Services on Quality Control</p>
2.	Ministry of Commerce	<p>Regulatory</p> <p>Application for Registration</p> <p>Ensuring Adherence to Minimum Acceptable Standards</p> <p>Testing and Advisory Services on Quality Control</p> <p>Advisory Services on Import and Export Practices</p> <p>Export Incentives and Allowances for Imports</p> <p>Export Promotion Bureau</p> <p>Advisory Services for expansion of export market potentials</p> <p>Arrangements for and Information on Trade and Industrial Fairs or Pavilions</p> <p>Patents and Trade Marks Registration Bureau</p> <p>Advisory services on registration of Patents and Trade Marks</p> <p>Registrar of Joint Stock Companies</p> <p>Registration of Firms</p> <p>Protection of the Interests of the Industry, Development of Exports, and Anti-Dumping Measures</p> <p>Signing of Bilateral and Multilateral Agreements</p> <p>Duty Exemption and Drawback Office</p> <p>Provision of Duty Drawback against PRCs (Proceed Realization Certificates) to the Exporters</p>

Sl. No	Overseeing Ministry	Name of Agency	Regulatory	Facilitatives	Major Functions
3.	Ministry of Finance	Bangladesh Bank	Regulation of the Banking Sector	Tax-free Import of Machinery and Equipment	Provision of Export Incentives
		Department of Customs, Excise and VAT			
		Nationalized Banks			
		Private Local or Foreign Banks			
				Remittance and Repatriation of Funds, Provision of Funds, and Facilitation of Other Financial Transactions	
				Remittance and Repatriation of Funds, Provision of Funds, and Facilitation of Other Financial Transactions	
4.	Ministry of Labor and Manpower	Office of the Chief Inspector of Factories and Establishments	Registration on the basis of Working Conditions and Safety Measures in Factories		
		Minimum Wages Board	Control on Wage Patterns		
		Directorate of Labor			Settlement of Labor Disputes
		Labor Appeal Tribunal			Settlement of Labor Disputes
5.	Ministry of Home Affairs	Department of Immigration and Passports	Immigration		Work Permit and Citizenship
6.	Ministry of Environment	Department of Environment	Environmental Clearance		Work Permit and Citizenship

There are various chambers of commerce and industry at both localized and central levels, formed with a view to coordinate the affairs of policy environment and execution of rules related to trade and investment acting as mediators between the entrepreneurs and the Government. Centrally placed chambers of commerce and industry are the FBCCI (Federation of Bangladesh Chambers of Commerce and Industries), DCCI (Dhaka Chamber of Commerce and Industry), MCCI (Metropolitan Chamber of Commerce and Industry), and BCI (Bangladesh Chamber of Industry). The other localized chambers of commerce and industry have their representatives in the FBCCI. Various product or service-based associations of traders and entrepreneurs in Dhaka have their representation in DCCI as well. Some of such large product or service-based associations are BGMEA (Bangladesh Garments Manufacturers and Exporters Association), BFFEA (Bangladesh Frozen Foods Exporters Association), BEMMA (Bangladesh Electrical Merchandise Manufacturers Association), Bangladesh Road Transport Owners Association (BRTOA) and others.

As in the case of CBAs and Trade Unions, representations to various chambers of commerce and industry as well as product or service-specific associations of entrepreneurs are dominated by influence from the political parties (as a result of a high-level political orientation of the citizens of this country). It has been observed that manipulations by the ruling political parties have often led to top-level management of such institutions by members having access to or being members of these ruling parties. As a result, professional leadership in the trade and investment sector by these institutions has run short of optimum success. On the other hand, whatever achievements they have made in negotiations with the Government on rules and practices in trade and investment, these achievements have not been poised at mass welfare, and have rather facilitated maximization of profit of a limited few entrepreneurs. Though there are certain NGOs (non-government voluntary organizations) having the goal of protecting consumer rights and labor rights in Bangladesh, their activities have not spread beyond routine circulation of information on annual changes in prices of essentials, relatively less work on real change in consumers' income, savings and expenditure patterns, cost of living, dissemination of messages on labor rights- all for a number of years. Certain other NGOs, operating in their respective operational areas, have come to gain some strength in influencing rules and procedures for trade and investment in Bangladesh. Examples of such NGOs are:

- | *MSUK* (Centre for Development of Human Potentials). Operating, in collaboration with the Michigan International Development (USA), a pilot project for finally designing a larger program aimed at improved health and family welfare rights of the garment factory workers;
- | *BELA* (Bangladesh Environment Lawyers' Association). Working closely with the Government for creation of a legal environment conducive to maintenance of a healthy natural environment in Bangladesh.
- | *Nijera Kori*. Having close networking activities with the London-based ISAN (Industrial Shrimp Action Network).
- | *BAPA* (Bangladesh Environment Movement). Highly patronized and supported by expatriate Bangladeshis worldwide toward lobbying and advocacy for maintenance of countrywide ecological balance.

Activities in the trade and investment sector of Bangladesh are carried out under the purview of the country's legal environment as well as the ICC (International Chamber of Commerce) Brochure, international maritime rules and various regional and international trade and tariff agreements signed by this country. Though Sections III and IV.2 - IV.8 dwell on various legal and judicial

practices in Bangladesh indicating the type of governance in this country, it may be mentioned that there are certain laws that directly affect or influence trade and investment, such as:

- | Emergency Services Act,
- | Banking Ordinance,
- | Negotiable Instruments Act,
- | Domestic Flag Rules,
- | Factory Law,
- | Workman's Compensation Act,
- | Industrial Relations Ordinance.

IV.2 Property Rights Laws

Private ownership and investment is allowed in all sectors with exception in the case of five sectors, such as:

- | Arms, ammunition, defense equipment, and machinery;
- | Production of nuclear energy;
- | Security printing and minting;
- | Forestry in the reserved forest areas; and
- | Air transportation (except air cargo and international air transportation) and railways.

As the country's economy has remained stifled by many inefficient state-owned enterprises (SOEs) for long, efforts for privatization of the economy as a whole have been watched closely by various international bodies as a barometer of Bangladesh's attitude towards the private sector. The Privatization Board's claimer, in written reports, states that it has sold off 30 companies since the Privatization Board was created in 1993, primarily in the jute, textiles, sugar, and food sector. In reality, it has retained control of many of the firms reported to have been privatized. The Board, starting from its inception in 1993, has continued to slow down to a virtual standstill despite the Government's appointment of a prominent local businessman in late 1997 as the Board's Chairperson. During July 2001-June 2002, no single company was privatized, but partial shares of 11 companies have been sold. Even following privatization, some of the companies are yet being heavily regulated because of a number of reasons, such as the managements' failure to reduce employment rolls. A total of 150 companies were in the pipeline of the privatization process at the end of June 2002, but there was an anticipation that any achievements in privatization would not occur until after the coming national election, scheduled to take place in October 2001. The government is usually slow to privatize the state-owned enterprises in order to avoid the formation of unions, and subsequent disputes, which are an integrated component of any private or privatized company.

Though not clearly set out in writing, many sectors are reserved, at least, partially for the Government. In occasions of otherwise unmanageable situations of scarcity of certain commodities, the Government has often allowed discrete operation of the private enterprises to ensure quick and efficient supply of the commodities in scarcity. Such allowances, on the turn, have been dominated by decisions to offer opportunities to the members of the ruling party or their peerage to import goods or to distribute goods. Distributorship for sale of fertilizer from a large fertilizer factory in the Jamalpur District during the 1991-1996 regime was awarded to a member of the family of a senior member of the then ruling party. Alleged reports of numerous irregularities committed by that fertilizer dealer led to dissensions among the local farmers who led repeated demonstrations protesting the said irregularities. The law

enforcement authorities intervened to quell the protests and demonstrations. This finally led to the death of more than half a dozen of innocent demonstrating farmers.

The occasional discrete decisions, made by the Government to bring in private operators in specific missions in trade and investment (e.g. for wheat and fertilizer imports and fertilizer distribution), have often been despised by the SOEs. Under such public-private partnerships, the government is usually responsible for infrastructural and operational support to the private partners. The private partners carry out sales, marketing and general operations. This has resulted in the lack of cooperation of the state-owned authorities to the private partners as a result of a sense of unhealthy and unethical competition from the government in order to undermine the image of the capabilities of the private enterprises. As for instance, low-level care in provision of infrastructural and operational support from the governmental components of the Bangladesh Railway to the private operators of a limited number of privatized railway trains has been manifested as some of the reasons behind apparent but falsified weaknesses of the private operators. A combination of such tactical non-cooperation from various governmental institutions and the undermining of legal and policy reforms has virtually stifled private sector initiatives.

IV.3 Mechanisms to Protect Property Rights

The mechanism of protection of property rights is not transparent and is a point of serious concern to the investors and prospective investors in this country. There are two particular reasons for the lack of transparency of this mechanism:

- 1 The ingrained culture of delay in disposal of legal cases (Section IV.7 of this report), especially the ones under the jurisdiction of CPC (Civil Procedure Code); and
- 1 Insufficiency of enactments necessary for addressing property rights issues.

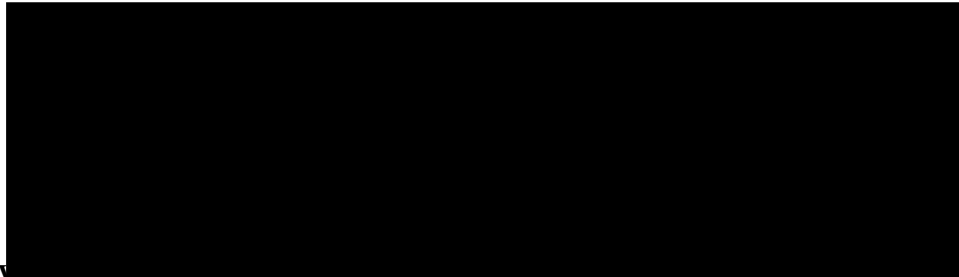
Bangladesh, being a signatory to the Uruguay Round agreements and being a member of the World Intellectual Property Organization (WIPO) in Geneva since 1995, has also acceded to the Paris Convention on Intellectual Property in 1991. Following these affiliations, Bangladesh is obliged to bring its laws and enforcement efforts into TRIPS (Trade Related Intellectual Property Rights) by January 1, 2006. Copyright conformity with the WTO's TRIPS has been established by way of legislation in November 2000. However, absence of laws to enforce the new copyright legislation turned the bill to be ineffective at this moment. Land for purchase or lease has to be commonly transacted in by any investor; but the obsolete laws relating to land are complex and frequently give rise to chaos. Papers relating to land registration records are almost commonly spurious. Parties in transactions of land frequently avoid registering mortgages, liens, and encumbrances because related stamp duties and charges have been set at high levels. Instruments take effect from the date of execution, and not the date of registration. As such, a bona fide purchaser can never be certain of title. In brief, whatever provisions have been in writing, there is little enforcement of Intellectual Property Rights and other property rights laws in Bangladesh. In spite of these efforts by the Government to streamline Property Rights Laws in Bangladesh, there have been a few U.S. complaints to date. Legislation to update the Patents and Designs Act and the Trademarks Act is still pending final vetting by the Ministry of Law, Justice and Parliamentary Affairs. The Country Commercial Guide 2003-2004, published by the U.S. Trade Centre in Dhaka, indicated that Bangladesh's dispute settlement mechanism was a fundamental impediment to foreign investment. The Guide added that dispute settlement was also hampered by shortcomings in accounting principles and registration of real property.

"Special 301" Watch List of the U.S. Trade Representative, that identifies countries denying sufficient protection of intellectual property rights or fair and equitable market access for persons

that rely on intellectual property protection, has never included Bangladesh. However, in 2003, a US trade association proposed adding Bangladesh to the Watch List. In this country, intellectual property infringement is common, especially of computer software, motion pictures, pharmaceutical products, CDs/DVDs, and audio and videocassettes. As a result of the rampant copying of CDs/DVDs and audio and videocassettes, there have been two particular impacts on the local economy:

- 1. the violation of copyright laws, depriving the foreign producers of these audio-video materials of their entitlements in return of such copying; and
- 1. poisoning of unhealthy competition to the local film and music industry when the very latest foreign films are available in the market within 24 hours of their release abroad.

The method of copying and distribution of such entertainment has been discovered by *The Daily Star* in its July 02, 2003 issue as the following.



IV.7 Structure of the Judiciary

The country's legal system comprises of Administration of Civil Justice and Administration of Criminal Justice regulated procedurally by two distinct sets of laws, that is, Civil Procedure Code (CPC) 1908 and Criminal Procedure Code (CrPC) 1898. Besides certain special laws enacted from time to time in specific urgent situations, the Penal Code 1860 deals with the offences in terms of definitions, extent of punishment and exceptions, etc. Under the special laws, certain provisions of the Code of Criminal Procedure with regard to investigation, arrest, bail, seizure, attendance of witness, etc., are applicable.

The Bangladesh Constitution 1972 includes a separate part (Part VI, Articles 94-117) dealing with the judiciary. The Supreme Court of Bangladesh comprises of the High Court Division and the Appellate Division headed by the Chief Justice of Bangladesh. The High Court Division, beside its appellate and revisional jurisdiction in civil and criminal matters, has extraordinary jurisdiction known as writ jurisdiction under Article 102 of the Constitution toward enforcement of fundamental rights. The Appellate Division is the topmost court that, besides having jurisdiction of appeal arising from the decisions of the High Court Division under Article 103, has been vested with the jurisdiction of doing complete justice under the Constitution's Article 104 to prevent failure of justice. In addition, the Appellate Division has advisory jurisdiction on legal matters of public importance under Article 106 of the Constitution whenever sought by the President. The Supreme Court has the jurisdiction to decide the constitutionality of any law and it can also strike down any law that is ultravires or inconsistent with any provision of the Constitution. The decisions of the Appellate Division are binding upon the High Court as well as on the subordinate courts and the decisions of the High Court Division on all courts subordinate to it.

The subordinate judiciary consists of the courts of district judges, additional judges, joint District judges, assistant judges and the magistrates. The district judges, additional judges and the joint

district judges, apart from their civil jurisdiction, are also vested with the criminal jurisdiction and are classified as the courts of sessions judge, additional sessions judge and assistant sessions judge. Below the courts of sessions judge, there are the metropolitan magistrates for the metropolitan areas and magistrates for other areas trying cases which cannot be tried by the Courts of Sessions. Offences punishable with imprisonment up to five years may be tried by different classes of Magistrates. Assistant Sessions Judges can try offences and pass sentences not exceeding ten years. Sessions Judges and Additional Sessions Judges can pass any sentence authorized by law and also sentence of death subject to confirmation by the High Court Division (Sections 6, 31, 32 of the CrPC). Appeals against the judgments of conviction and sentences passed by the Magistrate are made to the court of Sessions, and appeals against the judgments of conviction and sentences passed by the Sessions Judges are made to the High Court.

Under the criminal administration of justice, offences are generally categorized into cognizable and non-cognizable with their classification as to arrest, bail, compoundability, courts by which to be tried, procedure of trial, etc., shown in the Second Schedule of the Code of Criminal Procedure (CrPC). Criminal proceedings are initiated by either complaint or First Information Report (FIR). In cognizable cases, police can arrest the alleged offenders without warrant from the court. Prosecution in cognizable cases is the state's responsibility. A criminal proceeding comprises of investigation and trial during which offenders are detected and apprehended, evidences are collected and the case is made ready for trial. The foundation of the case is built during investigation. Detection of the real criminal and collection of proper evidence lay the real foundation of a criminal case because the success of the prosecution depends on the efficient handling of the cases by the investigators. The methodology for investigations to be conducted, and whether statements of witnesses, confessional statements of the accused and the dying declaration are to be recorded will all be regulated by specific provisions of law.

Magistrates are empowered to try summarily petty offences punishable up to two years imprisonment under Chapter XXII of the Code of Criminal Procedure (CrPC). The procedure of trial before the Court of Sessions is contained in Chapter XXIII of the CrPC.

IV.5 Independence of the Judiciary

As per the provision of Article 94(4) of the Constitution, the chief justice and other judges of the Supreme Court are independent in the exercise of their judicial functions. Similarly, all persons employed in the judicial service and all magistrates are independent in the exercise of their judicial functions as provided under Article 116A of the Constitution. The independence of the judiciary is the precondition of fair trial and fair justice. Another prerequisite of sound and independent judiciary is the separation of the judiciary from the executive organ of the state. Article 22 of the Constitution contains fundamental principle of state policy to the effect that "the state shall ensure the separation of the judiciary from the executive organs." Although there is the constitutional commitment for the separation of the judiciary, no positive steps have been taken till today for the separation of the judiciary.

The landmark decision of the Secretary, Ministry of Finance vs. Masdar Hossain (1999) 52 DLR (AD) 82 was determined on the basis of how far the Constitution of Bangladesh had actually secured the separation of the judiciary from the executive organs of the State and whether the Parliament and the Executive had followed the Constitutional path. In brief, the case was decided following how far the independence of the judiciary is guaranteed by the Constitution and whether the provisions of the Constitution had been followed in practice. The court identified five conditions of judicial independence:

- (i) Security of judicial tenure;
- (ii) Security of judicial salary;
- (iii) Institutional independence of subordinate judiciary;
- (iv) Judicial appointments by separate Judicial Service Commission;
- (v) Administrative independence and financial autonomy of judiciary.

As a conclusion to the case on Secretary, Ministry of Finance vs. Masdar Hossain (1999) 52 DLR (AD) 82, the Appellate Division of the Supreme Court, in its judgment, gave 12-point guidelines to implement the separation of the judiciary from the executive organ of the state, as reported on Page of 52 DLR (AD). The Government, by taking permission from the Supreme Court, has postponed the decision of separating the judiciary from the executive for fourteen times. In the last week of May 2003, the Supreme Court allowed another timeframe of four months to the Government to implement separation of the judiciary.

The expectations of the common citizens are not only a judiciary separate from the executive organ of the state, but also a judiciary independent from the influence of ant ulterior quarters. The art of practicing impartiality does not develop overnight, it rather results from understanding, appreciating and acknowledging the moral values, ethics and professional responsibility over a considerable period of time. It is basically a question of developing an attitude. In this regard, there is the need to look at the types of incumbents in the judiciary and the particular arrangements for their recruitment, codes of ethics and training in the judicial service.

IV.5.1 Appointment and Term in Office

At present, the judges of the subordinate courts are under the administrative control of the Ministry of Law, Justice and Parliamentary Affairs which, according to Article 116 of the Constitution, exercises this control in consultation with the Supreme Court. However, the magistrates are under the administrative control of the Ministry of Establishment. The magistrates perform both executive and judicial functions. The dual administrative control over the judges and the magistrates has some adverse reflection on the independence of the judiciary affecting, sometimes, fair trial.

As a current practice, the judicial officers of the subordinate judiciary are appointed by the Public Service Commission, an executive unit of the state. The advice given to the Government in its conclusion of the case on Secretary, Ministry of Finance vs. Masdar Hossain (1999) 52 DLR (AD) 82, the Government also mentioned that the Government should appoint, in its process of separation of the judiciary, judicial officers of the subordinate judiciary by a Judicial Service Commission, instead of the Public Service Commission.

The vast majority of the judges and judicial officers are appointed from either the members of legal profession with long professional standing or the law graduates by way of judicial service examination intake. The legal educational institutes of Bangladesh do not teach its graduates the ethics or professional responsibility. There is no conceptual framework that a student needs to learn and develop good ethics to be a good lawyer. As such, there is no subject like legal ethics in the official curriculum of any of the law degrees in this country.

Though one may argue that the legal educational institutes do not produce professionals but academics, then the total responsibility shifts to the professional bodies (e.g., the Bangladesh Bar Council, the Bar Associations, JATI- Judicial Administration Training Institute, etc.). It is their responsibility to ensure that their members, before joining their respective professions, undergo a proper system of training where they are carefully introduced to the issues of legal ethics and professional responsibility.

As per Rule 10 of The Bangladesh Legal Practitioners and Bar Council Rules 1972, the functions of the Bangladesh Bar Council includes, among others:

- (i) Admitting persons as Advocates on its roll;
- (ii) Holding examinations for purpose of admissions;
- (iii) Removing Advocates from its roll;
- (iv) Laying down standards of professional conduct and etiquette for Advocates;
- (v) Entertaining and determining cases of misconduct against Advocates on its roll and ordering punishment in such cases; and
- (vi) Promoting legal education.

Under the current policy of the Bangladesh Bar Council, every person shall, before being admitted as an Advocate, pass a written examination, viva-voce and a vocational training course of around seven weeks. The syllabus for the written examination for enrollment includes a topic "Rules of Professional Etiquette" which is examined by assessing a candidate's knowledge on Bangladesh Bar Council Canons of Professional Conduct and Etiquette.

These canons were framed in exercise of the power conferred on the Bangladesh Bar Council by Section 48(q) of the Legal Practitioners and Bar Council Act 1965 and are crucial for any legal practitioner as he (an Advocate) is expected to discharge certain high-level duties in the society. In Bangladesh, the Advocates are expected to be role models of "integrity, imbued with the spirit of public service and dedicated to the task of upholding the rule of law and defending at all times, without fear or favor, the rights of citizens." Therefore, as per the Bar Council Enrollment Examination Policy, every candidate is required to be familiar with these canons and is examined by way of answering a given hypothetical problem of ethical conflict situation. But this arrangement is not enough to ensure the target result of having an overall ethical and professionally responsible legal profession because:

- (i) There is no system or institute to provide tutorials to explain or discuss the issues of ethics and professional etiquette to the aspiring candidates. Therefore, the candidates take preparation for the written examination on their own. The need for popularizing legal ethics and basic professionalism cannot be treated so easily.
- (ii) The materials on legal ethics provided and suggested to the candidates are insufficient. The candidates are provided with only the bare rules, no explanatory notes or case references are attached or suggested. As such, there is no way for a candidate of the average quality to develop a critical mind while reading through the words of the ethical rules.
- (iii) The candidates are not examined as to whether they are familiar with different grounds for which they can be disqualified for admission to be an Advocate. No materials are provided regarding actual cases of disqualification in the previous years.
- (iv) The candidates are not examined on the basis of their knowledge in disciplinary proceedings of the Bar Council. No reading materials are provided for explaining to the candidates when they can be found guilty of professional or other types of misconduct. They also do not get to refer to previous decisions of the tribunal or court to find out different incidences of professional malpractices for which they can be reprimanded, suspended or even removed from practice or struck off the roll.

In addition, though the candidates answer a question on legal ethics in the written examination, there is no way to know whether they have written the right answers, once the results are published.

Therefore, there is a danger that the candidates may fail to realize the importance of being professionally ethical, once they enter into the profession.

The current policy of the Bar Council is that every successful candidate (that is, those who have passed the written examination and viva-voce) would need to go through a compulsory training course known as Bar Vocational Course (BVC) to get a call to the Bar and the “Sanad.” BVC is conducted by the Legal Education and Training Institute (LETI) of Bangladesh Bar Council.

Within a span of seven weeks, the students of BVC have approximately 80-84 classes. In this course, only 3 classes (each having approximately one-hour duration) are allocated to have a discussion on the topic of Professional Ethics. The discussion is of general type and there is no specific syllabus available for these sessions. This is the first and only time the newly recruited Advocates get an opportunity to have a discussion on the most sensitive issue of their profession and that does not receive proper weightage in the induction mechanism.

The other elements that plague the judiciary of Bangladesh quite often are the increasing incidents of politicization and superseding of one incumbent with another by the ruling political parties in appointments to positions of justices to the Supreme Court. Once such incident in July 2003 pushed the Supreme Court Bar Association at bay with the Government; and it also resulted in boycotting of the court (Supreme Court) by them.

IV.5.2 Codes of Ethics

The Constitution of Bangladesh enjoins on the judges to perform their duties without fear of reprisal or influence of any person, institution or authority. Judges should also recognize their duty to uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their Judicial Office and to preserve the faith and trust which the society has bestowed upon them. Judges, among others, should follow the following principles in the performance of their judicial duties and in the conduct of their personal lives.

- (a) Judges should discharge the duties of their Judicial Office according to the Constitution and the Laws of Bangladesh. They have a duty to apply the relevant law to the facts and circumstances of the cases before the Court and render justice within the framework of the law. Reasons for the judgment/order should be recorded in clear language so as to enable the litigants to understand the reasons behind the decisions.
- (b) Judges must be impartial and objective in the discharge of their judicial duties. They should not be influenced by public pressure or fear of criticism. Judges shall not, by words or conduct, manifest favor, bias or prejudice toward any party. They need not do anything which is improper to earn popularity from any person or group.
- (c) Judges shall endeavor to maintain order and decorum in courts. They must strive to remain patient, dignified and courteous in performing the duties of Judicial Office and shall carry out their role with integrity, appropriate firmness and honor.
- (d) Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court. There is no justice where delay is such that by the time the decision is rendered, it no longer has any practical meaning to the litigants. There is no such if the prohibitive cost of litigation prevents a citizen from seeking justice through the court system. In order to ensure speedy justice, the judges should devote the entire prescribed time for judicial work and discourage adjournment of hearing of cases on an insufficient ground.

- (e) The primary responsibility of the judges is the discharge of their judicial duties. Subject to any restrictions imposed by law or rules, the judge may participate in law-related activities provided such activities do not interfere with the judge's judicial duties.
- (f) The judges should maintain their personal conduct at a level that will ensure and maintain the people's trust and confidence. Judges must not abuse the power of their Judicial Office or use it inappropriately. In other words, judges should not involve themselves in any activity which is incompatible with their Judicial Office.

IV.5.3 Training Process

As per the Judicial Administration Training Institute Act 1995 (as mentioned Bangladesh Gazette Notification- Extraordinary Issue dated July 9, 1995), the Government of Bangladesh has set up a JATI to arrange for training of persons appointed in the judicial service, lawyers and some other professionals connected with the judicial system in order to enhance their professional efficiency. The JATI is now functioning in the Old High Court Building in Dhaka and the foundation for its new building has already been laid down. The sources of JATI's funds are grants from the Government, grants from the local authorities loans obtained on prior approval of the Government and others. The establishment of JATI and the conversion of the Law Commission into a permanent entity have been rendered under a US\$2,000 million project with support from the World Bank.

Functions of JATI

The gazette notification dated July 9 1995 outlines JATI's functions as the following:

- | Impart training to the persons appointed in the judicial service, law officers entrusted with conducting of government cases, advocates enlisted with the Bangladesh Bar Council and officers and staff of all courts and Tribunals subordinate to the High Court Division of the Supreme Court;
- | Arrange and impart training in legislative drafting and drafting of other legal documents;
- | Impart training in legislative drafting and drafting of other legal documents to trainees from abroad in cooperation with international donor agencies;
- | Conduct research and investigation in respect of court management and to publish the same;
- | Arrange and conduct national and international conferences, workshops and symposia for improvement of the judicial system and quantity of judicial work; and
- | Publish periodicals, reports, etc. on the judicial system and court management.

Curricula of JATI

As in the case of various courses at the Bangladesh Bar Council, the curriculum for the Basic Course at JATI does not have any module of ethics or professional responsibility. However, the curriculum for Judicial Administration Training Course for the district and session judges contains a module on Judicial Ethics and Code of Conduct of Judicial Officers. Under its current training policy, the JATI runs the following training courses:

- | District or Joint District-and-Sessions Judges (6-day);
- | Basic Course for Newly Appointed Assistant Judges (60-day);
- | Senior Assistant Judges (21-day, and sometimes 3-day short courses);
- | Public Prosecutors (6 days to 21 days);
- | Government Pleaders (6 days to 21 days);
- | In-Service Training Course for Ministerial Officers of the Subordinate Courts and Tribunals (One to 2 weeks).

Achievements of JATI

In five years, from June 1997 to May 2002, JATI imparted training to 1397 judges, advocates and court support staff. The institute introduced and conducted the first batch training for the court support staff (i.e) Administrative Officers, Nazirs and Bench Assistants) in the year 2000. Each of the training programs was different in nature and intensity. The curriculum was made the basis of training, but improvements were made as to their contents and methods to achieve optimum result in each course. Study tours were an integral part of JATI's judicial training. The trainee-judges visited the Jatiyo Sangsad (National Parliament), the Supreme Court, the Ministry of Law, Justice and Parliamentary Affairs, UNICEF-Dhaka, Dhaka Central Jail, the Defense Staff College, the Islamic Institute of Technology, BARD (Bangladesh Academy for Rural Development), National Juvenile Correction Centre at Tongi and other institutions of repute to make trainees aware of their activities and gain more knowledge on other important issues beside the law.

Faculty Development at JATI

The Institute, from the beginning, gave significant impetus on faculty development. JATI's faculty members visited countries like Japan, India, Canada and Britain for gaining knowledge about judicial training and training facilities there. The Institute's officers also received various types of training and project related activities for better training management at JATI.

Danish Support to JATI's Development

Support to Capacity Building of the JATI of Bangladesh is a five-year capacity building project aimed at enabling the JATI to deal with well-structured professional training in order to increase judicial efficiency of the subordinate courts and make the judiciary understand its roles and responsibilities. The project constitutes a component of the World Bank-financed Legal and Judicial Capacity Building Project. The major activities include the following:

- | management and institutional development;
- | development and application of training plans and training needs analysis tools;
- | development of training curricula, training materials, and audio-visual aids;
- | training of trainers;
- | development and implementation of training courses for the target groups.

In addition, the project also includes procurement of education and training equipment necessary for the function of an envisaged new Judicial Administration Training Institute.

IV.6 Fairness in Trial and Sentencing Process

(a) Fairness in Trial

To get fair and speedy trial is a fundamental right guaranteed in the Bangladesh Constitution. Article 35 of the constitution reads as follows:

Article 35. Protection in respect of trial and punishment:

- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence,
- (2) No person shall be prosecuted and punished for the same offence more than once,
- (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law,
- (4) No person accused of any offence shall be compelled to be a witness against himself,

- (5) No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment,
- (6) Nothing in Clause (3) or Clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial."

The question of fair trial presupposes fair investigation, fair prosecution and fair provision of the scope for the defense of the accused under legal dispensation. A person accused of an offence shall be presumed to be innocent so long he or she is not proved guilty by legal evidence beyond all reasonable doubt. This implies that even ten accused persons may be acquitted but not a single innocent person should be convicted. That a person shall have the protection of law is the inalienable right guaranteed in the Constitution in Articles 31 and 33, which read as follows:

Article 31. Right to Protection of Law- To enjoy the protection of law, and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

"Article 33. Safeguards as to Arrest and Detention

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate "

As for the purpose of protecting social order and peace by preventing prejudicial activities against the state, the Special Powers Act 1974 was enacted. In the meantime, this law has been largely modified. There are a lot of arguments and criticism for and against this law, which curtails the fundamental rights of the citizen. Instances are not rare when concerned agencies of the Government sometimes use the provision of this law arbitrarily. Despite this, the Supreme Court, in order to check this type of arbitrary arrests and detentions, has so far granted anticipatory bails and directed the release of some detainees forthwith. Currently, the demand for the repeal of the Special Powers Act 1974 still persists at the end of the conscious sections of the people. However, after some modifications rendered to the Special Powers Act 1974, this law has been complemented by the enactment of other laws titled Speedy Trial Act (on October 24, 2002) and the Anti-Terrorism Act.

Another socio-economically embedded factor that hinders fairness of trial in general is the high costs of hiring lawyers. Access to the Government's support system for managing or attending legal suits by the relatively poorer sections of the population is extremely limited. As such, the poor victims are often compelled to avoid litigation or to stop appealing or attending legal suits after short-run efforts.

The recent rise in threats or other forms of coercion from godfathers of the crime world to the socially powerless victims have stopped them short of going for legal suits. Additionally, the weak and corrupt structure of the law enforcing agencies has also failed to provide protection to the justice-seeking socio-economically weak victims. Even the media have reported frequently on the murders of victims or their witnesses in the courts and court premises because they appeared there

in order to attend the hearing sessions. This situation tells on the outcome of the corruption and weaknesses of the law enforcement agencies obstructing pursuit of fair trial and justice.

(b) Sentencing Process

Sentencing, the final and concluding part of trial in a criminal case, is deterrent and retributive in Bangladesh. The entire drama of a criminal proceedings ends with the verdict of the court in which the police/investigators, the witnesses, the prosecutors and the judges/magistrates play their respective roles. Apparently, a criminal charge against a person in the society carries certain stigma; and for this reason the people generally try to avoid criminal charge or otherwise being entangled in criminal proceedings.

Sentence of death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property and fine are prescribed by Section 53 of the Penal Code which may be awarded to the offenders according to the nature of charges. By Ordinance XLI of 1985, the term "transportation for life" has been substituted by the word "imprisonment for life" equivalent to thirty years of rigorous imprisonment under Section 57 which the Government may commute into imprisonment not exceeding twenty years as provided under Section 55 of the Penal Code (Ordinance XLI of 1985). Sentence of death passed by the Court of Sessions shall have to be confirmed by the High Court Division under Section 374 of the Code of Criminal Procedure. It is well within the prerogatives of the President, who can grant pardons, reprieves, respites, remit, suspend or commute any sentence passed by any court, tribunal or other authority under Article 49 of the Constitution.

In passing the sentence, the court must have full regard to the nature of the offence, status of the accused persons and overall the ends of justice in all fairness of things. Except in cases involving the sentence of death and imprisonment for life, the courts are given wide discretion in passing sentences of various terms. The cardinal principle is that the sentence must not be excessive or disproportionate to the nature and gravity of the offence. In practice, different courts pass different terms of sentences in similar types of cases which are poised at pricking the people's conscience and shaking their confidence in the judiciary. Accountability in the proper sense of the term on the part of every quarter engaged in the task of administering justice (e.g. investigators, prosecutors, judges or magistrates) is relatively low, and such deficiencies in the judicial system have often given rise to unwelcome public opinion about the honesty, attitude and role of the country's judiciary. As for instance, one may refer the case of Shima Chowdhury of Chittagong District which jolted the conscience not only of the people of Bangladesh, but also of the people of many parts of the world. Similar mishap in the performance of the judiciary in passing sentences was visible in the case of Yasmin Murder Case in Dinajpur District. Therefore, it may be concluded that the laws and the practices in the delivery of judgment requires urgent improvement.

IV.7 Speed of Trial vs. Backlog of Cases

It is the constitutional right of the people of Bangladesh to get speedy and fair trial under the legal dispensation. However, in the legal system of this country, delay in the dispensation of justice has been a chronic problem. The mounting backlog of cases in almost all tiers of the judiciary is the main cause of delay in disposal of cases. As a result of such delays in delivery of judgment, the people are also losing confidence in the fairness of the judiciary. In general, the causes of such delays may be classified under two broad heads, *the court's delay and the law's delay*.

The fact that the laws of the land tend to delay the disposal of cases and that such delays are a good cause for bail in non-bailable offences have been well illustrated in an article titled "Undue delay in trial is good ground for bail in non-bailable offence" published in *The Daily Star* dated July 13, 2003 in Dhaka. It was stated there that the particular Appellate Division Criminal Case between

Captain (Retired) Nurul Huda (Appellant) vs. State (Respondent) had its judgment delivered on December 01, 2002 after a long trial since October 1996 (High Court Miscellaneous Criminal Case No. 1965 of 1997 arising out of Ramna PS Case No. 93 dated October 21, 1996 under Sections 149/448/326/307/302/34 of the Penal Code). The deliberations presented in the newspaper article indicate that a relatively large number of Criminal Procedure Code (e.g. Sections 496, 497, 497, and 339C-4) were related with the disposal of the case from appeal for bail. The final verdict permitting the release of the accused on bail even contradicts the earlier verdicts given by the High Court on multiple occasions. The accused had to languish in jail with problems in his prostate glands, urinary tract infections and serious depression for being in custody for more than six years without disposal of the case.

While elimination of the problems causing the law's delay is a long-term issue, the types of factors causing the court's delay are relatively more visible. Case management in Bangladesh's courts is not satisfactory. The judges usually do not make a prior mental picture of the cases in hand. It is a prerequisite for every judge to look after the administration of the court besides disposing of cases, but the judges spend most of their time in certain routine jobs only. It is also argued that they are overburdened with huge piles of cases and that they do not have sufficient time to look into various aspects of the cases well before they come to the court for hearing. This carries the judicial system to the point that the number of courts is disproportionately fewer than the number of cases, irrespective of the levels of complexities of certain cases.

Apparently, in a move to dispose of the formidably large backlog of cases, the Government enacted the Speedy Trial Act on October 24, 2002. The political oppositionists termed it as an instrument to harass them and to stop them from full exercise of their political rights. The deployment of the Bangladesh Army with quasi-magistracy given to them coupled with the enactment of the Speedy Trial Act 2002 resulted in arrests of many terrorists reportedly patronized in the past by a number of political parties. Media reports have it that prior information sent to a number of the other terrorists from and by the ruling party led to the flight of these terrorists to India escaping the campaign by the army. Besides, a number of senior political leaders among the oppositionists were arrested, quizzed and reportedly tortured in the process. Moreover, number of arrestees faced quick deaths in custody even before the state initiated the process of trial. Despite appeals from various international human rights agencies to carry out investigations into these deaths, the processes and reasons for many of those deaths in custody still remain shrouded in mystery. There were many serious questions alleging the Government of having given the power of magistracy to the army and challenging the good intent of the Government behind the waging of this so-called military campaign terrorism.

In June-July 2003, several cases around mostly social crimes were disposed of under the Speedy Trial Act, ending in verdicts sentencing the alleged criminals to at least life terms or deaths. When the majority of the cases are left hanging in the lower courts, the quick disposal of a few raises the question in the press as to whether the Act was just a face-saver for the Government.

IV.8 Mechanism of the Poor's Access to Justice

As per findings of a survey conducted by the Transparency International Bangladesh (TIB) Chapter and a report about a Special Cell published in the *Daily Muktakantha* dated May 24, 1999, about 90 percent of the victims asserted that it was almost impossible to get help from the police without money or influence. In the matter of court cases, engagement of a lawyer is very costly and a poor litigant cannot engage a good or senior lawyer. Generally, the lawyers charge higher fees than the prescribed fixed fees. Effective measures are necessary so that only prescribed fees are charged.

Honesty and integrity of the lawyers and court employees are vital factors for the poor's access to justice. Moreover, the Civil Procedure Code (CPC) has been amended by way of amicable settlement between the parties to ensure quick disposal and the poor's access to justice.

V. KEY RECOMMENDATIONS

In an era of globalization, and interdependence of economies, the following areas should be considered and strengthened seriously in order to increase the capacity of state in promoting trade and investment in Bangladesh:

1. Political Will, Commitment and Stability
 - a. Institutionalizing democratic norms and values;
 - b. Ensuring rule of law;
 - c. Initiating electoral reform;
 - d. Improving law and order situation;
 - e. Initiating reforms to strengthen local governments;
 - f. Mapping of local resources;
 1. It is evident that the bulk portion of weaknesses of the state emanated from the lack of commitment and will of the political leaders. So any reform designed to improve the state capacity should start from the ruling political party.
 1. Opposition political parties can also play a vital role by participating in the political process in a democratic manner.
2. Good Governance to Minimize the Costs of Doing Business in Bangladesh
 - a. Streamlining bureaucracy (Training, Posting, Transfer, and Promotions);
 - b. Curbing Corruption:
 - i. Make BAC independent and more efficient;
 - ii. Strengthen and reform NBR and other relevant agencies for increased financial transparency;
 - c. Strengthening BOI to promote sectoral priority, and areas of comparative advantage by sector, including export-oriented FDIs;
 - d. Promotion of economic diplomacy;
 - e. Introducing e-governance for increased transparency;
 - f. Engaged governance: Increased efforts to improve relationships between public officials at the grassroot level and local business people;
 1. It is repeatedly noted that it is not the policy failure but the structural weaknesses of the state and its bureaucracy which is responsible for failure to attract FDIs in Bangladesh. These structural weaknesses work as an extra tax, and thus dissuade investors from coming to Bangladesh.
3. Conducive Infrastructure
 - a. Improving service delivery of utilities, including electricity and gas;
 - b. Increasing efficacy of ports;
 - c. Development of information technology backbone;
 1. Bangladesh could never attract FDIs without adequate infrastructural support. It is, however, important to note that although expansion of public sector amenities is vital, it is even more important to ensure quality and prompt service delivery of what we already have.

4. Development of Capital Market
 - a. Proper use of remittance (the prime source of foreign currency earning)
 - b. Transparency of the stock exchange activities.
5. Image Building of Bangladesh
 - 1 Chinese and Indian experiences suggest that in general expatriate investors pioneer FDIs in a country. However, Bangladesh is seriously suffering from an image crisis. Even the local investors are highly reluctant to invest in Bangladesh. Hence, the GoB has to take concerted efforts, along with aforementioned activities, to uplift the popular image of Bangladesh.

It is most likely that all these steps would improve Bangladesh's performance in trade and investment. However, how and when these steps are to be taken are subject to further in-depth studies. Such research studies should be carried out on urgent basis both to formulate well-informed policies in a rapidly changing world and to identify implementation priorities for accelerated trade and investment in the era of globalization.

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**RAS/01/061/A/09/01: Regional Initiative on HDRs in Asia and the Pacific -
Globalization and State Capacity**

Terms of Reference of National Case Studies

It is increasingly being acknowledged that the State is a key actor in the development process. It has a major role to play in making globalization useful for all; alleviating poverty and income inequality; in advancing human rights and democracy; in protecting the environment and promoting sustainable development. One of the main conclusions, which can be extrapolated from the United Nations Millennium Declaration, is that reinforcing state capacity and promoting good governance is a paramount factor in implementing the Millennium Development Goals.

How the public sector is structured, how it is administered and how it operates, as well as the policies that are pursued have a great impact on people's well being. Managing the public sector in today's environment of constant change, particularly in view of globalization, has become an increasingly demanding challenge for national decision makers, policy advisors, service delivery managers and civil servants at large. Reforming public administration systems and strengthening state institutions are key factors in order to enable people to seize the opportunities of globalization. Unfortunately, globalization has benefited only a relatively small number of countries and some regions of the world are still not integrated into the world economy. Even in countries that may have significant advances due to globalization, there are huge disparities in the distribution of its benefits.

Experience has shown that States with effective public administration systems and strong institutions have the capacity to channel globalization to their own advantage and to minimize its costs. Without building strong institutions and effective regulatory frameworks at the national level, including independent and effective judiciaries, strong parliaments, accountable executives, mechanisms of transparency and accountability, and without adequate social policies, including those on health, education, and social security systems, there are too many risks that either a country will be marginalized or it will not be able to shield the most vulnerable groups of society from the negative effects of globalization.

Trade and investments provide opportunities for benefits to both developed and developing countries. In addition to the economic and financial contribution that trade and investments may provide, they are also a growing source of social goods and services. This is particularly true of developing countries, especially the least developing countries where domestic resources are not adequate for the economy to provide the social needs of their constituents. The key consideration, however, is the institutionalization and appropriate application of the channeling of the potential benefits to be derived from trade and investments for social goods and services.

In light of the above, one of the outputs of this Project is a regional report centered on regional and country-level experiences and practices related to state capacity and globalization. The report will focus on three dimensions of state capacity that contribute to the promotion of trade and investment: (a) administrative capacity of the State, (b) systems of transparency and accountability, and (c) legal and judicial frameworks. For this purpose, six national case studies will be commissioned in the following countries: Bangladesh, China, India, Indonesia, Mongolia and the Philippines. The results of these national case studies will form the basis of the regional report.

Each national case study will address the following topics (this is not intended to be an exhaustive list):

1. Administrative capacity of the State in promoting trade and investment:
 - (a) Leadership and strategic planning capacities;
 - (b) Human resources development, including negotiating skills required to effectively participate in multilateral agreements and regional treaties; policy analysis capacity
 - (c) Performance standards for management development
 - (d) Public service professionalism
 - (e) Information technology in government operations
 - (f) Existence of Investment Councils (like in Japan)
2. Transparency and accountability in trade and investment activities:
 - (a) Anti-corruption laws
 - (b) Conventions against cross-border corruption
 - (c) Agencies and/or institutions
 - (d) Enforcement mechanisms
3. Legal and judicial framework:
 - (a) Regulatory framework for trade and investment
 - (b) Property rights laws
 - (c) Mechanisms to protect property rights
 - (d) Independence of the judiciary
 1. Training and recruitment process
 2. Appointment and term in office
 3. Codes of Ethics

It would also be useful to provide some information on the overall structure and mechanisms of access to justice for the poor (for example, public legal assistance).

The final outline will be discussed with each identified national consultant by DESA prior to the preparation of the study. Consultants will be given six months to prepare their respective studies with the first draft (in electronic form - PC version of Microsoft Word) to be submitted at the end of the fourth month of the contract. The paper should be between 20 and 30 pages at 1.5 line spacing, excluding tables and graphs. Each consultant will have an opportunity to present his/her own findings at a Senior Policy Workshop in the region to be jointly organized by DESA and UNDP. The workshop is tentatively scheduled for February-March 2003. Each of the national case studies will become the property of the Project.

EXPORT POLICY 1997-2002

The Export Policy 1997-2002 has been designed to operate in the imperatives and opportunities of the market economy with a view to maximizing export growth and narrowing down the gap between import payment and export earning. The principal objectives of this policy are:

- | To achieve optimum national growth through increase of export in regional and international market;
- | To narrow down the gap between the country's export earning and import payment through achievement of the export targets;
- | To undertake timely steps for production of exportable goods at a competitive price with a view to exporting and strengthening existing export markets and making dent in new markets;
- | To take the highest advantage of entering into the post Uruguay liberalized and globalized international market;
- | To make our exportable items more attractive to the market through product diversification and quality improvement;
- | To establish backward linkage industries and services with a view to using more indigenous raw materials, expand the product base and identify and export higher value added products;
- | To simplify export procedures and to rationalize and solidify export incentives;
- | To develop and expand infrastructure;
- | To develop trained human resources in the export sector;
- | To raise the quality and grading of export products to internationally recognized levels.

The following strategies shall be undertaken to attain the objectives of the export policy 1997 - 2001:

- | Simplifying export procedures and helping the private sector achieve efficiency.
- | Enhancing technological strength and productivity and facilitating reduction of cost and attaining internationally accepted standard of quality of exportable products and thereby consolidating their competitiveness.
- | Ensuring maximum use of local raw materials in the production of export goods and encouraging establishment of backward linkage industries.
- | Participating in the international trade fairs, specialized fairs, single country exhibitions abroad and also sending out trade missions with a view to consolidating our position in the existing market and creating new markets.
- | Encouraging export of new category high value added readymade garments and also encouraging the concerned trade associations for establishment of a Fashion Institute.
- | For promotion of high value added leather and leather goods export: providing various facilities including bonded warehouse facilities for import of materials such as raw hides, pickled, wet blue, crushed and finished leather, components and chemicals, etc., to 100 percent export-oriented leather industries.;
- | For promotion of export of shrimp: Extension and modernization of traditional/semi-intensive method of shrimp cultivation and ensuring quality as per buyer's requirements.
- | For promotion of export of jute and jute goods: Undertaking extensive publicity of jute and jute goods as environment-friendly natural fibre and diversification of the uses of jute products.

- | For promotion of export of tea undertaking program for establishing brand name and developing linkage with established blending and distributing agents.
- | For promotion of export of agro-based products: undertaking program for raising quality standard and expansion of market.
- | For the promotion of export of electrical and electronic goods (including computer software and data entry): Building and ensuring conducive infrastructure.
- | For the promotion of export of engineering consultancy and other services and sub-contracting involving, in a bigger way, Bangladesh missions abroad obtaining contracts.
- | Organizing regularly international trade fairs and product-specific fairs with the country.
- | Making appropriate development and expansion of infrastructure conducive to export.
- | Making arrangements for necessary technical and practical training for development of skilled manpower in the export sector.
- | Ensuring maximum utilization of financial and other assistance extended by the World Trade Organization to the least developed countries.
- | Extending technical and marketing assistance for development of new products and for finding appropriate marketing strategies.
- | Taking necessary steps to assist procurement of raw materials by the export-oriented industries at world price.

Export Promotion Councils/Committees

A National committee on export has been formed. The highest-level committee on export promotion is headed by the Honorable Prime Minister and consists of the Honorable Ministers for Foreign Affairs, Finance, Commerce and Industries, Planning, Jute and Textile as well as senior government officials and representatives of important trade associations. The committee reviews the export situation, provides necessary directions and readily resolves problems. For immediate attention and action on export related problem, a task force has been formed under the chairmanship of the Honorable Minister for Commerce. With a view to exchanging ideas with Chambers of Commerce and Industries, Exporters' Associations and private sector organizations in formulating export policy and strategies, and up lamenting policy decisions, an export council has been formed. A task force shall also be formed to recommend practical measures for export increase and monitoring the implementation of incentives and facilities of thrust sector and crash program items.

Commodity Councils

Commodity Councils shall be formed for jute, tea, shrimp, readymade garments and leather and leather products.

Thrust Sector

Leather and leather goods industries, high and high value added readymade garments, computer software and agro-processing sectors have been identified as thrust sectors in this export policy. Although the leather and leather goods sector has enormous export potential, the sector has not been able, till date, to achieve desired results. On the other hand, the readymade garments sector is expected to stage a breakthrough in the export of high-priced, high value-added garments of newer categories after having survived successfully the initial phase of exporting low-end garments. Like wise computer software and agro-processing sectors could not record the desired level of export through the sectors offer bright prospects for earning foreign exchange. These four sectors have been declared "Thrust Sectors" in this policy to ensure priority with the following lines of actions:

Leather and Leather Goods

Leather manufacturing units shall be modernized in order to enable them to produce increased quality of finished leather out of raw hides. With a view to reducing cost of production, steps shall be taken to establish accessories industries for producing necessary chemicals and other inputs within the country. The existing Leather Technology Institute shall be modernized for use as “Common Facilities Centre” for the country's leather units. Necessary credit facilities shall be extended for setting up of leather goods industries and efforts for marketing the produces shall be strengthened. Cluster industries comprising small units of leather goods factories shall be set up with a view to generating employment. A “leather Council” shall be formed. Industrial units having no bonded warehouse at the same time not interested to avail of duty draw back facilities shall be entitled to cash benefit in lieu of duty drawback. Import of raw hides, including wet blue and pickled leather, shall continue with the prevailing customs duty (2.5 percent) and import license fee (2.5 percent) leviable on the importation of raw leather for three years. Uniform policy on bank loan as regards criteria and rate of interest shall be followed for credit to leather sector. The total credit excluded to the leather sector shall be brought under a single bank and export will also be affected through that designated bank. After careful revision of the overall situation prevailing in the leather industries, the time limit for export of crust leather has been extended up to the year 2000. Facilities for BMRE and other transformation process shall be made available to all tanning units to enable them to switcher, by 2000, to processing crust/finished leather from wet blue leather.

Readymade Garments

All out efforts would be made and steps be taken for production and export of high priced readymade garments in light of the prevailing market demand. Immediate steps shall be taken to establish a Fashion Institute. Pending establishment of the Fashion Institute measures will be taken, under special arrangements, to extend expert services to match the actual demand. Liberal credit may be considered for capacity building and hiring technology for producer of high quality garments.

Computer Software

For the development of human resources in the software information of computer science, courses in all universities including BIT and Polytechnic Institutes and selected colleges shall be considered. Similarly, for having a pool of skilled and trained instructors, basic computer scheme at graduation level may be introduced. An Information Technology Village, making multifaceted facilities, shall be established as part of infrastructure development for promotion of export in this sector. As a fillip to effective software marketing, appropriate provisions on protection of intellectual imports shall be incorporated in the existing Copyright Act.

Agro Processing

For the development of the agro-processing industries, “Hortex Foundation” has already been established. Development activities of this sector under the Foundations programs will go on.

Export Incentives

In light of the objectives and strategies of the Export Policy 1997-2002, several new incentives and facilities have been made available to the exporters. Besides, some existing incentives have been modified and improved to make them more workable. The rest of the existing facilities and incentives will remain unchanged. The incentives as offered are enumerated below.

Fiscal Incentives

Restructuring of the Export Credit Guarantee Scheme (ECGS): At present, there are four schemes, namely, the Export Credit Guarantee (Pre-shipment), Export Credit Guarantee (Post-shipment), Export Payment Risk Policy (Comprehensive Guarantee) and Whole Turnover Pre-shipment

Finance Guarantee, available under the Export Credit Guarantee Scheme (ECGS) covering risks on export credit as well as probable commercial and political risks occurring abroad.

Convertibility of Taka

Taka has been made convertible in the current account in lieu with the policy of export-led growth in the liberalized world market. As a result, earning from the trading account shall be freely convertible into foreign exchange for import of goods (barring a few banned items). Under this arrangement, exporters shall be allowed to retain their foreign exchange earnings in their respective foreign exchange accounts gradually at higher proportion.

Utilization of Foreign Exchange by Exporters

- 1 So long, exporters were allowed to retain 20 percent of their f.o.b. earnings in their respective foreign currency accounts in US dollar or Pound Sterling. From now on, they will be entitled to retain either 40 percent of such earning or at a rate fixed by the government from time to time on proper review. However, in cases of export products where the import contents used in the manufacture of such items are relatively high (such as, naphtha, furnace oil, bitumen and other petroleum products, readymade garments and electronic goods) and in the case of export of services (legal advice, consultancy and similar professional services), the exporters concerned will be entitled to retain only 7.5 percent of their f.o.b. export earnings. Immediately on realization of export proceeds, the concerned banks will credit the exporters' foreign currency account in proportion to their respective entitlements. Exporters may utilize this foreign exchange for bona fide business purposes, namely, undertaking business trips abroad, participating in export fairs and seminars, importing raw materials, machinery and spares and even setting up overseas business offices. Foreign exchange may also be kept in the renewable fixed deposit account which will bear interest at the rate of 10 percent p.a.

Export Promotion Fund (EPF)

The following assistance and support would be provided out of the Export Promotion Fund to producers/exporters of new and non-traditional items including those under the crash program for product development and product and market diversification:

- (a) Venture capital on easy terms and low interest rates;
- (b) Assistance in obtaining foreign technology and consultancy for product development and diversification;
- (c) Assistance in fielding marketing missions abroad and participating in international fairs for market compatibility of products;
- (d) Assistance in establishing sales and display centers abroad and extending warehousing facilities;
- (e) Assistance for participation in overseas training programs on product development and marketing help develop technical skill and marketing expertise;
- (f) Assistance in any other activity related to product and market development;
- (g) Loan from GoB banks at a rate of interest of 7 percent p.a. for establishing factories as well as for operating capital (including LC money).

Extension of Time-limit for Adjustment of Export Credit from 180 days to 270 days

At present, export credit is allowed at concessionary rate of interest for a maximum period of 180 days. A section of exporters however cannot enjoy the benefit of such concessionary credit facility

due to structural characteristics of certain commodities. Under such circumstances, the time-limit for repayment of export credit has been extended from 180 days to 270 days in case of export of frozen food, tea and leather by way of relaxing the condition of submission of firm contract L/C, and considering working capital as export credit. The time limit for export credit under the Export Promotion Fund in certain cases shall be extended up to 270 days.

Export Financing

- (a) Introduction of Credit Card: In view of the risks involved in carrying of cash, foreign currency/travelers cheque while undertaking business trip abroad, the practice of issuing credit cards to exporters against their respective foreign exchange entitlements will continue.
- (b) Limit of Export Credit: Exporters may obtain export credit from commercial banks up to 90 percent of the value of their irrevocable letter of credit/confirmed contract.
- (c) Credit to first time applicant: With a view to encouraging the new comers to enter into export trade, the commercial banks will consider their credit proposals on a priority basis.
- (d) Monitoring the Overall flow of export credit: Bangladesh Bank will take necessary steps to ensure that normal flow of export credit is maintained. The C.C. limit of the exporters will be determined only on the basis of their export performance in the preceding year. This will not be subject to any general credit squeeze measure. Such credit facilities will also be available to new contracts.
- (e) Overdue interest: No overdue interest will be charged by the commercial banks in cases of export against irrevocable letter of credit on sight payment basis. In such cases, however, exporters will be required to submit necessary export documents within the specified time.
- (f) Export credit cell: A special export cell to supervise and monitor the export financing has been functioning in Bangladesh Bank. Besides, in every commercial bank a special unit has been created for processing exclusive export credit proposals.
- (g) Export monitoring: A high-powered committee has been functioning to assess the export credit requirement and to review and monitor the flow of export credit to ensure that adequate and timely credits are made available to the exporters.
- (h) Inland back-to-back letter of credit: Authorized dealers may establish inland back-to-back letter of credit in favor of local suppliers of raw materials against the corresponding master letter of credit.

Rebate on Insurance Premium

Special rebates are allowed on premium covering fire and marine insurance to export-oriented industries (non-traditional items). Such rebates will be available also to the exporters of these items on shipment of goods.

- 1 Incentives for export of non-traditional industrial products: Incentives will be provided for export of non-traditional/new industrial products, especially where value addition is 50 percent or more.
- 1 Similarly, export firms having exceeded the proportionate export target set for that product-sector will be considered for incentives facilities.

Import Facilities of Raw Materials for Export-oriented Leather Industries

To encourage increase in export of finished leather at competitive price, customs duty and import license fee leviable on import of wet blue and pickled leather by export-oriented leather industries will be exempted.

Income Tax Rebate on Export Earnings

Previously, 50 percent rebate on taxable income generated from export earning was admissible under the Finance Act every year. From now on 50 percent of the income tax on any income on export will be exempted through incorporation of a new provision in the Income Tax Ordinance itself rather than as a temporary relief hitherto granted under the Finance Acts on a yearly basis.

Lowering the Rate of AIT at Source

Tax at source on all export earnings shall be deducted at the rate of 0.25 percent.

Payment of Duty Drawback through Commercial Banks

For quick disbursement of duty drawback with a view to giving a competitive edge to our export in the international market, payments will be made by the commercial banks immediately on receipt of foreign exchange against all exports, except the deemed exports, determined on the basis of the principles laid down by the National Board of Revenue.

Bonding Facilities for Export-oriented Industries:

Bonded warehouse facilities have generated special enthusiasm among the import-led export-oriented industries. To sustain such interest, the procedures for providing bonded warehouse facilities to such industries will be further simplified, and will be extended to all industries recognized as 100 percent export-oriented industries.

Duty-free Import of Capital Machinery by Export-oriented Industries

Presently, items produced in the Export Processing Zones (EPZ) are entirely exported. Likewise, 100 percent export-oriented industries located elsewhere in the country are also required to export their produces entirely from this point of view as the objectives and functions of the industries of both locations are identical. Duty-free import facility of capital machinery has also been extended to the 100 percent export-oriented industries out side the EPZ. As for export-oriented garment factories also, import duty is nil on import of capital machinery, fabric and accessories.

Alternative Facilities in lieu of Customs Bond or Duty Drawback for Export-oriented Domestic Textile Sector and Garments Industries

During fiscal year 1995-96, the government, in an attempt to give incentive to the domestic textile and garments sector, allowed 25 percent compensatory assistance to the industries of this sector. In future also, these sectors will continue to receive reasonable facilities. Such compensatory assistance will also be admissible to a composite unit producing both fabric and garments or to the manufacturer only in case the exporter is not the producer of the local fabric provided no bonded warehouse or duty drawback facilities were availed of for such importation. If, however, the exporter is an intermediary buyer, the facility will go to the original producer of goods.

Tax Holiday

To encourage a rapid growth and attract entrepreneurs to export oriented industries, tax holiday incentive will continue till the year 2000 in consonance with the Industrial Policy. The industrial enterprises enjoying the benefit of tax holiday shall be exempted from deduction of tax at source. After 2000, decision on tax holiday will be taken in light of the government policy of that period.

Duty Drawback Scheme

- (a) Exporters of manufactured products are entitled to draw back after the export is effected.
- (b) The rate of duty drawback payable on export of all traditional and non-traditional items will be renewed at regular intervals and more and more new products will be brought under the duty drawback system.

Value Added Tax (VAT) on Packaging Materials

Should jute clothes and bags be used in the packing of export goods, VAT paid on such products will be refunded.

Simplification of the Procedure for Refund of VAT

To maintain competitiveness of export prices, VAT paid on export support services, namely, C&F service, telephone, telex, fax, electricity, insurance premium, shipping agent's commission/bill, will be refunded under a simplified procedure.

Reduced Airfreight for Export of all Crash Program Items including Fruits and Vegetable

- | Airfreight at lower rate will be changed for export of all crash program items including fruits and vegetables.
- | Withdrawal of royalty from foreign airlines extending cargo services.

Settlement of Trade Disputes

The Export Promotion Bureau will initiate steps for settlement of trade disputes through conciliation.

Recognizing Small and Medium-size Agricultural Farms as Industry

To encourage production of fruits, vegetables, fresh flowers, orchid, etc. for export, agricultural farms of a minimum size of 5 acres have been recognized as "Industry" and become eligible for all facilities of export-oriented industries.

Research and Development

Marketing of products in the international market is becoming increasingly competitive due to globalization and liberalization of trade. To sustain in the face of such stiff competition, continuous quality improvement and market adaptability have become necessary. As for this purpose, industrial enterprises should be equipped with their own Research and Development (R & D) facilities.

Commodities under the Crash Program

- | At present toys, luggage and fashion items, electronics, leather goods, diamond cutting and polishing, jewellery, silk fabric, stationery goods, cut and artificial flowers and orchid, gift items, vegetables and engineering consultancy and services have been included under the crash program. In order to boost production and export, promote goods/services under the crash program, soft-term credit will be provided for product development, market adaptation, and marketing. In addition, assistance will be provided for market exploration for obtaining joint venture. Fresh flower, fruits and bamboo, cane and wooden furniture shall be included in list of crash programing items apart from the items listed above.
- | In order to increase the export of agro-based products, necessary assistance will be provided to the high value added agricultural products.

Participation in International Trade Fairs, Organizing Single Country Exhibitions and undertaking Market Development Programmes Abroad

As a part of export promotion Bangladesh regularly takes part in international trade fairs, organizes single country exhibitions and undertakes market development programs in different countries of the world. Private enterprises and organizations are encouraged to take part in such export-oriented events and are accorded various incentives. Besides, programs to organize single country exhibitions in different countries through combined public and private initiatives will continue.

Strengthening Training on Export-related Matters

Knowledge about the facilities and incentives available in the export trade leads to intensified export activities in the country. To apprise the country's exporters of the various facilities/ incentives available, training sessions, seminars and workshops in different parts of the country under the National Export Training Program of the Export Promotion Bureau will continue to be organized.

Establishment of World Trade Centre

The government has decided to establish a World Trade Centre in Dhaka in a bid to strengthen infra-structural facilities for the development and expansion of export. An area of 6.12 acres near Hotel Sonargaon has been earmarked for this purpose.

International Trade Centre

Simultaneously with the establishment of a World Trade Centre in Dhaka, it has been decided to set up, in Chittagong, an International Trade Centre at private initiative. Necessary land for this purpose has already been allotted.

Organizing Local Fairs of International Standard

Organizing trade fairs of international standard plays a very important role in the promotion of exports. Trade fairs help product familiarization on the one hand and establishment of closer contacts between foreign buyers and local sellers on the other hand. Considering this general aspect, specialized trade fairs of international standard will be organized within the country.

EXPORT PROCESSING ZONES
(Source: Export Promotion Bureau's Website)

Introduction

In order to stimulate rapid economic growth, particularly through industrialization, the Government has adopted an “Open Door Policy” to attract foreign investment to Bangladesh. The Bangladesh Export Processing Zones Authority (BEPZA) is the official organ of the Government to promote, attract and facilitate foreign investment in the Export Processing Zones.

The primary objective of an EPZ is to provide special areas where potential investors would find a congenial investment climate, free from cumbersome procedure. Two EPZs, one in Chittagong and the other one near Dhaka, are now operational.

Following information is provided to the potential investors for investment in EPZs of Bangladesh:

Eligible Investors

100 percent foreign owned including Bangladesh nationals ordinarily resident abroad, (Type-A). Joint Venture between foreign and Bangladesh entrepreneurs resident in Bangladesh (Type-B). 100 percent Bangladesh entrepreneurs resident in Bangladesh (Type-C).

Mode of Investment

Investment in convertible foreign currencies by foreign investors. Option to establish public/private limited companies or sole proprietorship/partnership concerns.

Investment Guarantee

Foreign Private Investment (Promotion and Projection) Act 1980 secures all foreign investment in Bangladesh. OPICs (Overseas Private Investment Corporation, USA) insurance and finance programs operable. Security and safeguards available under Multinational Investment Guarantee Agency (MIGA) of which Bangladesh is a member. Arbitration facility of the International Centre for the Settlement of Investment Dispute (ICSID) available.

Telecommunications

Telex, fax and International Dialing Services connected through satellite system available.

Communications

Adequate sea, rail, road and air communication services available.

One Window Same Day Service and Simplified Procedure

BEPZA

- | Sanctions projects generally within one week.
- | Issues required Import/Export Permits.
- | Issues required Work Permits for foreign nationals working in EPZ enterprises.
- | Provides required infrastructure facilities in EPZs.
- | Offers “One Window Same Day Service” to investors in EPZs.

Production-Oriented Labor Laws

Law forbids formation of any labor union in EPZs. BEPZA is vested with responsibility to administer labor matters for all enterprises in EPZs.

Minimum Wages (Monthly)

- | Apprentices/Trainees US\$22.00
- | Unskilled US\$38.00
- | Sem-skilled US\$45.00
- | Skilled US\$63.00

Other benefits include Conveyance Allowance, House Rent, Medical Allowance and Festival Bonus.

Working Hours:

- 48 hours a week in a factory
- 40 hours a week in an office
- 5 working days a week.

Employees' Leave

- | 10 days Casual Leave
- | 17 days Annual Leave.

Facilities and Incentives

Facilities:

- | Land and factory building are available on rental basis.
- | Electricity, water, gas and telecommunications are provided by the zones.
- | Import and export permits are issued by EPZ within 24 hours.
- | Work permits are issued by BEPZA.
- | EPZ is a secured and protected area.
- | Recreational facilities are available.
- | Availability of foodstuff and beverage on payment of nominal tax for foreigners working in EPZs.
- | Potential investors are required to deal only with BEPZA for investment and all other operational purposes.

Incentives

Fiscal:

i. Tax Exemption

- a. Tax holiday for 10 years.
- b. Exemption of income tax on interest on borrowed capital.
- c. Relief from double taxation subject to bilateral agreement.
- d. Complete exemption from dividend tax for tax holiday period for foreign nationals.
- e. Exemption of income tax on salaries of foreign technicians for 3 years subject to certain conditions.

ii. Duty-Free Import and Export

- a. Duty-free import of machinery, equipment and raw materials.
- b. Duty-free import of three motor vehicles for use of the enterprises in EPZs under certain conditions.
- c. Duty-free import of materials for construction of factory buildings in the zones.
- d. Duty-free export of goods produced in the zones.

Non-Fiscal:

i. Investment

- a. All foreign investments secured by law.
- b. No ceiling on extent of foreign investment.
- c. Full repatriation of profit and capital permissible.
- d. Repatriation of investment including capital gains, if any, permissible.
- e. Remittances allowed in following cases:
 - ı Savings from earnings, retirement benefits, personal assets of individual on retirement / termination of services.
 - ı Approved royalties and technical fees.
 - ı No permission for expansion of the project or product diversification.

ii. Project Financing and Banking

- a. Offshore banking facilities available.
- b. Local and international banking facilities also wide open.

iii. Import

- a. Freedom from national import policy restrictions.
- b. Import of raw materials also allowed on Documentary Acceptance (DA) basis.
- c. Advantage of opening back to back LC for certain types of industries for import or raw materials.
- d. Import of goods from the domestic tariff area permissible.

iv. Project Implementation

- a. Re-location of existing industries from one zone to another within the permissible country.

v. Operation

- a. Sub-contracting within EPZ allowed.
- b. Inter-zone and intra-zone export permitted.
- c. All customs formalities done at the gate site of the respective factory building within the zone.
- d. Permission for import/export given on the same day.
- e. Repairing and maintenance of machinery and capital equipment from domestic tariff area are allowed.

vi. Employment

- a. Liberal employment of foreign technicians/experts allowed.
- b. Foreigners employed in the zones enjoy equal rights similar to those of Bangladesh Nationals.
- c. Law forbids formation of any labor union in the zones. Strike within the zones is prohibited.

vi. Support Services

Customs Office, Post Office, Medical Centre, Fire Station, Police Station.

Dhaka Export Processing Zone

Location: Savar

35 km from Dhaka City Centre

25 km from Zia International Airport, Dhaka

Zone Area: 58 hectares (142 acres)

Land

Total number of plots: 100
Size of each plot: 2000 sq. m.
Tariff: US\$1.50/sq. m. /year

Standard Factory Building

Space: 72,000 sq. m. in 16 blocks
Tariff: US\$2.00/sq. m. /month

Warehouse

Space: 2,300 sq. m.
Tariff: US\$2.00/sq. m. /month

Utility Services

Water Supply: DEPZ gets water from its own water supply system
Storage Capacity: 4,520,000 liters/day
Tariff: Tk. 13.56 per sq. m.
Power Supply: 11 KV, 3-phase, 50 cycles
Tariff: Tk. 2.86 per KWH (Industrial Use)
Gas Supply: 136,000 cubic meters/day or 5,667 cubic meters/hour
Tariff: Tk. 3.64 per cubic meter (Industrial Use)

Chittagong Export Processing Zone

Location: 2.40 km from the Chittagong Sea Port
5.63 km from the main business centre of Chittagong
7.24 km from the Chittagong International Airport
Zone Area: 255 hectares (630 acres)

Land

Total number of plots (planned): 430
Size of each plot: 2044 sq. m.
Tariff: US\$1.50/sq. m. /year

Standard Factory Building

Space: 39,000 sq. m. in 16 blocks
Tariff: US\$2.00/sq. m. /month

Utility Services

Water Supply: CEPZ gets water from Chittagong WASA
Tariff: Tk. 13.56 per sq. m.
Power Supply: 11 KV, 3-phase, 50 cycles
Tariff: Tk. 2.70 per KWH (Industrial Use)
Gas Supply: CEPZ gets gas from the Titas Gas Field
Tariff: Tk. 3.64 per cubic meter (Industrial Use)

**GLOBALIZATION AND STATE CAPACITY: NATIONAL CASE STUDY ON
TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND
INVESTMENT ACTIVITIES IN CHINA**

*Xin Chunying He Ming**

**I. DETERMINATION OF THE CCP AND THE CHINESE GOVERNMENT IN
FIGHTING AGAINST CORRUPTION**

The term of corruption meant differently under the planning economy system, which lasted in China for more than 30 years. A man having an extra marital affair might be considered as the corrupted person and be punished strictly, he may lose his job, and his children may be humiliated in school. A hungry mother, steals a piece of bread in public dining room may be punished as corruption too. There might be political corruption in political sense, that people were depressed, and their moral ability was deprived. But in economy sense, the country was clean. Generally speaking, public officials did not have access to get himself more shares from the public pocket, because the tight control in all aspects of social life eliminated possibilities for corruption. And that is why some elder people still think those days are the "golden time" because everyone was equal in terms of having social shares, given the fact that they lived in a very poor life, and enjoyed fewer rights. "Poor but equal" was one way to keep the social order.

It is true that corruption has become one of the major challenges to Chinese Government today. The high-speed economic development produced prosperity on one hand, and brought about problems such as corruption on the other. Studies show that most Chinese people are not happy with the situation of corruption, while benefited from economic reforms, they feel the Government needs to do more in combating corruption.

Given this background, fighting against corruption has been on the top agenda since the 13th CPC Central Committee Conference for Chinese Communist Party and Chinese Government. As President Jiang Zemin put it as a matter of "life and death of the Party and the State", he called for all members of the CCP to "fully understand the important significance for the work of fighting against corruption and building a clean and honest Government."¹ The determination to fighting against corruption has been tested in a radical way in 1989,² there are more than 10 important speeches made by top leaders of the Party and the State on fighting against corruption. As the ruling party of the State, the strong will of CPC has resulted in great number of anti-corruption regulations, and institutional capacity has been strengthened as well.

Given the efforts made, corruption in China is still on the rise. In the year 2001, Courts at all levels punished 17,931 criminals involving graft and embezzlement, including high-level officials such as Hu Changqing, Deputy Governor of Jiang Xi Province, and Cheng Kejie, Deputy President of the Standing Committee for the National People's Congress, both got death penalty. China is unique in the sense that high government officials are being executed for corruption in this country. According to the report that the submitted by the Supreme

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¹ Jiang Zemin: Speech on the Fourth Plenary of the 13th CPC Central Committee.

² The student demonstration was in the name of Anti-corruption.

Procurator's Office to the National Peoples' Congress, 45113 embezzlement, bribery and dereliction of duty cases were filed at Procurator's Office at all levels in that year. Among them there were 1335 "Big Cases", the standard is each of them involves more than one million RMB. Other than Hu and Cheng, Li Jizhou, former deputy minister of the Ministry for Public Security, was sentenced to death penalty with two-year suspension. He was involved in a smuggling case, accepted bribery from the smuggler, and interfered the investigation by using his power.³

II. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

II.1 Anti-corruption Laws

II.1.1 Development of Anti-corruption Laws

Since corruption usually linked with public power and position, so the first phrase of anti-corruption regulation was developed with the Party and administrative system, in the form of "document" or "circular". The milestone for anti-corruption legal documents was the criminal law.

Criminal Law

The criminal code was amended in 1997 on the basis of the 1979 version. Three additional amendments were added to the law in 1999 and 2001, some of the added articles are aimed at punishing new corruption cases. Now there are two specific chapters on suppression of the crime of corruption: crimes of graft and bribery, and crimes of dereliction of duty. The former includes embezzlement, accepting and offering bribes, while the latter includes abuse of power by state personnel.

Article 382 of the Criminal Code stipulates that any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement. Any person authorized by State organs, state-owned companies, enterprises, institutions or people's organizations to administer and manage state-owned property who, by taking advantage of his office, appropriates, steals, swindles own possession shall be regarded as being guilty of embezzlement. Whoever conspires with, or engage in embezzlement shall be regarded as joint offenders in the crime and punished as such. Persons who commit the crime of embezzlement shall be punished respectively in light of the seriousness of the circumstances and in accordance with the following provisions:

- (a) An individual who embezzles not less than 100,000 Yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.
- (b) An individual who embezzles not less than 50,000 Yuan but less than 100,000 Yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property.
- (c) An individual who embezzles not less than 5,000 Yuan but less than 50,000 Yuan shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual, who embezzles not less than 5,000 Yuan and less than 10,000 Yuan, shows true repentance after committing the crime, and gives up the embezzled money of his

³ Report by the Supreme Procurators Office to the National People's Congress, March 22, 2001.

own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.

- (d) An individual who embezzles less than 5,000 Yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level. Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.

For State functionaries, the law stipulates that any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds and fail to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not more than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Whoever misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen, aid to the poor, migration and social relief shall be given a heavier punishment. Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes. Any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession shall be regarded as guilty of acceptance of bribes and punished for it. Whoever has committed the crime of acceptance of bribes shall, on the basis of the amount of money or property accepted and the seriousness of the circumstances, be punished in accordance with the provisions of relevant articles in the law. Whoever extorts bribes from another person shall be given a heavier punishment.

Where a State organ, state-owned company enterprise, institution or people's organization extorts from another person or illegally accepts another person's money or property in return for securing benefits for the person, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any of the units mentioned in the preceding paragraph that, in economic activities, secretly accepts off-the-book rebates or service charges of various descriptions shall be regarded as guilty of acceptance of bribes and punished in accordance with the relevant provisions of the law.

Any State functionary who, by taking advantage of his own functions and powers or position, secures illegitimate benefits for an entrusting person through another State functionary's performance of his duties and extorts from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it. Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State functionary shall be guilty of offering bribes. Whoever, in economic activities, violates State regulations by

giving him rebates or property to a State functionary or by giving him rebates or service charges of various descriptions shall be regarded as guilty of offering bribes and punished for it.

Whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; Whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property. Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State owned Company, enterprise, institution or people's organization or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

For those who introduce a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Where a unit⁴ offers bribes for the purpose of securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with relevant provisions of this Law. Any State functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as is required by State regulations, if the amount involved is relatively large, shall be convicted and punished in accordance with the relevant provisions of this Law.

Any State functionary, whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.

Any State functionary shall, in accordance with State regulations, declare to the State his bank savings outside the territory of China. Whoever has a relatively large amount of such savings and does not declare them to the State shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or the competent authorities at a higher level.

Where a State organ, State-owned company, enterprise, institution or people's organization, in violation of State regulations and in the name of the unit, divides up State-owned assets in secret among all the individuals of the unit, if the amount involved is relatively large, the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall

⁴ Unit is translated from the Chinese term "Dan Wei", which means a working unit that could refer to a ministry or an institute, or even a company.

also, or shall only, be fined; if the amount involved is huge, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined. Any judicial organ or administrative law-enforcing organ that, in violation of State regulations and in the name of the organ, divides up in secret the fines over to the State, among all the individuals of the organ, shall be punished in accordance with relevant provisions of the law.

Audit Law

The audit law was enacted in 1994. The guideline for this law is to implement Article 91 of the Constitution, which stated that audit office shall be established by the State Council to audit and supervise the financial situation of all government departments and local governments.

No organization or individual may refuse or obstruct auditors' performance of their functions in accordance with the law, or retaliate against auditors. Persons in charge of audit institutions shall be appointed or removed in accordance with legal procedures. None of them may be removed or replaced at random unless they are found guilty of illegal acts or negligent of duties or no longer qualified for the post.

Audit institutions shall exercise supervision through auditing over the budget implementation, final accounts and management and use of extra-budgetary funds of departments (including units directly subordinate to them) at the corresponding levels and of the people's governments at lower levels. The National Audit Administration shall, under the leadership of the premier of the State Council, exercise supervision through auditing over the implementation of the central budget and submit audit reports thereon to the Premier. Local audit institutions at various levels shall, under the respective leadership of the governors of provinces, chairmen of autonomous regions, mayors, prefectural heads and heads of counties or districts as well as under the leadership of audit institutions at the next higher levels, exercise supervision through auditing over the budget implementation at the corresponding levels and submit audit reports to the people's governments at the corresponding levels and to the audit institutions at the next higher levels.

The National Audit Administration shall exercise supervision through auditing over the financial revenues and expenditures of the Central Bank. Audit institutions shall exercise supervision through auditing over the assets, liabilities, profits and losses of the State-owned monetary organizations; through auditing over the financial revenues and expenditures of State institutions; through auditing over the financial revenues and expenditures of State institutions; through auditing over the assets, liabilities, profits and losses of State-owned enterprises.

Audit institutions shall conduct audit in a regular and planned way with regard to the state-owned enterprises that are vital to the national economy and the people's livelihood, or the state-owned enterprises that heavily depend upon government subsidies, or have large amounts of losses, and other State-owned enterprise designated by the State Council or the people's governments at the corresponding levels.

Audit institutions shall exercise supervision through auditing over the budget implementation and final accounts of the State's construction projects; through auditing over the financial revenues and expenditures of the social security funds, funds from public donations and other relevant funds and capital managed by governmental departments or by public organizations authorized by the governments; through auditing over the financial revenues and expenditures of project with aids or loans provided by international organizations or governments of other countries.

In addition to the audit matters specified in this Law, audit institutions shall, in accordance with the provisions of this Law as well as relevant laws, or administrative rules and regulations, exercise

supervision through auditing over the matters that shall be audited by audit institutions as stipulated by other laws, administrative rules and regulations.

With regard to particular matters relating to the State's budgetary revenues and expenditures, audit institutions shall have the power to carry out special investigations through auditing among relevant localities, departments and units and governments at the corresponding levels and to the audit institutions at the next higher level. Audit institutions shall determine their audit jurisdiction on the basis of the auditees' subordinate relations in budgetary and financial affairs or the supervisory and managerial relations with respect to the State-owned assets of the auditees. Where a dispute arises on audit jurisdiction between audit institutions, the matter shall be determined by an audit institution superior to both disputing parties. Audit institutions at higher levels may authorize audit institutions at lower levels to audit the matters, which are within the jurisdiction of the former. Audit institutions at higher levels may directly audit the major matters under the jurisdiction of audit institutions at lower levels.

Department of the State Council and of the local people's governments at various levels, State-owned monetary organizations, enterprises and institutions shall establish and improve their internal auditing systems in accordance with the relevant regulations of the State. Such internal auditing shall be subject to the professional guidance and supervision of audit institutions. Public audit firm that independently conduct public audit according to law shall be guided, supervised and managed in accordance with relevant laws and regulations of the State Council.

Administration Supervision Law

This law is enacted to strengthen the supervision, guarantee the smooth implementation of laws and government decrees, to build an honest and clean government, to raise administrative efficiency.

Supervision organs exercise the function of supervision on behalf of the government, supervising administrative organs and public servants of the State and other persons appointed by administrative organs of the State.

Supervision will be enforced by relying on people. Supervisory organs shall institute an informing system to facilitate citizens to bring accusations or expositions against any administrative organs and civil servants, or any persons appointed by administrative organs that violate laws or are derelict in their duties.

The supervisory organ under the State Council shall supervise over all departments and their functionary. Other persons appointed by the State Council and the various departments under it, People's government of provinces, autonomous regions and municipalities directly under the Central Government and the leading members of those governments.

The supervisory organs of local people's governments are set up at and above county level, they shall exercise supervisions over the various departments and their civil servants, other persons appointed by the people's governments, the government at the next lower level and its leading members.

Where departments or persons under supervision violate laws and regulations by committing any of the following acts, administrative sanctions will be imposed: withhold the truth, provide false evidence or conceal, transfer, alter or destroy evidence; deliberately delay providing documents, data, financial accounts or other materials or information relevant to the matter under supervision or refuse to provide them; sell off or transfer suspect property during the period of investigation;

refuse to explain or clarify the questions raised by the supervisory organ; refuse to implement the supervisory decision or refuse to adopt this law, where the circumstances are serious. Whoever retaliates against or frame up any complainants, accusers, or supervisors shall be given administrative sanction, if the act constitute a crime, criminal responsibility shall be imposed through legal procedure.

Other Major Legal Documents

Other major legal documents refer to administrative regulations by State Council and its General office. Those kind of legal documents play an important role in keeping governmental officials in line. Of course, the administrative punishments are most disciplinary, but they could change the fate of a civil servant.

The most popular regulations are:

- Regulation of graft and bribery of public officials in administration 1988, by the State Council.
- Regulation of prohibiting gifts be given or accept in public affairs 1988, by the State Council.
- Regulation of restricting leading cadres to go abroad 1989, by the general office of the State Council.
- Regulations for Civil Servants 1993, by the State Council
- Regulation of Giving and accepting gifts in foreign related activities 1993, by the State Council.
- Regulation of reporting important personal affairs for leading cadres 1997, by the General Office of the State Council.
- Regulation of special inspectors 1998, by the State Council.

II.2 Conventions against Cross-border Corruption

Generally speaking, Chinese Government has been active in participating International anti-corruption efforts. In the ADB and OECD Anti-corruption Initiative for Asia-Pacific, China is an active partner. China attends the IACC conference regularly. The Seventh IACC was held in Beijing in 1995. The Supreme People's Procuratorate was the organizer. More than 900 participants, consisting government officials, judges, public prosecutors attended the conference, which was the largest since the IACC holds its regular Conference.

Chinese laws are also corresponding with international treaties on combating corruption. For example, the criminal law clearly demonstrated that the State is harsh on crimes such as smuggling and other cross-border crimes.

II.3 Agencies and Institutions

II.3.1 State Procurators Office

The State Procurators Offices are State Organs for legal supervision. There is Supreme procuratorate and people's procuratorate at various local levels. They have heavy responsibilities to supervising the law enforcement, specifically over cases of treason. They act to dismember the State and other criminal activities impeding the unified enforcement of State policies, laws, decrees and administrative orders. They also conduct investigation on criminal cases directly handled by themselves, review cases investigated by police and determine whether to approve arrest, to prosecute, to supervise over investigatory activities of the police to see if they conformed with laws,

as well as to supervise over the execution of judgments and orders in criminal cases, over prisons, detention centers, and organs in charge of reform through labor.

What we want to explain here is that the statutory procedure for the judiciary to deal with specific corruption cases is based on the Criminal Procedure Law, which provides the procuratorate with the jurisdiction over crimes of corruption by officials. However, for some cases, particularly involving high-ranking officials, the Chinese Communist Party's (CCP) committee of discipline inspection intervenes first.

The Anti-Corruption Bureau was established within the system of procuratorate in 1995. It was an effort to learn from Hong Kong, which is considered to be a good model for mainland China. The responsibility of Anti-Corruption Bureaus is:

- | to guide the investigation and pre-trial for corruption cases in the country;
- | to participate the investigation of big bribery and corruption cases;
- | to coordinate the work in investigating big corruption cases when joint work are needed;
- | to study and propose policy and legal proposals for combating corruption.

II.3.2 Supervision Ministry

The Supervision Ministry is the ministry that is in charge of the administrative supervisions over all governments divisions and their officials, governments of provinces, autonomous regions, municipalities directly under the Central Government and their officials in implementing State Laws, policies and regulations, administrative orders. Investigation shall be conducted if there are mis-conducts, and administrative punishment will be imposed according to laws and regulations.

Supervision departments are established at all levels of governments. They play an important role in guarantee clean and efficient governments. Legally, their responsibilities are:

- | to supervise administrative organs at all levels in implementing state laws, regulations, orders, and decrees
- | to accept complaints and charges against state organs and their functionary for violation of the law or dereliction of duty;
- | to investigate and punish acts of state administrative organs, functionary and other staff who are appointed by administrative organs if they violated laws and policies.

II.3.3 Audit Institutions

According to the law, the State Council shall establish the National Audit Administration to take charge of the audit work throughout the country under the leadership of the Premier of the State Council. The Auditor-General shall be the administrative leader of the National Audit Administration.

Audit institutions of the people's governments of provinces autonomous regions, municipalities directly under the Central Government, cities divided into districts, autonomous prefectures, counties, autonomous counties, cities not divided into districts and municipal districts shall be in charge of the audit work within their respective administrative areas under the respective leadership of governors of provinces, chairmen of autonomous regions, mayors, prefectural heads, or heads of counties and districts as well as under the leadership of audit institutions at the next higher levels. Local audit institutions at various levels shall be responsible and report on their work to the people's governments at the corresponding levels and to the audit institutions at the next higher levels and their audit work shall be directed chiefly by the audit institutions at the next higher level.

Audit institutions may, as required by work, appoint resident audit officers within areas under their jurisdiction. Resident audit officers shall, according to the authorization of audit institutions,

conduct audit work in accordance with the law. Funds necessary for audit institutions to perform their functions shall be included in the budgets of the governments and guaranteed by the people's governments at the corresponding levels. Auditors shall possess the professional knowledge and ability suitable to the audit work they engage in. In handling audit matters, if auditors have an interest in the auditees or the audit items, they shall withdraw. Auditors shall be protected by law in performing their functions.

II.3.4 Internal Setting in all Governmental Agencies

It is a special feature of China that supervision organs are set in all governmental agencies, state-owned enterprise, hospitals, even schools. The mission of those supervision organs are supposed to watch their workers in complying with laws and regulations. There are disagreements over the effectiveness of those settings, but they are an integral part of the whole supervision mechanism.

II.4 Enforcement Mechanism

Some so-called anti-corruption laws are, strictly speaking, not laws but political and disciplinary norms formulated directly by the CCP or jointly by the CCP and governmental agencies. In fact, the CCP's Central Committee for Discipline Inspection (CCDI) has prepared numerous disciplinary documents aimed at curbing corruption. At administrative level, as we presented in the first section of this paper, there are many regulations targeting on the behaviors of State functionary, the last measure is legal, when a corruption case was brought to court, laws will be applied. It is like a "net", as the old Chinese proverb describe as "the net of heaven never leak".

III. LEGAL AND JUDICIAL FRAMEWORK

III.1 Regulatory Framework for Trade and Investment

III.1.1 Law on Foreign Capital Enterprise

The law on foreign capital enterprise was enacted in 1986. This law is formulated to protect the lawful rights and interests of the parties in Chinese-foreign economic contracts. Article 4 of the Law stipulates that the investments of a foreign investor in China, the profit earned by them and other lawful rights and interests, are protected by Chinese law. The State shall not nationalize any enterprises with foreign capital.

Under special circumstances, when public interest requires, enterprises with foreign capital may be requisite by legal procedures and appropriate compensation shall be made. According to this law, if an enterprise with foreign capital meets the conditions of legal person under Chinese law shall acquire the status. Enterprises with foreign capital shall conduct their operations and management in accordance with laws and shall be free from any interference. Enterprises with foreign capital must set up account books in China, conduct independent accounting, submit the fiscal report and statements as required, and accept supervision by the financial and tax authorities.

III.1.2 Law on Chinese Foreign Contractual Joint Ventures in 1988

This law is formulated to expand economic cooperation and technological exchange with foreign countries, to promote the joint establishment by foreign enterprises and other economic organizations or individuals with Chinese enterprises or other economic organizations in setting up contractual joint ventures on the principal of equality and mutual benefit. The State shall, according to law, protect the lawful rights and interests of the contractual joint ventures and of the Chinese and foreign parties.

The application for the establishment of such a joint venture shall be examined and approved by relevant agencies and the examination and approval authority shall decide within 45 days. Once the

joint venture is approved, the parties shall apply to the administrative authorities within 30 days to obtain a business license. The management and production is free from interference. Any disputes arising from the execution of the contract shall be settled through consultation or mediation. In case both parties are unwilling to settle through consultation or mediation, they may choose a Chinese Arbitration Agency, they can also bring the case to Chinese Court if no arbitration clause is provided.

In terms of trade there are laws and regulations, but more important is the commitment to WTO, since China is now a party State. This paper will provide China's commitment with WTO agreement at the end of the paper.

III.1.3 The Foreign Trade Law

The foreign trade law was enacted in 1994 in order to provide a suitable environment for foreign trade. Article 4 of the Law stated that the State shall institute a uniform system of foreign trade and safeguard a fair and free foreign trade order in accordance with the law. China promotes and develops trade relations with other countries and regions on the principle of equality and mutual benefits. In foreign trade, China grants the most favored nation treatment and the national treatment to other signatories or acceding parties on the basis of the international treaties and agreements that China has signed or acceded to, or to the other party under the principle of mutual benefit and reciprocity.

Cross-boarder economic crimes are strictly forbidden under this law. Chapter 7 of the law is concentrated on legal liabilities for such illegal acts. According to those articles, whoever smuggles goods that are prohibited or restricted to whose import and export, such an act constitutes a crime, shall be investigated for criminal responsibility. If such an act does not constitute a crime, the offender shall be punished by the Customs Law. Their business licenses for foreign trade may also be revoked.

For those who counterfeits or alters certificates of origin or license of import and export shall be investigated for criminal responsibility connected to relevant articles of Criminal Law. Where a unit commits the crime specified, a fine shall be applied. Persons directly in charge shall be investigated for criminal responsibility, their business license may also be revoked. Whoever knowingly uses counterfeited or altered licenses to import and export goods shall be punished according to the relevant articles of the Criminal Law.

Whoever in violation of this law, import or export technologies that are prohibited or restricted, if such an act constitutes a crime, shall be investigated for personal gains or abuse of power.

The State functionaries engaged in foreign trade, who neglect their duties or practice irregularities for personal gains or abuse their power, shall be investigated and punished. If their acts do not constitute a crime, they shall be given administrative sanctions.

The State functionaries engaged in foreign trade who by taking advantage of their office extort other persons' money or goods or illegally accept other persons' money or goods so as to seek benefits for such persons, shall be investigated for criminal responsibility, if such an act does not constitute a crime, administrative sanctions shall be imposed.

III.2 Property Rights Laws

There are a number of property rights laws in China. The Trade Mark Law was enacted in 1982, the Patent Law was enacted in 1984, and the Copy Right Law in 1990.

III.2.1 Protection of Trade Marks

The Trade Mark Law was enacted in 1982 with two amendments in 1993 and 2001. Article 1 of the Law stipulates that "this law is formulated for the purpose of improving the administration of trade marks, protecting the right to exclusive use of trade marks and encouraging producers to guarantee the quality of their goods and maintain the reputation of their trade marks, so as to protect the interests of consumers and promote the development of the socialist commodity economy."

Any of the following acts shall be an infringement of the right to exclusive use of a registered trademark:

- | using a trade mark which is identical with or similar to the registered trade mark on the same kind of goods or similar goods without a license from the owner of that registered trade mark;
- | manufacturing or selling, without authorization, representation of the registered trademark of another person; or harming, in other ways, another person's right to exclusive use of a registered trademark.

The party whose right has been infringed may request the administrative department for industry and commerce to handle the matter, they should stop the infringement act immediately, and to compensate the party whose right has been infringed. If the infringement is serious, and the parties do not agree with the settlement, they can bring a lawsuit to court.

III.2.2 Protection of Patent

The patent law was enacted in 1984 with two amendments in 1992 and 2000. This law is formulated to protect patent rights for inventions and creations, to facilitate their popularization and application, promote the development of science and technology.

If any acts of infringement arise from the exploitation of a patent without the authorization of the patentee, the patentee or interested parties may request the patent administrative authorities to handle the matter or may directly file a lawsuit in court. Any staff member of the patent Office or any of the relevant state functionaries engages in malpractice for benefit of himself or his friends, administrative sanction shall be imposed. If the case is serious, criminal liability shall be applied *mutatis mutandis* of the Criminal Law.

III.2.3 Protection of Copy Right

According to the copy right law, anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringement, eliminating its ill effects, making a public apology, and paying damages, depending on the circumstances:

- | publishing a work without the permission of the copyright owner;
- | publishing a work of joint authorship as one's very own without the consent of the co-authors;
- | affixing one's name to a work created by another person, for fame or for gain, without having participated in its creation;
- | misrepresenting or distorting a work created by another person;
- | making use of a work either by way of performance, broadcasting, exhibition, publication, and production of motion pictures, television programs or video recordings, or through adaptation, translation, annotation, or compilation, without the permission of its copyright owner, unless otherwise provided in this Law;
- | making one's of a work created by another person, without paying remuneration in accordance with regulations;

- | making live broadcasts without the permission of the performers;
- | other acts of infringement of copyright, or of relevant rights and interests related to copyright.

III.3 Mechanisms to Protect Property Rights

Anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liability for such remedies as ceasing the infringement, eliminating its ill effects, making a public apology, for paying damages, and may, in addition, be subjected by the copyright administration department to such administrative sanctions as confiscation of illegal income and infliction of a fine:

- | appropriating or plagiarizing a work created by another person;
- | reproducing and distributing a work for commercial purposes without the permission of its copyright owner;
- | publishing a book of which the exclusive right of publication is enjoyed by another person;
- | producing and publishing a sound or video recording without the permission of the performer;
- | reproducing and distributing a sound or video recording produced by another person without the permission of the producer;
- | reproducing and distributing a radio or television program without the permission of the radio or television station which has produced it;
- | producing or selling a work of fine art with forged signature of another author.

A party that fails to perform his contractual obligations, or performs them in a manner, which is not in conformity with the agreed terms, shall bear civil liability in accordance with the relevant provisions of the General Principles of the Civil Law. Any dispute over infringement of copyright may be settled through mediation. The dispute may be brought before a people's court if either on settlement can be reached, or a party has retracted from the settlement reached through mediation. If any party refuses to accept mediation, he may also directly bring the dispute before a people's court.

Any dispute over a copyright contract may be settled through mediation, or be submitted to a copyright arbitration agency for arbitration in accordance with the arbitration clause of the contract or a written arbitration agreement subsequently concluded. Parties concerned shall execute the arbitral award. In case a party fails to execute the award, the other party may apply to a people's court for its enforcement. The court where the enforcement of the award is sought shall have the right to refuse its enforcement, if the court finds that the award is in violation of the law. When the court has refused the enforcement, any party may bring the dispute before a people's court. Where there is on arbitration clause in the contract and on arbitration agreement subsequently concluded either, parties concerned may directly bring the dispute before a people's court. Any party refusing to accept an administrative sanction may bring the case before a people's court within three months from receive the administrative sanction paper.

III.4 Independence of the Judiciary

The constitutional base for independent judiciary is stated in Article 126, which says that the people's court exercises judicial power independently in accordance with the provisions of the law, and is not subject to interference by any administrative organ, public organization or individual.

III.4.1 Qualifications for Judges

The Judges Law was enacted in July 1995, which stated that to be of the nationality of the People's Republic of China, one must have the following qualifications:

- | to have reached the age of 23;
- | to endorse the Constitution of the People's Republic of China;
- | to have fine political and professional quality and to be good in conduct;
- | to be in good health; and
- | to have worked for at least two years in the case of graduates from law specialties of colleges or universities or from non-law specialties of colleges or universities but possessing the professional knowledge of law;
- | or to have worked for at least one year in the case of Bachelors of Law.

Those who have Master's Degree of Law or Doctor's Degree of Law may be not subject to the abovementioned requirements for the number of years set for work.

Persons to be appointed judges or assistant judges for the first time shall be selected through public examination and strict appraisal from among the best qualified for the post, and in accordance with the standards of having both ability and political integrity. Persons to be appointed presidents, vice-presidents, members of the judicial committees, chief judges, and associate chief judges of divisions shall be selected from among those who are experienced in practical work.

Persons to have been subjected to criminal punishment for commission of a crime; or have been discharged from public employment shall not hold the post of a judge.

III.4.2 Training and Recruitment Process for Judges

The judicial personnel who do not possess the qualifications as provided prior to the implementation of this Law shall receive training so as to meet the qualifications as provided by this Law within a prescribed time limit. The specific measures shall be laid down by the Supreme People's Court.

III.4.2.1 Appointment and Term in Office

Article 11 of the Judges Law stipulates that a judge shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of appointment or removal as prescribed by the constitution and laws. The President of the Supreme People's Court shall be elected or removed by the National People's Congress, the vice-presidents, members of the judicial committee, chief judges and associate chief judges of divisions of the National People's Congress upon the recommendation of the President of the Supreme People's Court. The presidents of the local People's Courts at various levels shall be elected or removed by the local People's Congresses at various levels. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the People's Congresses at the corresponding levels upon the recommendation of the presidents of those courts. The appointment or removal of the presidents of the intermediate People's Courts, set up in prefectures of the provinces or autonomous regions or set up in the municipalities directly under the Central Government, shall be decided by the standing committees of the People's Congresses of the provinces, autonomous regions or municipalities directly under the Central Government on the basis of the nominations made by the respective councils of chairmen. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the people's congresses of the provinces, autonomous regions or municipalities directly under the Central Government upon the recommendations of the presidents of the higher People's Courts. The

presidents of the local People's Courts at various levels set up in the national autonomous areas shall be elected or removed by the people's congresses at various levels of the national autonomous areas. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendations of the presidents of those courts. The assistant judges of the People's Courts shall be appointed or removed by the presidents of the courts where they work. The measure for the appointment or removal of the presidents, vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges of the special People's courts such as the military courts shall be formulated by the Standing Committees of the National People's Congress separately.

III.4.2.2 Codes of Ethics

If a judge is found to be in any of the following circumstances, a report shall be submitted according to law concerning the removal of his or her post:

- | having forfeited the nationality of the People's Republic of China; having been transferred out of this court;
- | having no need to maintain his or her original post after a change of post;
- | being determined to be incompetent in the post through appraisal;
- | being unable to perform the functions and duties of a judge for a long period of time due to poor health;
- | having retired from the post; having resigned the post, or having been dismissed;
- | being disqualified from continuing to hold the post because of violation of discipline, law or commission of a crime; or
- | other circumstances that call for removal of the post.

No judges may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, procuratorial organs, enterprises or institutions, or serve as lawyers.

Judges who are connected by husband-wife relationship, or who are directly related by blood, collateral related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

- | the president, vice-presidents, members of the judicial committee;
- | chief judges or associate chief judges of divisions in the same People's Court; the president, vice-presidents, judges or assistant judges in the same People's Court;
- | the chief judge, associate chief judges, judges or assistant judges in the same division;
- | or
- | presidents or vice-presidents of the People's Courts at the levels next to each other.

No judges may commit any of the following acts:

- | spread statements damaging the prestige of the State;
- | join illegal organizations;
- | take part in such activities as assembly, procession and demonstration against the States, and participate in strikes;
- | embezzle money or accept bribes;
- | bend law for persons gain;

- | extort confessions by torture;
- | conceal or falsify evidence;
- | divulge State secrets or secrets of judicial work;
- | abuse functions and powers; and
- | infringe upon the legitimate rights and interests of citizens , legal persons or other organizations;
- | neglect his or her duty so as to wrongly judge a case or to cause heavy losses to the party concerned;
- | intentionally delay the handling of a case so as to affect the work adversely;
- | take advantage of the functions and powers to seek gain for himself or herself or other people;
- | engage in profit-making activities;
- | meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent ; or
- | commit other acts in violation of law or discipline.

A judge who has committed any of the acts listed above shall be given sanctions; if the case constitutes a crime, he or she shall be investigated for criminal responsibility. Sanctions include a disciplinary warning, a demerit recorded, a grave demerit recorded, demotion, dismissal from the post and discharge from public employment. The salary of a judge who has been dismissed from the post shall at the same time be reduced and his or her grade be demoted. A sanction shall be authorized and procedures gone through in accordance with the relevant regulations.

III.4.3 Training and Recruitment Process for Procurators

Qualifications for a public Procurator is provided by the Law for Procurators. Article 10 of the Law states that a public procurator must possess the following qualifications:

- | be of nationality of the People's Republic of China;
- | have reached the age of 23;
- | endorse the Constitution of the People's Republic of China;
- | have fine political and professional quality and to be good in conduct;
- | be in good health;
- | have worked for at least two years in the case of graduates from law specialties of colleges or universities or from non-law specialties of colleges or universities but possessing the professional knowledge of law; or
- | have worked for at least one year in the case of Bachelors of Law.

Those who have Master's Degree of Law or Doctor's Degree of Law may be not subject to the abovementioned requirements for the number of years set for work. The public procurators who do not possess the qualifications as provided prior to the implementation of this Law shall receive training so as to meet the qualifications as provided by this Law within a prescribed time limit. The specific measures shall be laid down by the Supreme People's Procuratorate.

According to Article 11, persons who have been subjected to criminal punishment for commission of a crime or have been discharged from public employment shall not hold the post of a public procurator.

A public procurator shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of appointment or removal as prescribed by the Constitution and laws.

The Procurator-General of the Supreme People's Procuratorate shall be elected or removed by the National People's Congress. The Deputy Procurators-General, members of the procuratorial committee and the procurators shall be appointed or removed by the Standing Committee of the National People's Congress upon the recommendation of the Procurator-General of the Supreme People's Procuratorate. The chief procurators of the local People's Procuratorates at various levels shall be elected or removed by the local People's Congresses at the corresponding levels. The deputy chief procurators, members of the procuratorial committees and procurators shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of those procuratorates. The appointment or removal of the chief procurators of the local People's Procuratorates at the various levels must be reported to the chief procurators of the People's Procuratorates at the next higher level, who shall submit the matter to the standing committee of the people's congress at that level for approval. The chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of the branches of the People's Procuratorial set up in prefectures in the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government. The assistant procurators of the People's Procuratorates shall be appointed or removed by the chief procurators of the procuratorates where they work. The measures for the appointment or removal of the chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of such special People's Procuratorates as the military procuratorates shall be formulated by the Standing Committee of the National People's Congress separately.

III.4.3.1 Qualifications for Procurators

Persons to be appointed procurators or assistant procurators for the first time shall be selected through public examination and strict appraisal, from among the best qualified for the post, and in accordance with the standards of having both ability and political integrity. Persons to be appointed chief procurators, deputy chief procurators or members of procuratorial committees shall be selected from among those who are experienced in practical work.

If a public procurator is found to be in any of the following circumstances, a report shall be submitted according to law concerning the removal of his or her post:

- | having forfeited the nationality of the People's Republic of China;
- | having been transferred out of this procuratorate;
- | having no need to maintain his or her original post after a change of post;
- | being determined to be incompetent in the post through appraisal;
- | being unable to perform the functions and duties of a public procurator for a long period of time due to poor health;
- | having retired from the post; having resigned the post, or having been dismissed;
- | being disqualified from continuing to hold the post because of violation of discipline, law or commission of a crime; or
- | other circumstances that call for removal of the post.

Where an elected chief procurator of a People's Procuratorate does not possess the qualifications as provided by this law, or a chief procurator of a People's Procuratorate is elected in violation of the statutory procedures, the chief procurator of a People's Procuratorate at the next higher level shall

have the power to apply to the standing committee of the people's congress at that level for disapproval.

The Procurator-General of the Supreme People's Procuratorate and the chief procurators of the People's Procuratorate of the provinces, autonomous regions or municipalities directly under the Central Government may make proposals to the standing committees of the people's congresses at the corresponding levels to remove or replace a chief procurator, a deputy chief procurator or a member of the procuratorial committee of a People's Procuratorate at lower levels. No public procurators may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, judicial organs, enterprises or institutions, or serve as lawyers.

Public procurators who are connected by husband-wife relationship, or who are directly related by blood, collaterally related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

- | the chief procurator, deputy chief procurators, or members of the procuratorial committee in the same People's Procuratorate;
- | the chief procurator, deputy chief procurators, procurators or assistant procurators in the same People's Procuratorate;
- | the procurators or assistant procurators in the same division; or
- | chief procurators or deputy chief procurators of the People's Procurators at the levels next to each other.

No public procurators may commit any of the following acts:

- | spread statements damaging the prestige of the State;
- | join illegal organizations;
- | take part in such activities as assembly, procession and demonstration against the State; and
- | participate in strikes;
- | embezzle money or receive bribes;
- | bend law for personal gain;
- | extort confessions by torture;
- | conceal or falsify evidence;
- | divulge State secrets or secrets of procuratorial work;
- | abuse functions and power;
- | infringe upon the legitimate rights and interests of citizens, legal persons or other organizations;
- | neglect his or her duty so as to wrongly judge a case or to cause heavy losses to the party concerned;
- | intentionally delay the handling of a case so as to affect the work adversely;
- | take advantage of the functions and powers to seek gain for himself or herself or other people;
- | engage in profit-making activities;
- | meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent; or
- | commit other acts in violation of law or discipline.

A public procurator who has committed any of the acts listed of this law shall be given sanctions;

if the case constitutes a crime, he or she shall be investigated for criminal responsibility. The sanctions include: a disciplinary warning, a demerit recorded, a grave demerit recorded, demotion, dismissal from the post and discharge from public employment. The salary of a public procurator who has been dismissed from the post shall at the same time be reduced and his or her grade be demoted.

A sanction shall be authorized and procedures gone through in accordance with the relevant regulations. The salary system and scales for public procurators shall, in light of the characteristics of procuratorial work, be formulated by the State; the salary of a public procurator who has made special contributions may be raised in advance in accordance with regulations. Public procurators shall enjoy procuratorial allowances, regional allowances and other allowances and insurance and welfare benefits as prescribed by the State.

III.5 Access to Justice for the Poor: Legal Aid

China's legal aid system emerged in the mid-1990s. Even though there is no unified legal aid law in the State level till now, but many regulations have been adopted in central and local level. It is not designed for fighting against corruption directly, but empowers the poor to seek justice. Of course, it is a useful tool for the grassroots to appeal to the formal legal institutions.

China's Ministry of Justice formally put forward the proposal to establish legal aid system in 1994. A pilot project of legal aid was initiated in some big and medium-sized cities. The practice had gained great experiences for the formal system to be built.

The Criminal Procedure Law and the Law for Lawyers amended in 1996 provided the legal base for the legal aid system. Article 34 of the Law stipulated as follows:

"If a case is to be brought in court by a public prosecutor and the defendant involved has not entrusted anyone to be his defender due to financial difficulties or other reasons the People's Court may designate a lawyer that is obligated to provide legal aid to serve as a defender."

If the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is to provide legal aid to serve as a defender.

If there is any possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is to provide legal aid to serve as a defender.

Since April 1997, the Ministry of Justice, together with the Supreme People's Court, the Supreme Procuratory, the Ministry of Public Security, Ministry of Civil Affairs, issued many documents on legal aid. Local regulations were also enacted to meet the need. Till now, more than 20 provinces have adopted local regulations. It would be fair to say that legal aid is in a stage of standardization.

As rules are made, legal aid centers that are to implement those rules are taking shape. There are more than 2000 legal aid centers at different level, more than 8300 legal aid practitioners nationwide. Lawyers, notaries, grassroots legal workers are also providing legal aid when needed. Various social organizations, such as the All China Women's Federation, All China Trade Union, the Youth League and the Association for the Handicapped, have set up legal aid institutions to provide legal aid.

Legal aid centers are structured in four levels: the Legal Aid Center under Ministry of Justice in State Level, provincial level, municipality level, county and district level. The first two level legal

aid centers are responsible for management, and the real legal aid work is done in municipality, county and district level for their respected areas.

To qualify for legal aid, a citizen must show firstly that he has reasonable ground to request for legal assistance in order to protect his legal rights. He must meet the minimum standard of living or unemployment relief stipulated by the local government, or other proofs to show that he has real financial difficulties in paying the legal cost. Legal aid is provided in the form of legal advice, mediation, defense, representation of parties to court and notary service.

IV. WTO COMMITMENT TO TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

China's accession of the WTO is considered to be the "win-win" game both for China and for the international community. China undertakes that only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are published and readily available to other WTO Members, individuals and enterprises, shall be enforced. In addition, China shall make available to WTO Members, upon request, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange before such measures are implemented or enforced. In emergency situations, laws, regulations and other measures shall be made available at the latest when they are implemented or enforced.

IV.1 Transparency

China shall establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange. After publication of its laws, regulations or other measures in such journal China shall provide a reasonable period for comment to the appropriate authorities before such measures are implemented, except for those laws, regulations and other measures involving national security, specific ensures setting foreign exchange rates or monetary policy and other measures, the publication of which would impede law enforcement. China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.

China shall establish or designate an inquiry point where, upon request of any individual, enterprise or WTO Member, all information relating to the measures required to be published under paragraph 2(C) of the Protocol may be obtained. Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request. Notice of the delay and the reasons therefore shall be provided in writing to the interested party. Replies to WTO Members shall be complete and shall represent the authoritative view of the Chinese government. Accurate and reliable information shall be provided to individuals and enterprises.

IV.2 Judicial Review

China shall establish, or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article CL of the GATS and the relevant provisions of the TRIPS Agreement. Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

Review procedures shall include the opportunity of appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any right to further appeal.

ADMINISTRATIVE CAPACITY, CORRUPTION REGULATION, AND JUDICIAL INDEPENDENCE IN INDIA

*Errol D'Souza**

I. INTRODUCTION

As economies globalize the effectiveness with which nations can benefit from this depends crucially on the capacity of governments to manage resources efficiently as well as to formulate, implement, and enforce sound policies. The benefits from this in turn depend on the quality of the institutions that govern economic and social interaction as the delivery of services is mediated through institutions. This paper accordingly inquires into the organizational capacity, responsiveness, and motivation of the state administration with reference to India. This inquiry is guided by the premise that the benefits of integration into the world economy are hindered when organizational and technical capacity in the state administration is weak. Besides administrative capacity, the broader environment that includes the degree to which dysfunctional behavior and the subversion of institutions through corruption affects the conduct of ordinary business life through subverting rules and regulations is another aspect of the governance of institutions that is inquired into. Finally, the judiciary provides security against corruption and expropriation and as an enforcement institution its success depends largely on the extent of its independence as well as the training and recruitment of the individuals who are its agency. Thus, the paper concludes by inquiring into how independent the judiciary is, and the adequacy of judges training and tenure that affects their ability to dispense justice. The mechanism of public legal assistance so as to reduce exclusion from justice in India is also described.

II. ADMINISTRATIVE CAPACITY

The administrative system in India has evolved from the time of the British rule and now has five distinguishing features:

- (1) The district as the basic unit of administration;
- (2) Centralization of decision making as the principle in policy;
- (3) A single dominating civil service with the Indian Administrative Service as the elite occupying the top position among other allied and subordinate services;
- (4) A system of elaborate rules and regulations as a means of maintaining control over the administration that comprises people from diverse social and training backgrounds and who are dispersed far from the administrative centers;
- (5) A split system of functioning ostensibly to separate questions of policy from those of administration.¹ The Desk Officer system introduced in 1973 was intended to deal with policy-making, planning and problem solving. The Secretariat continued to deal with administration.

With the advent of globalization, the Government of India, through its Department of Administrative Reforms, organized a national debate on how to make administration responsive, accountable and effective. An Action Plan was discussed and concretized in a Conference convened by the Prime Minister of all the Chief Ministers of the states. This Action Plan dealt with

- (1) How to make government accountable and citizen friendly;
- (2) Transparency and the right to information; and
- (3) Improving the performance and integrity of the public services.

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¹ Under Imperial rule, the system had Secretariat and Executive Offices.

An outcome of this has been that a number of Citizen's Charters have been instituted by central departments and state governments (Annual Report, 1997-98 of Ministry of Personnel, Public Grievances and Pensions, Government of India). Fixed time limits have been specified for handling grievances and publicizing the names of officers handling grievances and a system of computerized monitoring has been installed in many departments. With a view to simplifying laws and procedures, a Commission on Review of Administrative Laws was set up in 1998. The Commission recommended:

- (1) Compilation of up-to-date information about rules, regulations, and procedures under different Central Laws administered by various Ministries;
- (2) Amendments to 109 Acts;
- (3) Repeal of 1382 Central Laws of about 2500 Laws in force as they have become irrelevant;
- (4) Unification and harmonization of statutes, laws and regulations with reference to the perspective of domestic and foreign investors, trade and industry;
- (5) Expansion of the system of alternate dispute resolution and more effective utilization of the Arbitration and Conciliation Act.

The follow-up action on this has been impressive with implementation the recommendations of the Commission being coordinated by the Department of Administrative Reforms and Public Grievances and the Legislative Department. Three hundred eighty of the 1382 Central Laws recommended for repeal have already been repealed. The Department of Legal Affairs has created the International Centre for Alternate Disputes Resolution as a private registered society in Hyderabad that trains arbitrators, conciliators, and mediators, and provides model contract clauses to build arbitration into business relationships. These conciliation clauses are in consonance with the United Nations Commission on International Trade Laws model.

The administration has also drawn up a Minimum Agenda for e-Governance which includes the setting up of LAN, training and capacity building in IT, redress of grievances using IT, making available forms on web sites and enabling the submission of these forms online, etc. IT Managers have been designated in various Ministries and about one-third of the Ministries have online delivery of services. A Plan scheme to pilot projects in administrative reforms in the following areas is also being implemented Evaluation and Benchmarking, Development of Knowledge Management System, and Assessment of Quality in Government.² A citizen's charter initiative is also on since the last five years. These charters have been framed for many central ministries and state governments and publicize the commitment of the organizations, expected standards of service delivery, timeframe, grievance redress mechanism, etc. Computerized Information and Facilitation Counters (IFCs) have also been set up in various ministries and departments to provide information about schemes and procedures and to appraise the status of applications and grievances. A code of conduct prescribing standards of integrity for the public services has also been formulated and endorsed by the Chief Ministers' Conference and at present is being given a legal shape.

Despite these positive changes, for the administrative set up in India, amongst the four stages in the decision-making process for any new investment decision by a foreign investor - (1) screening, (2) planning, (3) implementing, and (4) operating and expanding - the biggest barrier is at the screening stage itself according to the Boston Consulting Group (BCG) with the perception being that even "before the foreign investor may even consider a project, he is already Enroned." The impression that investors carry, according to BCG, is that

² A Manual of Quality Management in Government is already published and circulated to central and state administrations and training institutes.

"these guys are nice but haven't organized themselves" which points to the need for attention to government process and machinery. Similarly, McKinsey in 2001 found that the time taken for application and approval of FDI projects was too long. Multiple approvals and delays in receiving licenses have resulted in a loss of investor's confidence. The Confederation of Indian Industry found for instance that a typical power project requires 43 central government clearances and 57 state government level clearances. Even though the number of clearances may be similar in OECD countries, the process is more transparent and relies more on self-certification. An AT Kearney survey pointed out that bureaucracy and redtape topped the list of investor concerns. The Federation of Indian Chambers of Commerce and Industry (FICCI) has also recently conducted a study on the experience of foreign direct investors in India and the obstacles mentioned include the following: plethora of clearances, archaic legislations (India does not have a separate Foreign Investment Law), centre-state duality, weak database, unhelpful bureaucracy, labor laws and weak image.

Clearly, India's main obstacle from enjoying the benefits of globalization is its quality of governance. At present, the Department of Administrative Reforms & Public Grievances has responded at a very elementary level by introducing an Incentive Scheme for Model Behavior which deals with clearing, cleanliness, punctuality, availability and to some extent innovative efforts to improve work in qualitative terms. This is on a pilot basis and a very limited response. Much more needs to be done in terms of evaluation and benchmarking, the application of information technology, and the development of a knowledge management system.

In India, the bureaucracy has been identified with a culture of conformism amongst employees and a higher authority appropriation by the management. For it to become an effective instrument of governance, there is an urgent need for change in the following dimensions:

- (1) From an administrative culture of conformity with procedures to a culture of performance;
- (2) From a culture providing subservice to a culture of responsibility;
- (3) From a budgeted cost culture to a culture of cost awareness;
- (4) From a continuity and stability culture to a culture of innovation and progressive development.

The initiatives needed to bolster the administrative capacity of the state span range of measures that include product, service and process quality improvements, as well as measures related to costs and productivity, and people involvement and development. The following criteria point to the enabling actions required in this regard.

- (1) Leadership - Strong and sustained support of political leaders is an essential condition for the success of the reform. Leadership stems from an involvement of the head of government, cabinet ministers, and the administrative heads of departments. As of now, politicians view the bureaucracy as an obstacle to the achievement of their political goals which has resulted in the politicization of the bureaucracy and has compromised public service integrity and a loss of ethics in public life. The administration, on the other hand, needs to encourage employee empowerment and take an active role in quality enhancement and training in an attempt to move from being supervisors to becoming leaders. The Fifth Central Pay Commission of the Government of India had envisaged a system that is geared to the emergence of "Administrative Entrepreneurs" who take risks and stick their necks out for the benefit of the public. Such public-spirited persons do exist in the administrative services who can be ignited to become visionaries.

- (2) Policy and Strategy - The administration of government needs to declare a formal policy of serving the citizen through benchmarking with other administrative departments elsewhere, staff appraisals, and regular reviews. Central to success is the induction of processes whereby prior options are reviewed and consultation ranges from staff to government to business groups whilst setting agenda. A Department of Administrative Reforms, headed by a senior and outstanding bureaucrat, needs to be established as the most important department of the government.
- (3) People Management - The full potential of the administration is realized through the development of skills. In a narrow sense, this is the stock of expertise of the staff as given by its technical knowledge, experience, and know-how. In broader terms, it deals with the adequacy of training systems, experience in the execution of policies, the extent of understanding of the impact of alternative delivery mechanisms on policy outcomes, and the information infrastructure of the administration which encourages communication that is not strictly univocal and top-down. Training that is integrally linked to career development and with some autonomy for staff to select their own training schedules as well as to assess whether training meets their needs is an important requirement currently. For lower level staff (Group C and D), training should be directed to multi-skilling and enabling them to become executive assistants so that some of the auxiliary staff could be downsized. For higher level staff (Group A and B), training needs to focus more on attitudinal change that encourages decentralized and innovative processes where initiative and change are given precedence over conformity and excessive stability.
- (4) Resources - The primary resources of administration are information and negotiation skills. A strategy of change which identifies the type of training required in these areas, that will promote effectiveness on the job, is to be evolved in the Indian context. These programs once in place should be reviewed and changed to reflect the goals of the administration as the politico-economic environment evolves. Apart from training abroad where universities have been more adept in developing public administration departments and schools of government, administrators could be attached for short periods of time to top private sector companies that have an international presence and that negotiate contracts not only domestically but with other countries as well.
- (5) Customer Satisfaction - Altering government behavior from command and control systems to a service orientation aimed at the facilitation rather than distrust of business requires administrators to relinquish powers, reduce cumbersome procedures, and to apply discretion in a principled rather than ad hoc manner. Speed in clearing projects for instance requires streamlining the documentation process, reducing reporting requirements (like the duplication involved in going through a number of government departments that do not cooperate and communicate with one another). Audits, which report the time taken to get clearances and identify complications, could be done internally as well as sought from firms so that a broader view could be addressed. Navigating the local bureaucratic maze is never easy, especially for foreign investors and it requires that they be put at ease in their dealings with public officials. Apart from speed in processing, quality of access is important and this occurs the more administration assumes ownership of the process and signals commitment through publicizing Action Taken Reports on audits.
- (6) People Satisfaction - This refers to how administrators themselves feel about their organization including the work environment, management style, career planning and job security. This requires the establishment of a fiercely meritocratic structure that systematically weeds out

incompetent and corrupt administrators. The administrative services in India have been largely immune from the imposition of penalties due to professional failure and corruption as complicated procedures have been instituted as a result of constitutional guarantees against arbitrary and vindictive action (Article 311). This has shielded the guilty from swift punishment and caused an erosion of accountability. Bonuses can be handed out on the basis of regular performance appraisal of the department which evaluates not only outputs but also planning and policy, monitoring, as well as operations. Grievance redressal, by both employees and customers, is an integral part of this. Apart from redressal at the bureaucratic level, there is also the need for an Ombudsman outside the routine bureaucratic machinery.

Performance appraisal is yet another dimension that requires some attention. As of now, Annual Confidential Reports are written which do not grade on a ten-point scale but use grades like Outstanding, Good, Average, Poor, etc., which induces an averseness to slotting an employee as Average. Performance appraisal on a team basis also needs to be introduced. Also, reporting and reviewing is not forward looking and is not used for promotions or salary increments. They should also be shared with employees so that feedback could be used for improving performance. To enable corrective action, appraisals should be more continuous - quarterly rather than annually. Finally, to insulate the administration, they should be protected from the use of transfers as a threat by politicians to influence them. Certain norms like having the premature transfer or removal of officers, examined by a high powered Civil Services Board comprising the Cabinet Secretary and other prominent persons from public life, need to be instituted.

Most importantly, the staff should be oriented towards a corporate spirit and this is best achieved by organizational forms that shift from specialized structures based on functions to structures based on coordinated work teams. The staff also needs to understand and periodically revisit the goals of the organization. This is best achieved by the production of the following documents - explanatory reports of yearly activity, documents containing statements on the philosophy, guidelines and purposes of the public body, and formal documents from the senior policymakers in the organization, such as plans and strategies, training handbooks, and organizational charts. The overall objective of the administration should be the minimization of transactions costs for firms while executing projects - the costs of coordinating the interests of stakeholders, collecting information, negotiating contracts, monitoring project progress, auditing and organizing local beneficiaries.

II.1 Corruption and Enforcement Mechanisms

Corruption is pervasive in India and worldwide the perception is that the system runs on corruption. As recent as July 2001, the Indian Prime Minister offered to resign in the wake of scandals relating to Tehelka.com and the Unit Trust of India.³ In a recent study by Transparency International India, which focused on corruption as faced by the common man,⁴ the most corrupt sectors in descending order were found to be Police, Health, Power, Education, Rations, Land Administration, Judiciary, Taxation, Railways, and Telecom. The total estimated outflow due to corruption in these sectors was about 10.5 percent of the total compensation made to public sector employees in a year. The key suggestion made by those surveyed for combating corruption was for the punishment of wrong doers. India, meanwhile, is a signatory to the ADB-OECD Anti-Corruption Initiative for Asia-Pacific, which requires it to address three pillars of anti-corruption activity: Civil service improvement, reduction of bribery, and the closer involvement of civil society.

³ Tehelka.com secretly filmed officials demanding bribes for arms sales. India's largest mutual fund, the state-run UTI stocked 43 million investors in August 2001 by freezing redemptions.

⁴ High level collusive corruption was not captured.

The anti-corruption institutions of the central government are the following:

- (1) Prevention of Corruption Act, 1988;
- (2) Central Bureau of Investigation;
- (3) Central Vigilance Commission;
- (4) Chief Vigilance Officers in various ministries and organizations; and
- (5) Civil service conducts rules.

The Prevention of Corruption Act which existed earlier was revised in 1987 and the definition of public servant was expanded to include elected public officials and members of the legislature. Under this anyone with assets disproportionate to his income is deemed to commit criminal misconduct. If convicted, the person can be imprisoned from 6 months to 7 years. The Central Bureau of Investigation (CBI) is the premier investigating police agency in India. It functions under the Central Vigilance Commission (CVC) with respect to investigation of corruption cases in public services. It is the body that puts into effect the provisions of the Prevention of Corruption Act as major complaints of corruption in government departments and statutory bodies of the government are investigated by the CBI. As policing is a state (provincial) subject, the CBI has to take concurrence of the state government for investigating a corruption offence. Though initially set up as an anti-corruption agency, it now takes up cases of heinous crimes, terrorism, etc., which somewhat has diluted its focus.

The Central Vigilance Commission was set up in 1964 as the apex organization for maintaining probity in public life. The lapses investigated by the Commission ranges from misuse of official position and violation of prescribed rules and regulations, violation of conduct rules, demand and acceptance of bribes, and gross negligence of duties to possession of assets disproportionate to known sources of income. Its advice is not binding on the government though disagreements in cases mentioned in the annual report are placed before Parliament. The Commission has the powers to exercise superintendence over the vigilance administration of various ministries of the Central government, public sector undertakings, etc. In a recent report, the CVC studied the state of vigilance mechanisms with respect to the members of the premier civil service, the Indian Administrative Service. The most common lapse amounting to two-thirds of the cases were related to the failure of officers to observe the limits of their delegated powers conferred on them statutorily or administratively, for instance, by showing undue favor and causing a loss to the organization. The demand and acceptance of bribes amounted to 6 percent of the cases and having assets disproportionate to known sources of income amounted to 10.5 percent of cases. The CVC concluded that corrupt practices are possibly much more a function of needlessly complex systems and procedures and that future reform should be directed to putting in place systems that make decision making less complex and more transparent. The cases also indicated a linkage between bureaucratic and political corruption and these points to the need for independent civil service boards to ensure impartial selection for key posts.

Each ministry and public sector organization has a Chief Vigilance Officer (CVO) who is appointed after clearance from the CVC. All cases of corruption in the organization are to be referred to the CVO who monitors and takes action on the irregularities and reports them to the CVC. There is no functionary equivalent to CVOs in state governments. Also, in state governments, the role of the CBI is played by the vigilance wing of the state police and the role of the CVC is played by the state vigilance bureaus/ombudsman. . . .

The Conduct Rules are quite strict in monitoring the higher civil services. It requires intimation about all moveable/immovable property at the time of joining the civil service. This does not apply

to the judiciary, defense forces and other public sector employees. An annual return in respect of immovable property is to be filed and no acquisition of such property is allowed without previous intimation to the government. In addition, every transaction exceeding Rs. 15,000 is to be informed of within a month and officers can accept gifts from friends and relatives on special occasions within Rs. 5,000. No speculation in stocks and shares is permitted and there is an expectation of no conduct unbecoming of a government servant. Currently, the existing procedures for gathering evidence on corruption include laying traps through a bribe giver informing the police in advance, search and seizure operations, and demonstrating that assets owned or possessed are disproportionate to known sources of income. Whistleblowers can play a very important role in providing information about corruption and mal-administration as people working in the same department know better as to who is corrupt. A Whistleblowers' Act has been recommended by the Law Commission of India but is yet to be enacted. Such an Act must, of course, ensure that informants are protected against retribution and any form of discrimination for reporting what they perceive to be wrongdoing.

Punishments for corruption today are possible through prosecution under the Prevention of Corruption Act, 1988, or through departmental actions. Given the slow pace at which cases are disposed of in the judicial system, the CVC has issued directives that departmental actions be completed within six months. The CVC has also recommended that the Corrupt Public Servants (Forfeiture of property) Act drafted by the Law Commission be implemented so that confiscation is in addition to conviction and imprisonment under the Prevention of Corruption Act. Another action that can be taken is for the government to prescribe rules for confiscation of benami property under Section 8 of the Benami Transaction Prohibition Act. This Act was passed in 1988 and till now the government has not framed rules so that it can confiscate properties acquired by the real owner in the name of his benamidars. Another law which has been envisaged over a long period for eradication of corruption is the Lok Pal (Federal Ombudsman) and Lok Ayukt Bill. This Bill has been in draft form in Parliament since it was first introduced in 1968 but has not yet been legislated. In its current guise the Prime Minister falls within its purview. This has stalled the bill because orchestrated attempts to malign the image of the Prime Minister could affect the functioning of the government and so there is a case for keeping the PM out of the purview of the Lok Pal.

The person who bribes is equally guilty as the individual who accepts it. In the 1970s the US had enacted the Foreign Corrupt Practices Act (FCPA) by making American companies giving bribes abroad liable to prosecution within the US. By 1997, 34 OECD countries had signed the anti-bribery convention. In India the chambers of commerce such as CII, ASSOCHAM and FICCI are yet to come together to sign an antibribery convention to ensure their members will not bribe.

Empowering the public through transparency in administration is another method of enforcement of anti-corruption. The objective of the Freedom of Information Bill, 2000, is to promote transparency in government activity but it contained many loopholes such as, for instance, not having penalty clauses for, not providing information. Meanwhile, many Indian states such as Karnataka, Kerala, Goa, Maharashtra, Rajasthan, Tamil Nadu, and Andhra Pradesh have enacted their own access to information laws. E-governance is another tool of an information led anti-corruption strategy. The Bhoomi (land) project of online delivery of land records in the state of Karnataka reduced the discretion of public

officials by introducing provisions for recording requests to alter land records upon sale or inheritance of land online. Such e-governance schemes can never be comprehensive in a developing economy due to weak technological infrastructure though it curbs opportunities for arbitrary action. Another form of public accountability that has been successfully pioneered by an Indian NGO, the Mazdoor Kisan Shakti Sangathan, is the use of jan sunwais (public hearings) which comprises a public audit of development expenditures by village residents to make officials accountable. A major source of corruption in India is political party financing. The nexus between corruption money and party funding is highlighted by the accelerated entry of criminals into politics. In February 2002 elections in the state of Uttar Pradesh, for instance, seventeen percent of the candidates had criminal records or charges filed against them. India requires an enabling law such as in Thailand where political parties are required to disclose their financial accounts to the public. Audited political party accounts can make influence peddling costly. Finally, an effective enforcement mechanism is the voice mechanism of the report card system used by the Public Affairs Centre in Bangalore which catches individuals involve in offering bribe, identify the government agencies involved and publishes comparisons between agencies and service delivery locations so that public scrutiny could be focused on the agencies.

III. THE JUDICIARY, ITS INDEPENDENCE, AND THE COVERAGE OF JUSTICE

India's legal system is based on English common law. District Courts exist at the first tier level. High Courts that stand at the head of a state's judicial administration constitute the second tier. The Supreme Court is the highest tier court in India. It is the ultimate court of appeals and hears appeal from the High Courts and is the court of review under subordinate tribunals. The Supreme Court exercises original jurisdiction in disputes between the Union and the states or between the states. It can also issue writs in the nature of habeas corpus, mandamus, prohibition, and certiorari and quo warrantor for the enforcement of fundamental human rights.

The Department of Justice within the Ministry of Law, Justice and Company Affairs administrates services within the Supreme Courts, High Courts and other courts and develops the infrastructure for facilities and administers training for the judges.

The method of selection to the High Courts and Supreme Courts has been a matter of great controversy. The power of appointment was vested in the executive for many years until the decision of the Supreme Court in 1993 which reversed it. By that time the arbitrary transfer of Judges of the-High Court, the manner in which additional Judges in High Courts were dealt with either by not confirming them or by granting extensions for short periods, and the arbitrary manner in which several appointments have been made including the super-session of senior most judges had raised questions about the desirability of the executive in the process. As of now for the appointment of judges to the Supreme Court it is the practice that the recommendation should be made by the Chief Justice of India and his four senior-most colleagues and that judges of the Supreme Court hailing from the High Court to which the proposed name comes from must be consulted. The Chief Justice of India and his four senior-most colleagues are the collegiums making the recommendation to the President who by warrant makes the appointment. The senior-most judge is to be appointed the Chief Justice of India. This has resulted in the appointment of judges who do not occupy the position for long periods of time which is not desirable in that change is a slow process.

For the appointment to the High Court, the recommendation is to be made by the Chief Justice of the concerned High Court in consultation with his two senior-most colleagues. The recommendation is then considered by the Governor of the state who offers his comments and the matter is then referred to the Chief Justice of India. The opinion of the Chief Justice of India is given primacy in the matter and prevails over that of the Governor of the state or even that of the High Court if inconsistent with his view. The President then makes the formal appointment. The District Judges who are at the highest rung of the subordinate judiciary are appointed both by direct recruitment and by promotion. The selection of direct recruit district judges is made by the High Court. On the High Court's recommendation, the Governor appoints them. Promotion to the post of district judge is also made by the High Court with the formal orders being issued by the Governor. The appointments to the lowest rung in the subordinate judiciary munsiffs and magistrates is made by the Public Service Commission and the High Court. In some states, a Judge of the High Court sits with the Public Service Commission for the purpose of selection and in some states the power of selection is vested exclusively in the High Court. Again, the recommendation in either case goes to the Governor who makes the appointment. For promotions from munsiff/magistrate to the intermediate higher level of subordinate judge/assistant sessions judge, it is made by the High Court itself. Thus, for the appointment, promotion and postings of the subordinate judiciary, the High Court is the real authority and the role of the state government is formal in character. As the opinion rendered by the judiciary (in consultation) is binding upon the executive, the judiciary is independent to a substantial extent in India.

With regard to complaints of misbehavior and incapacity against judges in the Supreme and High Courts, even though there is a Judges Inquiry Act, a committee to examine complaints is constituted ad hoc from case to case and is not a permanent committee with fixed tenure. The convention, if charges are proved, ranges from recommending a warning to a change in the allotment of work to the judge to removal which requires the judge to demit office himself failing which the matter is placed before Parliament which must recommend removal through an absolute majority of the total strength of the House and a two-third majority of the members present and voting.

In such cases, it is left to Parliament to decide on what constitutes "proved misbehavior" on a case to case basis and the Constitution is silent about what to do in the cases of deviant behavior not amounting to proved misbehavior. In the US too federal judges are to serve for life during good behavior which had raised a controversy about whether bad behavior that does not amount to "high crimes and misdemeanor" (treason, bribery) is ground for disciplining judges other than by removal. This knotty problem was resolved in the US by the judiciary passing the Code of Conduct for US judges in 1973 and in 1980 the Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act. This system has not yet been instituted in India. The recent National Commission to Review the Constitution realizing this lacuna has suggested that a committee comprising the Chief Justice of India and four senior-most Judges of the Supreme Court be empowered to examine complaints of deviant behavior against Judges. The Committee could ascertain whether

- (1) there is substance to the complaint;
- (2) it is required to call for a fuller investigation; or
- (3) whether it is sufficient to administer an appropriate reprimand to the erring Judge or recommend re-allotment of work or transfer.

If the matter is serious enough, it could be referred for a full inquiry to a committee under the Judges Inquiry Act. Discussion about the place for a Code of Conduct for Judges is yet to take place in India. The idea of addressing complaints against Judges to a committee of the Judiciary is to vest the power to recommend removal and such directions in a judicial body rather than in a political body like Parliament. The National Commission recommendation thus allows room for the executive in the matter of appointment but not in the matter of removal or in disciplinary matters. However, it does raise the issue of concentration of power with the Judiciary as the Chief Justice of India or his colleagues are not accountable to the people.

The qualifications required to be a Justice of the Supreme Court is citizenship with at least 5 years experience on the High Court or at least 10 years experience as an advocate of the High Court. Even though the constitution contemplates appointment to the Supreme Court from three sources, in the last fifty years not a single distinguished jurist has been appointed, and from the Bar less than half a dozen judges have been appointed. To be appointed to the High Court, a judge must have held judicial office in the territory of India for at least 10 years or have been an advocate for at least 10 years at a High Court. District Judges must already have been in service to the Union or state or have at least 7 years experience as an advocate or a pleader.

III.1 Transfer of Judges

Disciplinary actions can be taken in order to transfer judges from one High Court to another. However, a transfer for any other reason can turn into a contentions issue. The Law Commission of India has opposed the policy of transfer on the grounds that the argument that Judges will acquire local connections and prejudices is unwarranted as High Court Judges are recruited mainly from the Bar. Transfers would lead to difficulties in the way of leading members of the Bar accepting the office. In a recent Conference of Chief Justices a decision has been taken to discontinue the policy of transfer of Judges of the High Courts. However, the policy of having an outsider as Chief Justice in a High Court continues. The outside Chief Justices are reported to suffer from a lack of knowledge as to the ability, character and performance of the members of the Bar and so rely heavily on the advice of local judges who may not be senior enough.

The Fifteenth Amendment to the Constitution, effected in 1963, stipulates the age of retirement for judges of the High Court as 62 and for judges of the Supreme Court as 65. This has created an incentive for judges of the High Courts to seek to be elevated to the Supreme Court when they are close to retirement even though the remainder of the time may not be sufficient to make a contribution. It therefore makes sense to have a uniform age of superannuation at 65 as is the case in the UK for example where judges of the High Court and the Court of Appeal retire at the same age.

Post retirement assignments have been a source of undermining the independence of the judiciary. In India both Parliament and state legislatures have created a number of tribunals and commissions to which persons who have been judges of the High Court and Supreme Court are eligible. For some appointments like to the National Human Rights Commission or the Press Council of India, the selection is transparently done by a panel of high officials but many other selections are the choice of the central or state governments. This opens up the likelihood of the government dispensing favors without

due attention to merit which indirectly affects the independence and integrity of the judiciary. To minimize this possibility, it might be worth considering making it mandatory that when retired judges are sought to be appointed to tribunals and commissions such appointments should be made in consultation with the concerned Chief Justice i.e. Chief Justice of India if the retired judge is from the Supreme Court, and Chief Justice of the High Court if the retired judge is from the High Court.

III.2 Judicial Finances

The backlog of cases in India is huge and often the judiciary is blamed for it due to the admission of cases that can be disposed of or dismissed in the first instance itself. Long and winding arguments being entertained instead of being discouraged, frequent requests for adjournment by lawyers on the flimsiest of grounds are accepted often due to the heavy load of cases listed every day, and delays in deliveries of judgments long after the hearings are completed. However, since Independence there has been no proper allocation of funds commensurate with the corresponding increase in population and litigation. In 1998, the Chief Justice of India, in his address to the Bar Council, stated that in several European countries the number of judges per million populations varies from 90 to 100 whereas in India it is only 11. Moreover, about 25 to 30 per cent of posts are lying vacant at any point in time. The Indian system is better than that of many European countries such as UK and France as the officers and staffs of the courts are under the control of the Chief Justices of the court and there is no interference from the executive or the legislature. However, lack of long-range planning and finances has been a major shortcoming. As of now, the Chief Justice of the court prepares a budget with the help of the Registrars but these are routine budgets based on a cost plus increase of the previous years figures and are not based on any long-run or short-run planning. The budgets are then sent to the executive who makes cuts without consultation. The Chief Justices are empowered to make rules in regard to service conditions, salaries and allowances of the administration of the courts but if this has an impact on the finances of government, it requires the approval of the President or the Governor of a state. Moreover, even after the finances have been allocated for any expenditure exceeding Rs. 10,000, fresh sanction has to be sought from the Secretariat which keeps the Registrars busy at the Secretariat. Chief Justices of High Courts are also not allowed to re-appropriate amounts allocated under one head in the budget to another which results in under-spending and pressing needs not being catered to. The Judiciary is, thus, not effectively associated with planning, budgeting and implementation of the requirements of the administration.

The National Commission to Review the Constitution sought to remedy this by suggesting the creation, under law, of a National Judicial Council for India. This would be comprised of the Chief Justice of India, two judges nominated by him from the Supreme Court, and all the Chief Justices of the High Courts. The Judicial Council can go into the question of the uniformity in the service conditions of the subordinate judiciary in the whole country. Four institutions recommended to be put under the control of such a body are:

- (a) Institute of Court Management proposed to be set-up to train graduates in law in the management systems required to run the courts on a professional basis;
- (b) National Judicial Academy, Bhopal, which has been set up and could conduct courses on Continuing Legal Education;

- (c) The Indian Law Institute, New Delhi which could be made a deemed University awarding degrees and diploma; and
- (d) International Legal Data Centre, New Delhi which could house information subject wise on the legal literature from all over the world.

The budget for the National Judicial Council, it is suggested, should be settled in consultation with the central government and by way of convention passed in Parliament without a downward revision. Once passed the budget should be under the control of the Council which should not be asked to seek permission from the executive from re-appropriation. The budgets of State Judicial Councils could be finalized in a similar manner.

III.3 Training

Training for new entrants to the judicial service has not received the attention it deserves from the court and government till recently. The Law Commission in its 1986 report on Training of Judicial Officers stated that, apart from a couple of training institutes giving pre-service training, fresh recruits are directed to work with senior civil judges or District or sessions judges for a duration of three to six months before actual posting is given. In 1992, a claim for in-service training was made by judicial officers in a petition before the Supreme Court (*All India Judges' Association v. Union of India & Others*, AIR 1992 SC 165) which responded by directing that an All India Institute of In-service Training for higher officers of the judiciary and state level institutes for training the subordinate judiciary be set up. The schemes, 10 years later, are still at the drawing board stage. There are presently quite a few training institutes such as the North Eastern Judicial Officers' Training Institute, Guwahati, Andhra Pradesh Judicial Academy, Secuderabad, Madhya Pradesh Judicial Officers' Training Institute, Gujarat State Judicial Academy, Judicial 'Officers Training Institute, Nagpur, Institute of Judicial Training and Research, U.P, etc. offering mainly foundation courses for munsiffs and judicial magistrates and some refresher courses for additional and assistant district sessions judges. The National Judicial Pay Commission observed that training is restricted mainly to repetition of subjects taught in law colleges with some emphasis on their practical relevance. It recommended an urgent enhancement in the quality of the training institutions.

The National Judicial Pay Commission also conducted surveys amongst the judiciary and its associations about the training goals and the inadequacies in building capacities. The survey revealed that the demand of the judiciary from a good training program is that trainees imbibe judicial ethics and standards of judicial conduct are sensitized to the values and ethics of the constitution, are updated with legal knowledge, are familiarized with the forces operating at the social, economic, political and administrative environment in which judges work, develop analytical and communication skills and research and writing skills for the job, are imparted skills of management, including computer technology, cash flow and accounting techniques, etc. Amongst the inadequacies in existing training listed are:

- (a) most states do not have training schemes;
- (b) available schemes are neither scientifically organized nor based on experience;
- (c) most schemes have no examination to assess the impact of training;

- (d) there is no training on change of jobs or on promotion;
- (e) there is a total absence of competent trainers who are skilled on the job; and
- (f) the curriculum is not scientifically evolved and training in appreciation of scientific evidence is non-existent.

Keeping these inputs in mind, the National Judicial Pay Commission has evolved a course around the following six major themes for induction training for judicial officers:

- (1) Law, Justice and Society;
- (2) Rule of Law, Judicial Process and Constitutional Government;
- (3) Procedural Laws and Administration of Justice;
- (4) Technology, Modernization and Management of Change; and
- (5) Judicial Ethics and Accountability.

It also recommended that training academies need to inculcate some of the basic principles of higher education, academic autonomy, professionalisms, and have in place a core faculty who can structure its long-term goals and give effect to scientific schemes of training as well as conduct research. This has been a large felt need. The National Judicial Academy has been offering training courses on new aspects of law such as on gender and juvenile justice but an overarching training program as envisaged around the six themes mentioned above is yet to take its root.

III. 4 Public Legal Assistance

The Indian Constitution provides, through Article 39A, free legal aid so that lack of economic means does not result in denial of justice to persons. However, it was not until 1987 that the Legal Services Authorities Act was enacted to give a statutory base to legal aid programs. The Act was enforced in November 1995 and by 1998 the office of the National Legal Services Authority became functional. Every person, who has to file or defend a case, is entitled to legal services under the Act if the person is -

- (a) From the scheduled castes or tribes,
- (b) A victim of trafficking in human beings or a beggar,
- (c) A woman or a child,
- (d) A mentally ill or otherwise disabled person,
- (e) A victim of mass disaster, ethnic violence, flood, drought, earthquake, etc.,
- (f) An industrial workman,
- (g) In custody, including custody for immoral traffic or in a juvenile home or psychiatric nursing home,
- (h) In receipt of an annual income less than Rs.50,000 p.a. for a case before the Supreme Court and Rs.25,000 for a case before a lower court.

The National Legal Services Authority is the apex body that lays down the principles and policies for making legal services available under the Act. The Chief Justice of India is its Patron-in-Chief and the norm instituted is that the senior-most judge of the Supreme Court will be the Executive Chairman. Each state has a Legal Service Authority with the Chief Justice of the state High Court being the Patron-in-Chief. Legal Service authorities have also been set up at district and taluka levels. Since 1998, permanent and continuous Lok Adalats (People's Courts) have been established for disposing pending cases and disputes at the pre-litigation stage for government departments, statutory authorities

(municipal corporations, general insurance corporation, etc.) and public sector undertakings. A scheme of accreditation of NGOs for campaigns for legal literacy and awareness has also been implemented. To sensitize officers to legal services schemes a recent Chief Justices' Conference passed a resolution that the service records of judicial officers should reflect their interest in legal aid programs. The National Legal Services Authority also publishes an official quarterly newsletter, "Nyaya Deep" that includes statistical information in regard to legal aid schemes and programs and has become a forum for legal service functionaries to exchange views. It also issues press releases in leading newspapers in regional languages to convey salient features of the scheme and the utility of Lok Adalats. Up to the year 2000, about 3.2 million persons have been estimated to benefit from this legal aid, of which 0.7 million belong to the scheduled castes and tribes, 0.27 million are women, and 9,000 are children. Approximately 72,038 Lok Adalats have also been organized throughout the country where 12 million cases have been amicably settled. Of these, about 0.5 million cases pertain to Motor Accident Compensation Claims where compensation amounting to Rs. 24,690 million has been awarded. The legal services aid movement in the country aims to develop a culture of conciliation rather than litigation so that disputes are resolved quickly. The process has been slow but the legal aid movement in India is emerging as a powerful method of reducing exclusion and has been a mechanism for providing an equal opportunity for all citizens to participate as well as improve the coverage of judicial services.

IV. CONCLUSIONS

It has long been recognized that the state plays a major role in defining and enforcing the rules governing the access to markets. Government often enacted legal and regulatory reforms in order to deeper market access. However, these are dysfunctional without the development and training of the civil service, the development of judicial and legislative functions, and other such organizational reforms. This paper has focused on the service orientation of the civil service, with corruption being treated as an aspect of poor service provision as it results in poor quality and operational inefficiency. Another key institution is the judicial system which includes the courts, public prosecutors, enforcement agencies, and the market for legal services (lawyers) which determines to what extent protection and redress of citizens is catered to. This is a large area and the paper focuses on to what extent the judiciary is independent of the executive/legislature, so that cases are decided without outside pressure. In this context, the issues like the appointment of judges, the adequacy of their training, their tenure, and finally the coverage of justice in terms of the public support for legal services for those who are not in a position to have access to the judicial body is considered. The issues pointed out are important for the sustainability of a reform and the benefits accruing from global integration as these will be mediated through the delivery of effectiveness of these institutions.

NATIONAL CASE STUDY ON THE STATE CAPACITY AND GLOBALIZATION

*Batkhuu Barkhuu**

I. INTRODUCTION

Mongolia opens and approaches more closely to the world than before. Impact of globalization is increasing in all spheres of political, economical, and social lives in Mongolia. The sector of Foreign Investment and Foreign Trade has also been affected by the international openness. In contrast to 1990 when the country has been trading only with the countries of COMECON, in 2002 the country expanded its trade relationship with 88 countries in the field of foreign trade and a total of US\$ 1159.9 million were spent for its turnover. Between 1990 and 2002, around 2400 companies of 70 countries have invested about US\$800 million in all economical sectors of Mongolia.

As opposed to this, the country is facing huge difficulty in improving the competitive capacity of national industries in order to hold a position in the international market by its products that differ by qualifications and uniqueness and so. It is clear that goods and products from national industrial companies with old technology cannot compete in today's free market. It confronts to more trials than opportunities. Moreover, Mongolia is facing other serious problems such as poverty, corruption, environmental and natural disasters. The Living Standards Measurement Survey, which was conducted in 1998, showed that 36 percent of the population live under poverty line. Frequent occurrence of dud and drought in the last few years worsened livelihoods, and hence decreased supply of raw materials and product trading.¹ In addition, corruption and bribe has become real at all levels of state institutions and their negative impacts are increasing.

These positive and negative conditions demand us now to realize how we should adapt and benefit, and how we should discover national peculiar features and progress it in the in the context of globalization, rather than discuss the issue of to join or not to join globalization. The state is key actor in the development process, but State Capacity in Mongolia is still very weak.

The Capable State plays a major role in resolving confronted problems such as poverty, economic collapse, corruption, bribe, and impacts of natural and ecological hazards and disasters. Building up state capacity that promotes foreign investment and foreign trade is one of the appropriate ways to provide economic growth.

The purpose of this study is to prepare a report centered on country-level experiences and practices related to state capacity and globalization. There will be three main sections of state capacity that contribute to the promotion of trade and investment after introductory section. The second section covers administrative capacity of the State in promoting trade and investment issues. The section divided into six sub-sections. The third section considers transparency and accountability in trade and investment activities and anti-corruption activities of the state. The last section covers legal and judicial framework and divides into three sub-sections.

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¹ Poverty Reduction Strategy Paper, first draft, 2002, p.9.

II. ADMINISTRATIVE CAPACITY OF THE STATE IN PROMOTING INVESTMENT AND TRADE

State capacity is the ability to mobilize social and economic power through participation and cooperation to achieve a wide variety of social and economic goals, and administrative capacity is one of its essential components. On the other hand, while administrative capacity involves producing outputs, state capacity is a measure of ability to achieve outcomes.²

Administrative capacity is the efficient management of resources and knowledge in various administrative processes is required for delivering the outputs of government, such as foreign trade and foreign investment service. Strategic planning, leadership, performance, evaluation and monitoring are issues of administrative capacity. In addition, we should emphasize on skills of public servants (multilateral and bilateral collaboration), rewarding system and public information system.

II.1 Leadership and Strategic Planning

Leadership is an ability of creating a positive impact to persuade an organization, people's psychology to pursue achievement of goals of national development policy. The national development concept contemplates overcoming the transition period, national economic renaissance and stabilization, and creating a sound, self-sustaining economy in Mongolia. It can be seen that a precondition for the success of the National development concept is to build up national leadership capacities. Thus, the Government prefers visible and effective leadership from the center combined with appropriate, integrated accountability.³

The following types of leaderships exist in public administration.

Political Leadership. Formulation of the concept for political leadership is defined by the nature of political parties' activities and their arrangement in society. However, political party that gets majority of seats in free election play the key role in making the national policies, such as foreign trade and foreign investment policies. Moreover, leading political party nominates its members in political position of the state institutions. Thus, nominated servants are leaders in implementing the Government's Action Program. For instance, Minister for the Industry and Trade takes responsibility for making policies related to foreign trade and foreign investment as well as implement in Mongolia.

Public Administrative Leader. Public administrative leaders are public civil servant in the managing position, who carries on their services independently from the outcomes of the elections. In this case, State secretary of the ministries and head of departments and division of the ministries and agencies are public administrative leaders. As public administrative leaders, they favor legitimacy, respect ethic of public service, efficient allocation of budget and expenditure, and social outcome rather than political wishes. Nomination procedures of public administrative leaders are based on "Regulation of selection and nomination of ideal public servants" among experienced and knowledgeable candidates and rely on principles of open competition.

Study about leadership in public administration shows that skills in identifying the methods to approach the proposed goals, skills to support others, to define vision and mission, to convince others had deficit. Thus, consideration of how to improve lack of skills in public administrative leadership and definition of general guidelines is also essential.⁴

² Martin Painter. State Capacity, Institutional Reform and Changing Asian Governance. 2001, p. 2.

³ Mongolian state policy on reforming Government processes and the general system of structure, 1996, p. 6.

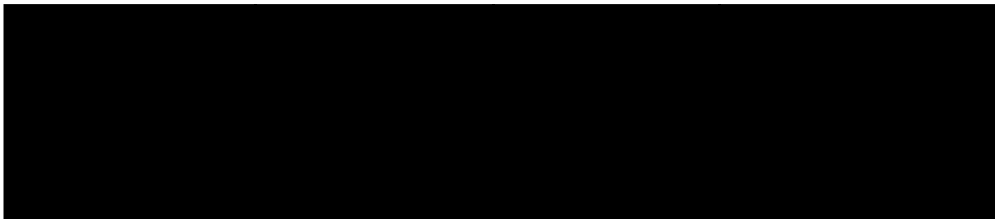
⁴ N. Narantuya, Final Report of Research on Leadership Practices, 2002.

In the report about Industrial and Trade Development Policy (Shafiq Dhanani and others, 2002) explained the following key constraints in the Mongolian trade sector:

- (i) limited product diversification, and heavy reliance on commodity exports (copper, gold and cashmere), whose prices fluctuated in the world market and have experienced long-term declines, leading to deteriorating terms of trade;
- (ii) limited market diversification of most Mongolian exports, with one country often purchasing close to 95 per cent of each of the main exports such as copper and garments;
- (iii) poor market 'positioning because the world demand for traditional Mongolian exports (mostly resource-based and labor-intensive, including its newest export, garments), has declined relative to other goods traded in the world market;
- (iv) abolition of the Multifibre Arrangement by the end of 2005 and of preferential access particularly to the USA, and the likely exodus of garment manufacturers out of Mongolia and into countries with lower transport costs and higher economies of scale;
- (v) difficult access to the relatively lucrative markets of neighboring Russia and China, due to high tariff barriers in the case of Russia, and non-tariff barriers in the case of China;
- (vi) Mongolia's weak position in fighting non-tariff barriers, due to the prevalence of animal diseases and poor hygienic and sanitation standards; and
- (vii) underdeveloped trade promotion services from government agencies as well as from private institutions.⁵

Visible and effective leadership is needed in the current hazardous circumstances of trade and foreign investment in Mongolia. Furthermore, as leadership is one of important components of public management, it is a concept that closely relates to strategic planning and performance. Before discussing about strategic planning, we will see scheme of distribution of responsibilities of the Government of Mongolia in trade and investment sector (see Table I).

TABLE I
Scheme of Distribution of Responsibilities in Trade and Investment Sector



Minister of the Trade and Industry is the member of the Government and is responsible for policymaking and strategic planning in trading and foreign investment. The Foreign Trade and Foreign Investment Agency is responsible for policy implementation. National Auditing Office and Public Service Council are taking control on effectiveness of activities and monitoring implementation of laws and other related regulations and

⁵ Mongolia: Industrial and Trade Development Policy Review, UNDP, UNIDO, Government of Mongolia, p 1.

decisions. At the local level, administrative organization is authorized to develop local policy and action plan and its performance.

The ways in which Government carries out its mandates for directing the affairs of nation in new public management are through indirect measures of strategic planning and policy guidance, rather than through direct measures of command and control of policy implementation. Strategic planning is setting national goals, and choosing the most appropriate policies and programs for reaching them.⁶ The Government is responsible for defining priorities and organizes its performance. Government develops its Action Program fitted to the concept of national development and implements it in the following four years.

Furthermore, every year Government of Mongolia develops statement on State Budget Framework. This document describes allocation of state budget covering up to three years of time. In its turn, the Ministry of Industry and Trade develops program of development in trade and foreign investment and plan of activities.

Priorities in trading and investment that are listed in the Government Action Program and other related papers of ministry:

- | To improve competitive quality of goods and services in world market and to increase export, to develop trade networking system of import and goods produced by national entities, and wholesale of raw material in the concept on regional socioeconomic development, and to reach the customers of remote areas;
- | To support foreign trade and foreign investment;
- | To carry responsibilities of Mongolia under the contract, agreement with the WTO;
- | To apply modern advanced methodologies and experiences into practice, to integrate worldwide highest technology, to deepen the reform and intensify restructuring;
- | To rehabilitate national industry;
- | To increase working place by promoting small and medium enterprises.

Supporting foreign trade and foreign investment will be implemented through 31 activities. Some essential of them are:

- | Develop strategic program on development of export of wool and cashmere, skin and hides, minerals and meat and meat products;
- | Build export supporting fund;
- | Develop and implement step by step policy on import tariff to support national industries producing export goods;
- | Increase foreign loan and aid supporting industries produce export goods;
- | Develop concept of foreign trade of Mongolia;
- | Make contract on continuation of discount in export trading from developed countries to Mongolia;
- | Expand export, including cashmere and meat products;
- | Lessen bureaucracy, hierarchy, and create sound participation and coordination of the state in foreign trade and investment.

⁶ Mongolian state policy on reforming government processes and the general system of structure, 4.7.1.

The abovementioned activities are closely related to other priorities.

Head of the Foreign Investment and Foreign Trade Agency of Mongolia (FIFTA) concludes and implements a contract of business plan with the ministers of the Ministry of Industry and Trade. The business plan of the organization, which includes detailed listing of activities of implementation of Government action program, financial sources, period of accomplishment, will be a Document Paper. Performance of business plan is prepared and reported every month and quarterly to the related high organizations and public.

Proper strategic planning depends on many factors. Development of leading priorities in foreign trade and foreign investment that are proposed by specialists of the Ministry of Industry and Trade requires multilateral skills and knowledge. Public servants gain them usually from trainings and workshops that are organized by international agencies or through state reform related activities. Although a new framework, promoting foreign investment and foreign trade sectors, is building up. But the question, how long it will take for its formation and empowerment is still a major concern.

II.2 Performances Standards of Management Development

Outcomes of Government activities have direct impact on state budget. Accordingly, its ineffective and high expenditure causes cutback of budget in other social services. Thus, new public management has multiple objectives targeting to make clear policy and goals of Government, and to provide accurate distribution of state resource. In previous section, we discussed about strategic planning in foreign trade and foreign investment. But the issues of performance indicator, evaluation and monitoring are most difficult.

Preferred outputs, products and inputs can serve as indicators of achieving goals. Use of methodologies for financial and performance auditing and evaluation is increasing to estimate outputs.⁷ Preferred goals depend on many external factors that may not relate to organization and public servants and sometimes it cannot be main indicator to evaluate responsibilities, especially in the sector of trade and foreign investment. In contrast, activities of the *Ministry of Industry and Trade and FIFTA* to implement Government's priorities are measurable. These can be number of contracts and agreements made between international organizations and countries, provision of preparation, provision of legal and economical enabling environment for foreign trade and investment, etc. Consequently, in this condition, estimation of required input is much more possible.

Efficiency in the performance of foreign trade and investment policy of the Government indicates its outcome. Accountability and rewarding mechanism are essential factors to increase efficiency of performance. Accountability framework consists of the following:

- | Clear definition of task and responsibilities of public organizations that are responsible for trading and foreign investment and clear understanding of servants what their roles are. Clear objectives and goals;
- | Comparison of actual and planned outputs;
- | Sufficient power to achieve goals;
- | Rewarding mechanism to support performance.

⁷ Namkhajantsan, Finance and Management Reform in Public Organizations, 2003, p. 31.

New public management is utilized to strengthen this framework in public organizations. Another indicator of performance is impact on the society and economy. It includes total amount of foreign investment, total amount of export and import and loss and gain in foreign trading.

II.3 Development of Human Resource (Multilateral Agreement/Contract and Skills to Analyze Policies, and to Enable and Engage Efficient Involvement of Contracts at Regional Level)

Government of Mongolia aims to develop multilateral and bilateral collaboration between countries to provide favorable environment for foreign trade and foreign investment. Thus, the need for developing skills, knowledge and experiences that matches to the progress of developing policy, policy analysis, multi and bilateral cooperation is tremendously increasing in the sector of foreign trade and foreign investment. Mongolia is collaborating actively to integrate multilateral partnership with UNDP, World Bank, the World Trade Organization (WTO) and other donor countries.

For example, Government implemented several joint projects to develop personnel capacity at national level with WTO, as member of the WTO. The Project, "International Trade and WTO", with assistance of GTZ is one of them. Under this project, many training and seminars, purposed to introduce activities of WTO, selling of intellectual property and integrated information system, were organized. Also, a joint project "provision of preparation to support developing efficient trade networking" with WTO was organized and around 100 persons from public and private enterprises participated in the international seminar discussing issues on industry, trade policy and sectoral problems. In addition, 30 officers from the Ministry of Industry and Trade and the FIFTA were involved in the seminars on "Trade and Investment", "Trade and Environment", "International Investment", and "Skills on Agreement" which were conducted by these organizations. These measures were targeted to develop capacity building for developing multilateral collaboration and experiences.

Also, there are many activities carried out to develop bilateral cooperation with the Republic of China, the Russian Federation, the United States of America, Canada, South Korea and Germany through joint meetings, exchange visits and joint projects.

Lately, activities targeted to improve collaboration in the area of trade and foreign investment between Mongolia and China are progressing. As a result, project on "Development of Mongolia and Southern Region of Inner Mongolia of China" is approved and the ADB is providing financial assistance. One of the positive outcomes of this project is expected to build up the experience and knowledge of regional trading.

The Russian Federation is another regional business partner of Mongolia. Collaboration in trade and investment involves contract between Governments and between Regions. As a result, Mongolia is exporting meat and coal to the near border towns, cities and provinces of Russia following the agreements and contracts.

Activities directed to support effort of servants like to increase their participation in developing strategic planning. Development of methodologies to identify main direction of the organization at lower level is progressing.

Ministry of Industry and Trade, and relevant agencies are carrying out activities targeted to prepare human resource and improve level of comprehensive knowledge. In 2002, around 30 public servants were involved in short-term courses of foreign language and professional training, locally and abroad. Moreover, post graduate courses for bachelor, master and doctorate in 19 different subjects are offered to future state servants and around 30 people have been in contract to attend in master degree courses in foreign countries by Government sponsorship assistance. Selection criteria of appropriate candidates are based on basic requirement and rules of foreign host universities, and universities and institutions of Mongolia.

II.4 Public Service Professionalism

Effective implementation of proposed goals and objectives of Government depends on knowledge, capacity and experiences of public servants, and thus, existence of enabling environment in public service is crucial for success. Framework for selection of skillful personnel, provision of sustainable environment and development of capacity building in public services are renovating. This concept of reform in public service has embedded in Public Service Law and Finance, and Management Law.

By the Law of Public Service, every candidate takes an entry examination of state service profession, as it is part of selection process. Every year state service organizations send order for required number of personnel based on their survey in needs for personnel to the Public Service Committee and it organizes selection competition. The candidate, who passes the examination, works as intern for the following one year. After the internship, on the basis of the reference letter from administration where the candidates ability to carry duties and to fulfill other requirement would be described, the process of recruitment will be conducted. If the person meets main requirements of the organization, by the resolution of the authorized administrative person, he/she shall take an oath of civil servants.

Core of the existence of public service is based on the principles of specialization and sustainability. In contrast, today political indicator is commonly used for selection and appointment of civil servant at any levels of public organization. Researchers argue that it has negative impact on public organizations' activities. Also, low wage and salary, and low social guarantees cause the highly skilled servants to lose their interest.

II.5 Information Technology in Government Operation

Globalization and reform in public services are hard to imagine without information technology. In Mongolia, reform in public administrative information system is growing faster since 1995. Information technology brings many advantages and opportunities to public administrative organizations. Through improving quality, speed, acceptability,

responsibility and transparency, citizens and partner organizations are advancing more trust in elimination of corruption and bribery.

Websites are providing essential information on time to citizens, investors and other stakeholders in integrating their collaboration. Information is produced both in English and Mongolian languages. Websites provide essential information for investment to Mongolia, information related to legal environment, and information about foreign trade and foreign investment. Also, the sites enable to introduce monthly, quarterly, and annual reports of the Ministry of Industry and Trade and the FIFTA. In addition, it provides direct communication opportunity with public servants who are responsible for foreign trade and foreign investment.

Certain works were conducted to develop administrative information system. Ministries and their agencies communicate through internal administrative information a networking system and information fund that consists resolution, order and document papers. At the Ministry level, 75 users are currently benefiting from the networking system. The internal information fund contains statistical information of foreign trade commodity circulation between 1995 and 2003, laws and regulation, fund of resolution and decision, and also records of civil servant. Exercise of internal information networking results in the speed of information development and delivering labor productivity. As a result, positive environment for developing new methodology, in collaboration between specialists, is created.

II.6 Existence of Investment Councils

The FIFTA is the Government agency, which is responsible for the promotion and facilitation of foreign direct investment and foreign trade in the country. Predecessor organizations of FIFTA were Foreign Investment Department of the Ministry of Trade and Industry, 1990-1996, and the Board of Foreign Investment (BFI), 1996-1998. FIFTA was formed in 1998 to handle trade and foreign direct investment issues of the country. The FIFTA has 20 employees and is divided into the following sections: Foreign Investment Promotion Team; One-Stop Service Center; Administration Unit; Small and Medium Enterprise Support Office and Information and Communication Unit. The FIFTA's main functions are as follows:

- | Provides investment matchmaking services to both foreign and Mongolian investors seeking cooperation in the areas of technology, management, marketing;
- | Hosts foreign- investors' missions and organizes Mongolian business missions overseas, as well as international investors conferences and seminars. In addition, FIFTA carries out investment promotion activities in order to facilitate adequate image of the Mongolian business environment;
- | FIFTA is the first contact for investors seeking to establish their business in Mongolia.

The FIFTA's One Stop Service Center provides information related to investment opportunities and incorporation procedures. The main objectives of the Center are to present effective and centralized service from the executive governing bodies to foreign investors, to improve the registration and monitoring activities and to make them open and non-bureaucratic. The Center's function principle is based upon the presentation of relevant ministries and agencies that issue licenses and permissions for foreign investment.

Also, it supports stability agreement. Foreign investors will be accorded the same conditions as those offered to local investors who are engaged or will be engaged in a similar business. The Cabinet member responsible for taxation policy may then sign a Stability Agreement with the investor, which provides a legal guarantee for stable corporation and other direct taxes and import duty for a specified period. The duration of the Stability Agreement (10 or 15 years) is determined by the size of the investment.

III. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

III.1 Anti-corruption Laws

The State Great Khural (Parliament) of Mongolia adopted Anti-corruption law in April 1996. Anti-corruption law is supposed to regulate state officials' corruption and bribes related activities. It includes:

- | State officials in charge of political and special position defined in the Law on State Service;
- | Chairman and Secretary of the Heads of Citizens' Representative Conference of aimag, capital city, sum and district;
- | State officials in charge of governing and administrative position at economic entities of state property or involving state property;
- | State officials in charge of giving permission, right, privileges, arranging loans and assistance as well as making registrations;
- | Person who is in charge of temporary or permanent position to carry out special duties of state executive organization or certain duties of subsectors under the set legislative procedure;
- | State officials in charge of governing position of state servant service.

Under the law, state officials have to submit their income report but it is uncertain where, whom and in what way it should be done. It is considered that submitting income report annually keeps state officials away from corruption.

Authorities of implementing anti-corruption activities are generally devolved to police, prosecuting organizations and courts. Unfortunately, provisions of the law were not implemented absolutely. The reason for this is that the way of fighting corruption is not completely defined and authority and obligations of implementing organization are not set forth clearly. Therefore, in order to intensify activities against corruption there is a necessity to form legal framework of state service and upgrade the systems of the state service. That is why for upgrading state service the following activities were formulated, for implementation by 2010, in the "National Program on Anti-corruption".

- | To adopt the amended or newly developed legal rule (it includes the legal rule of an officer at the customs, taxation, prosecuting and court organizations);
- | To create a favorable condition for transparent and fair competition to choose a civil servant;
- | To reduce bureaucracy at all levels of state organization;
- | To increase salary of a civil servant and thus improve the living standard;
- | To conclude a treaty with each civil servant to keep away from corruption;
- | To upgrade the mechanism of submitting the income report of a civil servant and the scrutiny procedure of the income report;
- | To appoint a person for corruption prone position for the duration of not more than two years.

IV. LEGAL AND JUDICIAL FRAMEWORK

IV.1 Regulatory Framework for Trade and Investment

Mongolia set the roots of developing under world trend and standards of development from the beginning of the 1990s and the legislative basis of it was laid down in the amendments of the Constitution of the year 1960. One of the main issues settled by these amendments was the recognition of the private property and this changed completely the principle when trade, industry and the way of running economy were managed by the sole centralized economy and were based on socialist property. Under these amendments of the Constitution, Law on Property was adopted in 1991 which allowed the existence of private property in Mongolia and the first Law on Economic Entity was also adopted in the same year. Thereby according to these laws, activities of property have taken place and the first private economic entities have begun to be established. In other words, before the mentioned reforms or before the 1990s, issues of foreign and domestic trade as well as investment were solely State's business and the right and responsibilities to conduct activities were also the State or the Government's duty. And as for foreign trade, Mongolia depended greatly on member states of the Economic Mutual Assistance Council.

Thus, Mongolia adopted its new democratic Constitution in 1992 and declared clearly the basic regulations for developing all forms of property equally and freely. Thereby the monopoly situation when the Government alone had the right to take part in foreign and domestic trade as well as investment had been removed, and the private sector has had the opportunity to participate in these relations. In this regard, the State Great Khural has regulated issues of adopting new national legislations as well as joining international organizations and international treaties and conventions on trade and investment.

As for legal system, Mongolia belongs to continent of Rome-German civil law and therefore, there is no special law on regulating trade activities and the main law that regulates them is the Civil Law. The Civil Law that served since 1963 was renewed and adopted in 1994 in conformity with the content and principles of the new Constitution and thus it performed its regulating role of the transitional period. Following the development of social relations and reforms taken place in economy, this law was adopted under a newly formulated concept in 2002 and came into force on September 1, 2002.

The main purpose of the Civil Law is based on the principles of equality, sovereignty, inviolability of property, freedom of the treaty, nonintervention in private business, carrying out lawful activities by citizens and economic entities, resumption of violated rights, protection by the court. Besides the Civil Law, the following laws regulate relations of a certain sector in detail: Law on Oil, 1991; Law on Foreign Investment, 1993-2002; Law on Chamber of Trade and Industry, 1995; Law on Foreign Trade Arbitration, 1995; Law on Currency Regulation, 1994; Law on Mining, 1997; Law on Friendship, 1999; Law on Company, 1999; Law on regulation of buying goods by state or local property's assets, choosing executives of a job or service, 2000; Law on Prohibition of unfair competition, 2000; Law on Labor; Law on Customs; Law on Customs Tariff; Law on Bankruptcy; Law on Bond Market, 2002; Law on insurance, Law on Banking; Law on Non-Banking Finance Organization, Law on Taxation Package of Population income, trade, value added, economic entities, organization; Law on Protecting Surroundings; Law on Quality and Standard; Law on Free Zone; Law on Tourism.

IV.1.1 Foreign Investment Law

The Foreign Investment law enacted in 1993 (latest amendments adopted in January 2002) contains four sections dealing with:

- | General provisions relating to foreign investment, including a definition of foreign investment and an outline of the types and forms of foreign investment allowed.
- | Protection of foreign investment including legal guarantees and the right and duties of foreign investors including protection in the event of expropriation.
- | Operation of business entities with foreign investment including registration and dissolution of businesses, exemptions from customs duties and sales tax, land use and other practical issues relating to the operation of business entities within Mongolia.
- | Settlement of disputes.

IV.1.2 Company Law

The Company law of Mongolia is one of important and authoritative legislation that governs all operations and activities of business entities in Mongolia.

- | A open or joint stock company whose shareholders' capital is divided into shares which may be freely traded by the public; and
- | A closed or limited liability company whose shareholders' capital is divided into shares, where the right to those to dispose of such shares is limited by the company's charter.

The State may also participate in business through companies with state ownership.

V.1.3 Law on Economic Zones

The Parliament has recently approved the Law on Economic Zones. Economic zone will be established in the city of Altanbulag on Russian and Mongolian border. This legislation envisions virtually tax free business environment and minimum bureaucratic obstacles for foreign and domestic companies. The Government of Mongolia intends to establish similar Free Economic Zones in Zamiin Uud and Tsagaan nuur as well.

IV .1.4 Contract Laws

Mongolia's principal laws of contract formation, performance, assignment, remedies for non-performance, etc. are found in the current Civil Code, enacted in November 1994 and amended a number of times later on. The latest version was approved in the spring of 2002. Issues relating to contracts concluded before the enactment date continue to be governed by the prior Civil Code. Contracts involving legal entities or land, as well as most other contracts are supposed to be in writing and certified by notary public.

Since 1990, Mongolia has concluded trade agreements, based on the new conditions, with many nations and such agreements on protecting and encouraging investment, exemption from double taxation, fighting against evasion from taxpaying, have created favorable conditions for trade, economy and investment. Mongolia became a state party to the TWO on January 29, 1997 and thus it joined the basic conventions of WTO and took 20 responsibilities to implement for becoming the member state of WTO. Some important responsibilities are:

- | Not to introduce a new tariff other than the permitted import tariff by WTO;
- | Not to levy different taxes on domestic and imported goods;
- | To reduce number of chemical goods related license;

- | To inform WTO about the reforms in trade and economy in the transitional period and report WTO about the property program and the implementation of the obligations bi-annually.
- | To publish any trade related law, rule or resolution before entering them into force in order to get acquainted with them and not to enter them into force before publishing;
- | To follow the agreement on investment trade related measures;
- | To bring into conformity activities and clearance of customs with the provisions 7,8,10 of TSEX;
- | To adhere to trade relating parts of the agreement on intellectual property right.

Some international trade related conventions which Mongolia joined are "Convention on the Limitation Period in the International Sale of Goods" (New York, 1974) 1974.06.14, "UN Convention on Contracts for the International Sale of Goods" (Vienna, 1980) 1991.01, and so on. Besides these, there are several programs and projects that are implemented. For example, The Mongolian German Project called "Cooperation on International Trade Policy: WTO." From the abovementioned discussion it can be seen that in the framework of trade and investment Mongolia managed to do its national legislation and international legal regulation at the appropriate level.

IV.2 Property Rights Laws

As for property rights it was mentioned in the first part that in Mongolia since 1990 the constitutional regulation has defined the principles of the existence of all forms of property and multiple structure economy. As it is declared in the 16th article of the Constitution of Mongolia "The citizen of Mongolia has the right to secure, own, possess and inherit movable and immovable property fairly. Private property is prohibited to confiscate or obtain by unlawful means. In case private property was get by force state or its authorized organization on the basis of social inevitable necessity compensates it by paying the price." And also according to the 2nd provision of the 5th article, "the state recognizes any form of public and private property, and protects the rights of possession by law". This declaration became the basic legal principle to be abided by in property relating issues.

There are several laws regulating property issues, but the main source is the Civil Law: 2002. Under this law property rights issues are regulated such as movable and immovable property, getting the right to possess the intellectual property, to sell them, protect the rights to possess, inherit, shared property, servitude, usufruct, mortgage, the right to construct buildings on the land of others, loan, fiduciary.

Main laws regulating relations of property are Law on Patent: 1993, Law on Copy Right: 1993, Law on Registration of Immovable Property: 1995, Law on Name of Goods and Economic Entity: 1997; Law on Conveying Technology: 1993; Law on State and Local Property: 1996; Law on Apartment Privatization: 1996; Law on Shared Apartment Possession: 1996; Law on Friendship: 1995; Law on Cooperative: 1999; Law on Company: 1999; Law on Bond Market: 2002; Law on Land Possessing to the Citizen of Mongolia: 2002; Law on Prohibition of Unfair Competition: 2000; Law on Foreign Investment: 2002; Law on Protection of the Rights of Customer: 1991; Law on Organization Confidentiality: 1995 and so on.

Mongolia is a member state of the World Intellectual Property Organization (WIPO) and joined the main conventions issued by this organization as the 11th country. Also Mongolia ratified TRIPS / Treaty on Rights of Intellectual Property Sales of the WTO.

IV.3 Mechanisms to Protect Property Owner Rights

Property owner rights operate on legislation, based on the principle of equal law protection. In the legal framework of protecting property owner rights, the Civil Law plays a major role and in this issue criminal legislation has a certain role. Court, arbitration, prosecutor, customs, police and organizations carrying out court verdict play an important role in protecting property owner's violated rights, in resuming rights and compensating damages. And also special bodies in charge of confirming legal rights of property owner conduct their activities. For example, Intellectual Property Office of Mongolia registers intellectual property, issues patents to samples of inventions and also a certificate. Land, Geodesy and Scheme Office are in charge of issues related to the registration of immovable property and land.

The State Great Khural renewed and adopted five basic laws in the year of 2002 such as the Civil Law, Criminal Law, Law on Verdict of Citizen's Case, Law on Criminal Penalty, Law on Enforcement of Court Verdict and these laws entered into force on September 1, 2002. Therefore, it is possible to be protected under the abovementioned laws in case property owner rights and interests are violated.

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GLOBALIZATION AND STATE CAPACITY: THE PHILIPPINES

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I. INTRODUCTION

The determining factor behind the state of fiscal affairs in the Philippines is the effectiveness of the state to cope with the demands of globalization. An effective state allows the efficient provision of goods and services. An effective state likewise possesses rules and institutions that allow markets to function and people to enjoy everyday life. Although the state is central to economic and social development, it does not necessarily follow that it acts as a direct provider of goods and services; it can achieve growth by simply serving as partner, catalyst, or facilitator. This study documents the rules, laws, regulations, institutions, and agencies that underlie the administrative capacity of the Philippines to promote trade and investments, and thereby to achieve economic growth.

The report is organized as follows: the second section describes the objective of the study. Section three explains the methodology used in assessing the state capacity and Section four analyzes the administrative capacity of the state. The fifth section examines the legal and judicial framework. Section six assesses transparency and accountability in trade and investment activities. Finally, section seven discusses the conclusions and recommendations.

II. OBJECTIVE AND RATIONALE

The objective of this study is to document and analyze Philippine's experience and practice related to state capacity and globalization. The study will cover three aspects of state capacity that contribute to the promotion of trade and investments: (a) administrative capacity, (b) systems of transparency and accountability, and (c) legal and judicial frameworks. In addition, the study will provide some information on the overall structure and mechanisms to access justice for the poor.

III. METHODOLOGY

The World Development Report (1997) states that, "good government is not a luxury, [but] a vital necessity for development." Further Snowdon and Vane (1999) states that, "countries with perverse [social] infrastructure, such as a corrupt bureaucracy, generate rent-seeking activities devoted to the diversion of resources rather than productive activities." The following discussion focuses on the role and capabilities of the state in order to function effectively and efficiently, achieve social stability, and promote socioeconomic development.

III.1 State Capacity

What constitutes state capacity? A framework is presented in Table I that "classifies the functions of government along a continuum, from activities that will not be undertaken at all without state intervention to activities in which the state plays an activist role in coordinating markets or redistributing assets" (World Development Report, 1997). The framework suggests that governments assume some role and perform a number of functions depending on their state capability.

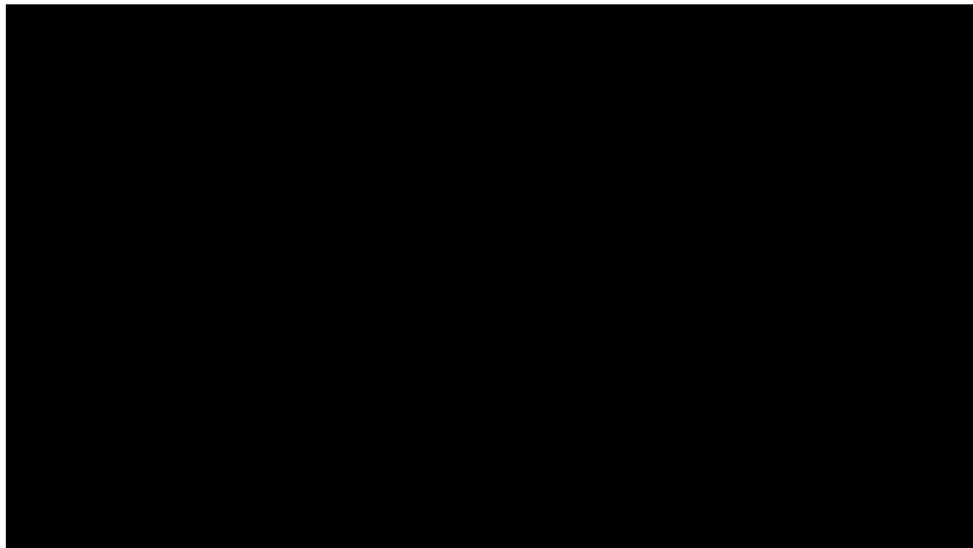
Basic functions such as the provision of pure public goods—property rights, macroeconomic stability, public health, safe water, roads, national defense, protection of

the economically poor - should be the focus of countries with low state capacity (World Development Report, 1997). Moreover, the World Development Report (1997) further includes that "social and institutional (including legal) fundamentals [should also be provided] to avoid social disruption and ensure sustained development."

States with more capability provide more than the basic services. At this level, states perform intermediate functions such as management of negative externalities, regulation of markets and industries, and the provision of social insurance (World Development Report, 1997). Moreover, the World Development Report (1997) argues that states with intermediate capability "cannot choose to provide or intervene, but only how best to intervene, since government can work with partnership with markets and civil society to ensure that these public goods are provided."

The World Development Report (1997) contends that, "states with strong capability can take on more activist functions, dealing with the problem of missing markets by helping coordination." The experience of Japan and the East Asian Tigers indicates that the state has a role in promoting markets through active industrial and financial policy.

TABLE I
Functions of the State



Source: World Development Report (1997).

Thus, depending on its capability, a government can function as provider of basic services (although it may not be the only provider), as market regulator to moderate the effects of market failure, as interventionist in the sense that it should coordinate the actions of markets and civil society in effecting more efficient outcomes, or as an activist in legislating or promoting active industrial and financial policy.

The Philippines is currently into all three levels, assuming the role and performing the functions of a state with low, intermediate, and strong capability. Although the Philippine Government has moved on beyond the basic services by venturing into regulation of

markets, it has yet to provide programs that alleviate the conditions of the economically poor, a requirement for the basic functions of the state. Moreover, although a pension system exists, an indication that the country is performing functions beyond the basic services, the amounts given to the pensioner are insufficient to meet basic needs. Furthermore, the national health care coverage (Medicare and PhilHealth) is insufficient to meet the needs of destitute individuals that require health services beyond basic health care.

The Philippine Government has also been implementing asset redistribution through the Comprehensive Agrarian Reform Program and land grants to informal settlers in urban areas, an indication that the country is performing an activist function, a characteristic of countries with strong state capability. What's more, the government has created trade and export development councils that are analog to those implemented in East Asian economies in the 1990s, although the country has yet to provide the basic services required of countries with low state capacity and has yet to deliver the basic functions of the state - law and order, property rights (e.g. contractual obligations between parties are usually muddled in Philippine courts) - in a more effective and efficient manner.

It seems that the Philippine Government is performing a lot of functions, some of which characterize a state with strong capability. A closer look at the outcomes of these activities seems to indicate that the Philippine Government is taking on functions that it is not yet capable of, at least given the definition of a state with strong capability and given the fact that the economically poor are not adequately protected and provided for, and that law and order is still tenuous.

III.2 Systems of Transparency and Accountability¹

The key to achieving transparency and accountability in governance is to find rules and norms that create the appropriate incentives for state agencies and officials to act in the collective interest while restraining arbitrary action. This can be achieved through:

- | Rules and restraints, such as an independent judiciary, are mechanisms for enforcing the rule of law, which are critical foundations for sustainable development. Appropriate separation of powers and the presence of watchdog bodies also restrain arbitrary behavior;
- | Building accountability necessitates formal mechanisms of restraint, anchored in core state institutions;
- | Power can be divided - executive, legislative, judiciary, or among central, regional, provincial or local governments;
- | The broader the separation of powers, the greater the number of veto points that can check arbitrary action (although multiple veto points can make it as hard to change the harmful rules as the beneficial ones);
- | In many developing countries legislative and judicial oversight of the executive branch is weak - the setting of goals and the links to the policies needed to achieve them are sometimes diffused, legislators suffer from limited information and capability (and in the Philippines, most members of the legislature are corrupt and/or incompetent), and judicial independence is compromised;
- | An independent judiciary is vital to ensure that the legislative and executive authorities are accountable under the law, and to interpret and enforce the terms of the nation's constitution (i.e. supreme court justices must be appointed for life and appointments must go through a rigorous process);

¹ The discussion on "Systems of Transparency and Accountability" is taken from the World Development Report (1997).

- | Formal checks and balances can help to reduce, but are seldom enough, so that reforming the civil service, restraining political patronage, and improving civil service pay may be needed to reduce corruption by giving public officials more incentive to play by the rules.

Competitive pressure can come from within the government bureaucracy through recruitment of civil servants on the basis of merit. It can also come from the private sector by contracting out services and allow private firms to compete with government agencies in the provision of goods and services. It can come from the international marketplace, through trade and the influence of global bond markets on fiscal decisions as well.

- | Government agencies should be free from political interference, must have limited but clear objectives, given adequate resources and training, and the staff must be well compensated;
- | Cross-country evidence indicates that bureaucracies with more competitive, merit-based recruitment and promotion practices, and better pay are more capable;
- | Political appointments must be the exception, not the rule, so that the state bureaucracy relies on highly competitive recruitment and a promotion system that explicitly rewards merit (ongoing reforms in the Philippines are examining these issues in an effort to improve bureaucratic capability);
- | Countries with weak capacity need first to strengthen rule-based compliance and financial accountability within the public sector, provide greater clarity of purpose and task, and introduce performance measurement;
- | As output measurement and ex-post controls on inputs are strengthened, state agencies can be provided more flexibility in exchange of greater accountability for results (for countries with weak capacity and inadequate controls, government executives that are given more flexibility may result to increased arbitrariness and corruption with no commensurate improvement in performance).

Voice and partnership is the means to achieve transparency and openness in modern society and governance, such as business councils, interaction groups, and consumer groups. Institutional working arrangements with community groups can contribute to greater state effectiveness by giving citizens a greater voice in the formulation [and implementation] of government policies.

- | Governments are more effective when they listen to businesses and citizens and work in partnership with them in deciding and implementing policy;
- | Even the best-intentioned government is unlikely to meet collective needs efficiently if it does not know what the people's needs are;
- | Government programs work better when they seek the participation of potential users, and when they tap the community's reservoir of social capital rather than work against it;
- | Policy-making should be embedded in consultative processes, which provide civil society, labor unions, and private firms opportunities for input and oversight;
- | Decentralization can improve the quality of government and the representation of local business and citizens' interests.

III.3 Legal and Judicial Capacity

The Philippines must demonstrate a credible rule of law. Writing laws is rather easy while enforcing them are fraught with problems, especially when the independence of the

judiciary is compromised (World Development Report,1997). The Philippine Government can reinvigorate the public sector through the containment and reduction of opportunities for corruption by cutting back on discretionary action and authority.

The first step in ensuring a credible rule of law is to have a constitution that protects the basic rights of persons (natural or juridical) and to have institutions that interpret and implement these laws as they are. Only when arbitrary actions and discretionary authority are restrained, the Philippines can achieve some semblance of justice - the demonstration of a credible rule of law. The second step is to enhance the institutions of restraint because such things take time to develop and establish themselves, while international commitment mechanisms may help to fill in the gap even as the state's legal and judicial institutions develop through international adjudication guarantees from international agencies (World Development Report, 1997).

When corruption is entrenched, as in the case of the Philippines, efforts that are more dramatic are needed to uproot it, and these efforts should be focused on better monitoring of official action - both by formal institutions and by individual citizens - and punishment of wrongdoing in the courts (World Development Report, 1997). *The Department of Justice* and the *Office of the Ombudsman* are two agencies that are supposed to interpret and implement the rule of law in the Philippines. The history of both agencies is littered with corruption and ineptness, which have fostered skepticism and ridicule among the general public with regard to the rule of law in the Philippines. Moreover, Philippine courts are famous for their slowness in litigation and taking action against those that break the rules and laws of the land. Corruption, despite claims to the contrary, is not culture specific, and reducing it will require a multi-pronged approach, which must include the private sector and the civil society more broadly (World Development Report, 1997).

III.4 Standards and Indicators of State Capacity²

To ensure effective institutions, the Philippine Government must supply effective market supporting institutions and create the demand for such institutions (i.e. agencies, systems, and mechanisms). The following are examples of how to ensure the effectiveness of institutions in effecting socioeconomic development:

- (a) Design institutions to complement what already exists-in terms of other supporting institutions, human capabilities, and available technologies;
- (b) Innovate to design institutions that work and drop those initiatives that do not;
- (c) Connect communities of market players through open information flows and open trade;
- (d) Promote competition among jurisdictions, firms, and individuals.

III.5 State Intervention in Socioeconomic Development

The economic rationale for state intervention usually revolves around market failure and the concern for equity. Market failure results when "a market left on its own fails to allocate resources efficiently" (Mankiw,1998). Most of the discussions supporting government regulation stems from market failure with an implicit assumption that the "process of government intervention is costless or, at the least, its benefits exceed the costs" (Weidenbaum, 1995). The following situations are some examples with varying degrees of market failure.

² The discussion on "Standards and Indicators of State Capacity" is taken from the World Development Report (2002).

The state, even one with a low state capability, is tasked to provide public goods, which are non-rival and non-excludable. These characteristics make it infeasible to charge fees for the use of public goods, which means that private suppliers do not have the incentive to supply them (World Development Report, 1997). In this case, public goods necessitate that the government takes an interventionist role by providing the public goods that the people need. Examples of public goods are national defense and rural roads.

Common property goods are rival but non-excludable so the government and private investors can share the cost of providing such goods (World Development Report, 1997). Common property goods, such as irrigation systems for a farming community or Level II water supply systems (public faucets) for an urban community, can be operated and maintained by the users. The government simply provides the basic infrastructure, while the community shoulders the maintenance and other operating expenses. Although the government intervenes to provide the basic goods at the outset, its intervention is limited.

Club goods are non-rival but excludable. So private investors, with some help from the government, may be persuaded to provide club goods, such as toll roads and inter-urban highways, which directly benefit some motorists and certain communities (World Development Report, 1997). In this case, the government simply promotes the undertaking by asking for bids from the private sector to undertake such projects through build-operate-transfer (BOT) and other related financing schemes. Since toll and other user fees will be collected for such facilities to cover the costs of construction, operation, and maintenance, the private sector has the incentive to supply club goods.

Externalities arise when the actions of an individual or a firm hurt or benefit others without that individual or firm paying or receiving compensation (World Development Report, 1997). Negative externalities, such as pollution, may be solved by using Pigovian taxes or tradable pollution permits or regulating the industry (Mankiw, 1998). Thus, the government may either regulate an industry that produces negative externalities or may simply intervene to moderate the effects of such externalities by using Pigovian taxes or tradable pollution permits. Positive externalities, such as technology transfer and primary education, benefit society as a whole. In such cases, the government and the private sector may share in the provision of such goods (primary education) or the government may simply provide incentives or subsidies to the private sector to adopt or develop new technologies.

Government regulation may be desirable when the industry is a natural monopoly in order to protect the public from monopolistic firm behavior. However, Weidenbaum (1995) argues that natural monopoly is only "natural" in a given technological or economic environment. That is, today's monopoly can become tomorrow's competitive industry (e.g. US railroads now compete with trucking and barges for moving cargo). Moreover, changes in technology and markets have created new scope for competition in services once considered monopolies (World Development Report, 1997), such as in power generation and transmission, postal service, airlines, and telecommunications. Thus, the government may simply provide the right mix of incentives to entice the private sector to take on services that the government used to provide.

Incomplete markets and imperfect or asymmetric information are pervasive problems that may result in inefficient outcomes (World Development Report, 1997). A number of

countries have sought to address these problems by ensuring widespread coverage in health, unemployment, and other social insurance; and holding down costs on medication by implementing price controls of ethical (prescription) drugs or the introduction of generic drugs. Governments have addressed these problems by regulating private insurance, financing or mandating social insurance, or by directly providing healthcare (World Development Report, 1997).

Promoting equity may compel governments to intervene even in the absence of market failure (World Development Report, 1997). Competitive markets do not always result in equitable and socially acceptable outcomes. Persons with limited assets may be left with insufficient resources to achieve socially acceptable living standards. Thus, government intervention may be required to protect the economically, socially, and politically weak through asset redistribution or direct payments.

IV. ADMINISTRATIVE CAPACITY OF THE STATE

The state is tasked to promote the well-being of its citizens by having a social infrastructure - the collection of laws, institutions, systems, and government policies that make up the economic environment that helps the country attain its potential. Social capability refers to the various institutional arrangements that set the framework for the conduct of productive economic activities without which market economies cannot function effectively and efficiently (Snowdon and Vane, 1999). Capability, in general, is the ability of the state to take on and foster collective actions such as law and order and basic infrastructure to support social and economic development, while effectiveness is a result of state capability in meeting society's demand for basic services (World Development Report, 1997). In the Philippines, agencies and institutions have been established to assist the government in helping the country to achieve its potential with regard to socioeconomic development and delivery of basic services to the people, among others. Thus, the administrative capacity of the state to promote socioeconomic development rests on the interplay and dynamism of a network of agencies and institutions in the government and the private sector to promote investments in capital projects and social programs, as well as the capability, effectiveness and efficiency of agencies and institutional arrangements that transpire in the course and conduct of development-oriented activities.

In order to promote investments that support socioeconomic development, the Philippine Government has setup agencies and institutions to review, approve, implement projects, and facilitate legislation that support these projects and programs. There are three major institutions - the Investment Coordination Committee (ICC), the Legislative Executive Development Advisory Council, and the Development Budget Coordination Committee - that facilitate, recommend, or review government projects and programs geared towards socioeconomic development. The institution that oversees the major capital investments of the government is the ICC.³ The ICC is a multi-agency working group that reviews the fiscal, monetary, and balance of payments implications of major capital projects.

IV.1 Project Review and Approval

The ICC follows a three-step project review and approval process, which can take around two-and-a-half months. Upon submission of the required documents by the proponent

³ The Appendix contains a more detailed discussion on the mandate and functions of ICC.

agency to the ICC Secretariat, the ICC Technical Board (ICC-TB) takes around four to six weeks to conduct project evaluation and prepare the project evaluation report (PER). The ICC review process breaks down when the ICC-TB and ICC Cabinet Committee (ICC-CC) take too long in reviewing a project, which may happen due to a number of factors including

- | non-inclusion of the proposed project in the list of priority projects for the year;
- | technical flaws in the project proposal that are difficult to resolve or require inter-agency consultation for the resolution of problems;
- | the proponent agency lacks the institutional mandate to undertake such projects;
- | the proponent agency lacks the institutional capacity to undertake the project; or
- | there are insufficient budgetary appropriations for the proponent agency to undertake the project in the current year.

Once the PER is complete, the ICC Secretariat furnishes the proponent agency with a copy so that the agency is able to respond to the issues raised in the PER. This exercise takes at least one week to complete and may take longer the proponent agency is unable to comply satisfactorily with regard to the issues raised by the ICC-TB. Projects that are not approved at the ICC-TB are remanded back to the ICC Secretariat for technical or other revisions so that it can be taken up in the next ICC-TB meeting.

Assuming that all goes well with the ICC-TB and the proponent agency during the post-PER process, the ICC Secretariat then forwards the project for further review by the ICC-CC, which deliberates on the merits of the proposed project. This process takes at least two weeks since there are only two ICC-CC meetings in a month. Projects that are not approved at this level are scheduled for further deliberations in the next ICC-CC meetings, while those that are approved are forwarded to the next NEDA Board meeting for formal approval and budgetary appropriations for the next fiscal year. The NEDA Board approval may take one month because it only meets in the second week of the month, which means that projects that are not approved by the first week of the month are scheduled for next month's meeting. Thus, although the ICC review and approval process theoretically takes two-and-a-half months, it could take longer due to factors that may be beyond the control of the ICC Secretariat and the proponent agency, which means that the system is flawed and needs to be more flexible to accommodate priority projects and programs for immediate approval and implementation.

IV.2 Interagency Coordination

The legislative and executive branches jointly undertake investment planning and decision-making. In theory, there exists a detailed legislative involvement in the preparation of the Medium-Term Philippine Development Plan (MTPDP) and its attendant document, the Medium-Term Philippine Investment Plan (MTPIP), and the discussion of the Budget of Expenditures and Sources of Financing (BESF), although the legislature has shown limited commitment to the objectives of the medium-term plan because Congress has failed to approve the MTPDP (Systems and Gap Analysis, 1997). Nevertheless, the main institution that oversees the coordination of developmental activities in the two branches of government is the Legislative Executive Development

Advisory Council (LEDAC).⁴ The LEDAC is tasked, among other things, to facilitate the passage of priority legislation that supports socioeconomic development planning so that such activities that promote economic development are given annual budgetary appropriations. Moreover, the LEDAC provides a mechanism for facilitating consensus between the legislative and executive branches on various socioeconomic goals and objectives of the current administration. The creation of consultative forums, such as the LEDAC and joint technical working groups and committees in various levels of the government bureaucracy, is a positive development towards building transparency and consensus among key agencies and institutions (Systems and Gap Analysis, 1997).

Although on paper the LEDAC is a good avenue wherein the goals and objectives of the executive branch with regard to programs and projects for socioeconomic development are coordinated with the budgetary appropriation exercises conducted by the legislative branch, the process may become dysfunctional due to the divergent priorities of the two branches of government. The Philippines is one of the most politicized countries when it comes to appropriating budget for programs and projects. Congresspersons and other politicians exert pressure on the executive branch through the implementing agencies to accommodate their projects in their districts or constituencies, which may not be in line with the priorities set by the present administration. When this happens, the LEDAC breaks down as an institution that coordinates socioeconomic plans with budgetary appropriations and becomes a venue wherein the executive branch becomes exasperated with the myopic concerns and fragmented approach to national development of the legislative branch. The consequences of such dysfunctional behaviors may be the non-passage of legislation that facilitates socioeconomic plans or the inclusion of congressional or politically motivated programs and projects that do not contribute to socioeconomic development in a national or regional scale. Though fraught with problems in its implementation, the LEDAC is still a positive step towards a consultative and more inclusive form of governance, which helps to improve the capacity of the state in achieving its goals and objectives for economic development.

Complementing the functions of the LEDAC in the area of expenditure levels for programs and projects is the Development Budget Coordination Committee (DBCC).⁵ The DBCC is tasked to recommend for approval of the President the level of annual government expenditure program and the ceiling of government spending for economic and social development, among other things. The DBCC also recommends to the President the proper allocation of expenditures for all development activities for the various infrastructure or capital projects. Thus, the LEDAC promotes the facilitation of socioeconomic programs and projects through legislation, while the DBCC recommends the annual budget to be spent on programs and projects that contribute to socioeconomic development. The ICC, LEDAC, and DBCC are institutions that seek to coordinate the socioeconomic investment activities of the government in order to improve its capacity to attract more investments to finance programs and projects that improve the country's socioeconomic infrastructure. These institutions enhance the administrative capacity of the state because they promote interagency cooperation that leads to a more rational and coherent investment program.

⁴ The Appendix contains a more detailed discussion on the mandate and functions of LEDAC.

⁵ The Appendix contains a more detailed discussion on the mandate and functions of DBCC.

There has been quite a debate with regard to how big a government should be or what services it should provide and the kind of interventions to make in order to promote economic development that's putting this debate to rest may mean taking a look at the experiences of states in the last century that was characterized by robust economic growth and development in North America, Europe, Australia and New Zealand, and East Asia. The history of the developing and evolving states tends to show that industrialized countries, in general, have spent more on government services as a proportion of gross national product than lower income countries (World Development Report, 1996). To further this argument, Bertucci and Alberti (2001) contend that intelligent states intervene strategically by creating the conditions that promote [economic] growth.

IV.3 Investment Promotion

The Philippines vigorously promotes investment activities that lead to socioeconomic growth and development through the aforementioned institutions that facilitate investments and, more importantly, through its two major agencies that directly promote investment policies and programs - the Board of Investments⁶ (BOI) and the Philippine Economic Zone Authority⁷ (PEZA). As the lead agency in promoting investments, the BOI assists Filipino and foreign investors to venture and succeed in desirable areas of economic activities such as in food processing, construction, metal products, telecommunications, power and infrastructure projects, among others. The BOI is responsible for the policies and incentives that govern investments in the country, local or foreign. On the other hand, the PEZA is tasked to contribute to the accelerated creation of employment and other economic opportunities, especially in the countryside, and to spur the growth and diversification of exports by encouraging and supporting investments in the development and operation of economic zones. The PEZA regulates the policies and activities of the different special economic zones in the country, which are usually the venue of direct foreign investments and complement PEZA's functions by promoting their own suitability and attractiveness as destinations for foreign investments.

The delineation of functions between BOI and PEZA is unclear since both promote foreign trade and investments although the former is more general than the latter. But the apparent overlap in the functions of BOI and PEZA may be a source of confusion among foreign investors or worse. In case of the foreign investors required to deal with both agencies, the investment process may prove to be more cumbersome, which could discourage direct foreign investments from flowing into the country. Thus, there is a need to rationalize the mandates and functions of BOI and PEZA to prevent overlapping jurisdictions in policy-making and implementation regarding the country's investment activities.

IV.4 Investment Planning and Coordination

To further its objective of promoting investments in key areas of economic development, the Philippine Government annually conducts an interagency investment planning exercise called the Investment Priorities Plan⁸ (IPP). The IPP is the government's blueprint for priority programs and projects in a fiscal year and is updated annually to reflect the developing priorities of the government with regard to socioeconomic sectors in a global environment.

⁶ The next section contains a more detailed discussion on the mandate and functions of BOI.

⁷ The next section contains a more detailed discussion on the mandate and functions of PEZA.

⁸ The Appendix contains a more detailed discussion on the mandate and functions of IPP.

The IPP is divided into national and regional lists. The national list includes export activities, mandatory inclusions under existing laws, and support to government programs from livelihood, infrastructure and environmental projects to social and cultural programs. The regional list includes industry clustering endorsed by the Small and Medium Enterprise Development (SMED) Council and priority projects for marginalized and autonomous regions in the country. The SMED Council, with the help of Bureau of Small and Medium Business Development (BSMBD), is helping small and medium enterprises (SMEs) to better prepare for the coming globalization by reviewing and formulating policies and proposed legislative bills affecting the country's SMEs. The BSMBD supports the SMED Council through the conduct of policy researches and studies on SMEs, preparation of position papers, interagency coordination, implementation and enforcement of policies, and monitoring of the implementation of laws concerning SMEs.

The IPP embodies broad objectives for a competitive economy that is capable of building wealth for the country in a more interactive global setting and a robust agricultural sector that matches the global standards of efficiency. The IPP identifies specific priority economic areas and strategic activities that are able to sustain economic development. In a way, the IPP contains a coherent investment plan of the government to effect and promote economic development that strikes a balance between national and regional development, which may help the government to attract more investments in the identified priority sectors. Nevertheless, Patalinghug (1992) observes that the IPP contains too many "priority areas", 261 in 1990 and 95 in 1991, whereas the South Korean Government was more selective by being more narrowly focused. Although strategic in its importance in achieving a rational and coherent investment plan, the process of including programs and projects in the annual IPP is compromised when congresspersons and other special interest groups pressure the executive branch in including programs and projects that benefit only certain districts and constituencies to the detriment of the rest of the country. When the programs and projects favored by the politicians run contrary to the priority programs and projects contained in the MTPDP and MTPIP, the process that governs the IPP becomes an exercise in futility.

IV.5 Revenue Collection and Expenditure Programs

The government has been implementing reforms with regard to revenue collection to improve its effectiveness and efficiency in increasing its coffers to support its programs and projects. To this end, the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), the two most important revenue collection agencies of the government, are rationalizing their collection mechanisms and improving their incentives for proper tax payments and collection of duties from businesses and individuals. Both agencies have started using information and communication technologies (ICTs) to support their operations and improve the delivery of service to their clientele and the general populace. Despite the government's efforts to boost its revenue collection, government expenditures still outstrip government revenues. The revenue-expenditure gap necessitates the infusion of large amounts of financing from foreign sources, as well as from domestic borrowing. Improving tax policy and administration is the key to close the revenue gap (World Development Report, 1996), although the gap is expected to continue given the increasing demand for government services stemming largely from the country's runaway

population growth rate and antiquated service delivery systems. There is a pending bill in Congress to create the National Authority for Revenue Administrative (NARA) to replace BIR and to strengthen tax administration.

Granted that the government will be able to sell state assets to finance its ever-increasing revenue shortfalls, it is expected that it will continue to rely on foreign borrowing to finance most of its major capital projects (MCPs) for the foreseeable future, especially when there are no longer any assets to sell. The only way for the government to stem its growing revenue shortfall is to improve its revenue collection capability and implement prudence in its expenditure programs. Thus, there is a need to reform the agencies and institutions that review, approve, plan, and program public investments such as the ICC, DBCC, LEDAC, and IPP. The government should discipline itself to drafting investment and expenditure programs closely linked to its level of revenues (from collection and borrowing) so that government resources are not rationed among expenditure programs (Systems and Gap Analysis, 1997). This matching of revenues with expenditure programs will help the government to achieve efficiency because it will be forced to select and implement programs and projects that have the highest impact on socioeconomic development to maximize the use of its scarce resources. (Low-impact programs and projects with regard to socioeconomic development will have to wait until enough resources are available for such projects.) This exercise will help the government improve its capacity in project selection and implementation, which may go a long way in terms of promoting and realizing socioeconomic development in the long term.

IV.6 Fiscal Monitoring and Evaluation System

The Philippine Government's effort to rationalize its support for government corporations is one way of implementing prudence in its expenditure programs. In 1994, the Corporate Affairs Group of the Department of Finance (DOF-CAG) submitted the final report on the Fiscal Monitoring and Evaluation System Enhancement Project (referred to as "the Project" in the remainder of the text) as part of the Reform Program for Government Corporations.

The Project was pursued to strengthen and institutionalize the Corporate Concerns Office of the DOF-CAG's existing system of monitoring and evaluating the financial operations of retained government-owned-and-controlled corporations (GOCCs) and government financial institutions (GFIs), especially with respect to the economic management of fiscal resources. One of the outputs of the Project is a financial information system that will provide databases for the purpose of tracking corporate performance, as well as for policy analysis. The evaluation procedures center on the financial aspect of the operations of GOCCs and GFIs, which is of paramount importance when it comes to evaluating the requests of GOCCs and GFIs for budgetary assistance from the national government.

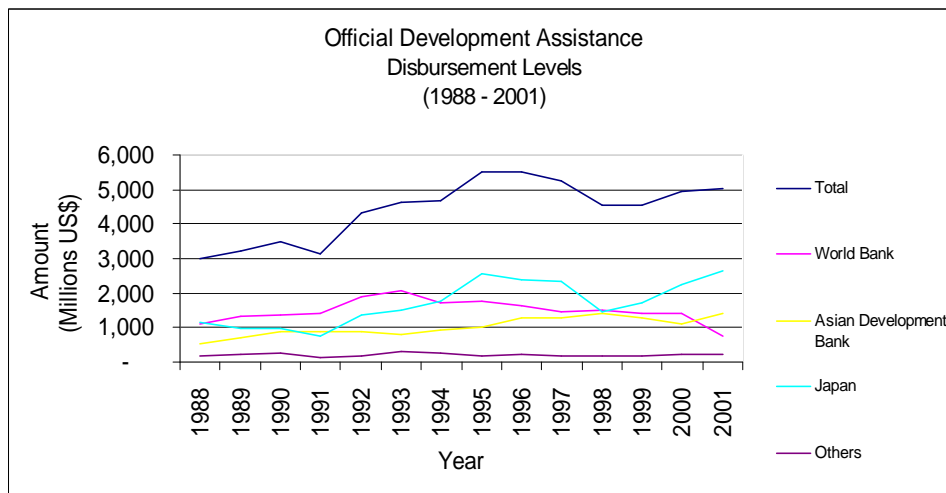
With the fiscal monitoring and evaluation system in place, the national government would be able to objectively evaluate whether or not it is in the best interest of the country and of the national economy to continue infusing huge amounts of resources to the financially strapped GOCCs and GFIs that usually ask for financial support. (Perhaps, the new system will help the government decide on the fate of the GOCC or GFI in question, whether it should continue in its operations or just be shuttered.) Implementing reforms that will help the GOCCs and GFIs to efficiently manage their fiscal resources may mean

less reliance on the national government for budgetary support and capital projects. The effect would be less financial burden on the part of the national government since some of the retained GOCCs and GFIs may no longer require government infusion once the reforms are implemented. This means that the national government can have more resources (because of the freed up resources stemming from the reforms to streamline the operations of GOCCs and GFIs) to spend on other activities, such as programs and projects that further socioeconomic development.

IV.7 Official Development Assistance (ODA)

The Philippine Government has historically relied on foreign assisted projects to develop its economic infrastructure (Systems and Gap Analysis, 1997). Since the IPP contains goals and objectives geared towards economic development that necessitate large amounts of resources - monetary or otherwise the country regularly looks for foreign aid to fulfill its capital requirements. To this end, the Philippines benefits from loans and grants from multilateral and bilateral financing agencies. The country received an average of US\$ 4,418 million as official development assistance ⁹ (ODA) from multilateral and bilateral agencies during 1988 to 2001 (see Figure 1).

Figure 1



The Government of Japan, through its loan and grant programs, contributes an average of US\$1,828 million annually in ODA for the aforementioned period and is the country's biggest source of aid financing. Japan's ODA contributions have increased more than 128 percent between 1988 and 2001. The contributions of World Bank (WB) and its various agencies have dwindled through the years, from a high of US\$2,062 million in 1993 to a low of US\$741 million in 2001, averaging US\$1,598 million during 1988 to 2001. Between 1989 and 2001, the WB's annual contributions were down almost 33 percent. The Asian Development Bank (ADB) has been steadily increasing its ODA contributions to the country during the same period, averaging US\$1,107 million annually. In 2001, ADB contributed US\$1,432 million in ODA, which was 162 percent more than its

⁹ The basic data were provided by the Project Monitoring Staff of the National Economic and Development Authority.

contribution made thirteen years earlier. ODA from other multilateral and bilateral agencies is not an important source of external financing to the country, although their contributions have increased more than 18 percent between 1988 and 2001, averaging just US\$226 million annually for the period.

Most projects funded by the Government of Japan, WB, and ADB are large multiyear capital investments. Other institutions such as the United Nations Development Program and bilateral agencies usually finance social projects that relate to poverty alleviation, human resource development, institutional capability building and institutional reforms, among others. Indeed, development assistance plays a major role in the country's drive for economic development, but external support such as aid financing may achieve little if the Philippine Government's will to reform is weak, or worse or non-existent (World Development Report, 1997).

Despite the huge amount of development assistance that flows into the country every year, the donor agencies' proclivity to finance certain projects in specific sectors of their own choosing without regard to the priorities set in the MTPDP, MTPIP, and IPP may be problematic. In relying largely on foreign-assisted projects to contribute to economic development, the government may at times implement projects that it has been forced into because of the donor agencies' preferences, which may not at all contribute to the medium-term plan of the country. Thus, despite the huge infusions of foreign aid into the country every year, the programs and projects they finance sometimes do not benefit the larger population and only contribute to the increasing marginalization of the economically poor and the politically weak.

Figure 2

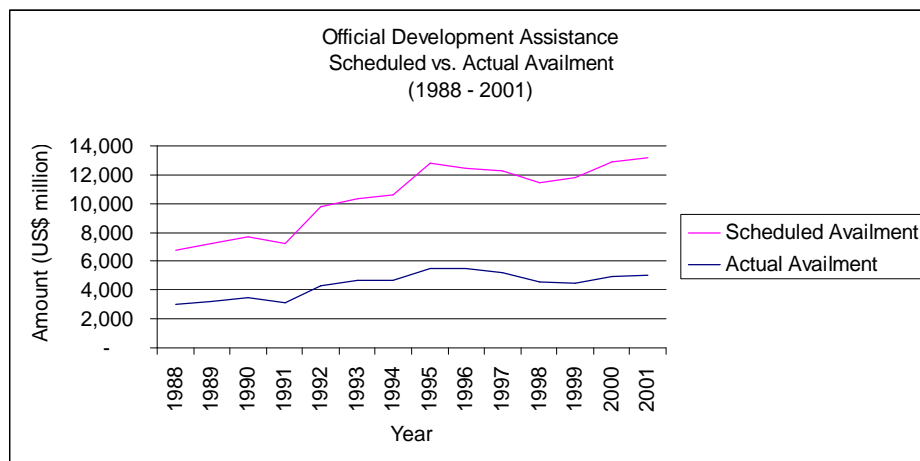
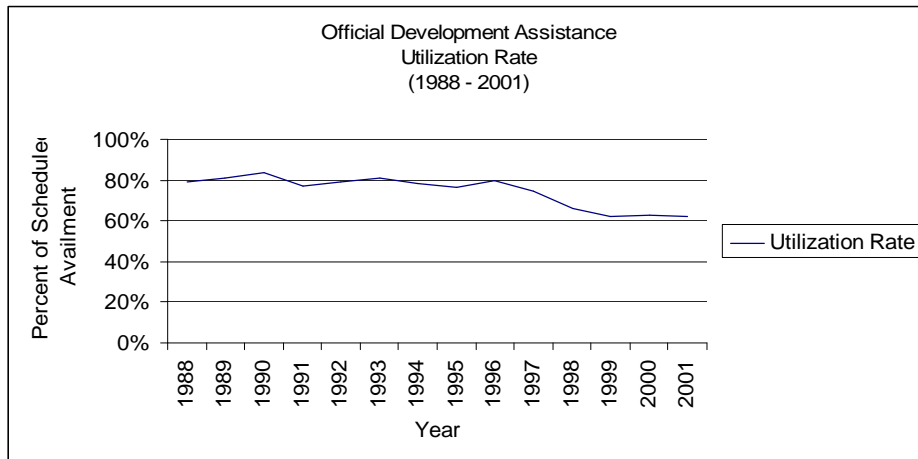


Figure 2 compares the level of scheduled and actual availment of ODA. The graph shows that the gap between the actual and the scheduled level of availment has been widening in the past fourteen years. This may be a telling sign that implementing agencies are inefficient in utilizing available ODA financing, but it could also mean that a number of the government's priority programs and projects are not supported by the funding

agencies (i.e. the funding agencies have not identified these projects in their list of preferred programs and projects). To make matters worse, the government pays penalties and fees annually for the un-drawn amount. As the gap between funds usage and available financing widens, the penalties and fees that the government pays also increase. The rate at which implementing agencies use up their scheduled ODA financing, ceteris paribus, may be connected to their capacity to implement projects efficiently and effectively. The widening gap may be indicative that the institutional capacity of some implementing agencies to carry out their mandates and functions is deteriorating.

Figure 3 complements the previous discussion on ODA availment gap by showing the annual utilization rate of ODA. The graph shows the deteriorating ODA utilization rate through the years, which may be related to institutional inefficiency and ineffectiveness of implementing agencies, the incompetence of agencies and institutions involved in the planning, programing and disbursement of ODA, or the proclivity of financing institutions for certain programs and projects that may be different from the priority programs and projects of the government.

Figure 3



The deteriorating ODA utilization rate needs to be abated so that the country is able to spend the maximum amount of available ODA in any given year to speed up the implementation and completion of its priority programs and projects that redound to national development, economic or otherwise. Moreover, the financing institutions should not prescribe the programs and projects the government should undertake especially when the financing agencies' preferences run contrary to the priorities set in the MTPDP, MTPIP, and IPP. Thus, the government should secure loans and grants that are not tied to the preferences of financing agencies or the technology and services provided by the country of origin of financing institutions. Moreover, the World Development Report (1997) furthers that foreign aid needs to be tied more closely to the recipient country's policies [and programs] in order to be more effective. To this end, the government needs more bargaining skills to effect the needed changes in how foreign aid is utilized and maximized.

IV.8 Project Implementation and Monitoring

The monitoring mechanism employed by the government is biased towards foreign-assisted projects (FAPs), which means that locally funded projects (LFPs) are not accorded with the same scrutiny and attention when it comes to project monitoring and funds usage. Moreover, the procedures for the selection and management of LFPs are less rigorous and less well defined (Systems and Gap Analysis, 1997) than those employed for FAPs. This bias is detrimental to the overall implementation of projects because FAPs usually have locally funded counterpart programs and projects. Thus, it is not uncommon to have FAPs that end up not being implemented well due to ill-advised and ill-managed local counterparts. Sometimes the implementing agency of a FAP does not have the capability of operating and maintaining the project once it is complete, which often results in underutilized infrastructure or worse, unusable facilities due to inadequate resources (institutional capability, financial, or otherwise) for operation and maintenance.

The prevalence of projects with cost overruns also indicates or, at the least, suggests that incentives are perverse (Systems and Gap Analysis, 1997). Corruption and fraud are not uncommon in the implementation of large infrastructure projects, and the country's judicial system is weak or ineffective in bringing erring government officials and other parties to court. In a way, the lax implementation of the rule of law does not act as a deterrent to fraudulent activities. The Systems and Gap Analysis Report (1997) also suggests that the PHP300-million threshold for projects is counterproductive because it encourages implementing agencies to fragment projects in order to evade ICC scrutiny. Fragmenting projects in order to evade the PHP300-million rule may result in projects that are never completed because of the inability of the implementing agency to secure the required financing for the next "fragment" of a bigger project. Thus, the ICC project review and approval process, though commendable in theory, is fraught with problems at the project planning and implementation levels.

IV.9 Trade and Industry

In its drive to become a newly industrializing economy by the year 2000, the Philippine Government, in 1996, created the Industry Development Council (IDC) to formulate policies that rationalize the government's industry promotion and development programs, periodically review and assess the performance of the country's various industries, and recommend to Congress any legislation that contributes to the development of Philippine products (Patalinghug, 1997). In theory, the IDC with its emphasis on industrial and investment policies of the government complements the objectives contained in the MTPDP and MTPIP.

To further the country's industrial activities, the Department of Trade and Industry¹⁰ (DTI) leads the domestic investment activities, and the industry and trade promotions of the government. The DTI acts as a catalyst for intensified private sector activity to accelerate and sustain economic growth through a comprehensive industrial growth strategy. The agency also seeks to promote a progressive and socially responsible liberalization and deregulation program, and policies designed for the expansion and diversification of both domestic and foreign trade. With regard to foreign trade, the DTI spearheads the Export Development Council (EDC), which oversees the implementation of the Philippine Export Development Plan (PEDP) and coordinates the formulation and

¹⁰ The next section contains a more detailed discussion on the mandate and functions of DTI.

implementation of policy reforms to support the Plan. The EDC is empowered to approve the PEDP; coordinate, monitor and assess the implementation of the PEDP and institute appropriate adjustments in order to adapt to changing conditions in both the domestic and international environments; periodically review and assess the country's export performance, problems, and prospects; identify the main bottlenecks, problem areas and constraints in all areas that influence export development, such as policy framework, physical infrastructure, finance, technology, promotions and marketing; among others. The EDC is an institution that has the potential to enhance the country's capacity to seize the opportunities that may result from increased trade and the coming globalization by involving both government and non-government agencies and institutions in the growth and development of the country's export sector. The IDC and EDC are the Philippines' institutional counterparts to East Asia's "deliberation councils", which provide a forum for government policy formulation and implementation, as well as for consensus building (Patalinghug, 1997).

Complementing the EDC on the domestic front is the Domestic Trade Development Council (DTDC), created in 1999 under DTI, which takes care of industries left out in the EDC and IDC (Patalinghug, 1997). The IDC, EDC, and DTDC are institutions that have been created to ensure that the industrial and trade policies of the country are robust and responsive to the ever-changing global economy and are meant to enhance the Philippine Government's capacity and effectiveness in realizing the gains from freer trade that will come with increasing globalization and at the same time mitigate the negative effects of globalization in the other sectors of the economy.

The three "deliberation councils" are institutions that are capable of enhancing state capability because governments are more effective when they listen to businesses and citizens and work in partnership with them in deciding and implementing policy (World Development Report, 1997). But in order for the country to have a coordinated industry and export policy formulation and plan implementation, the IDC and EDC should be merged into one entity that will include all key players in the sector, comparable to Japan's Industrial Structure Council (Patalinghug, 1997).

In June 2000, Executive Order (EO) 225 was enacted effectively integrating the three industry development councils - EDC, IDC, and DTDC - into the Trade and Industry Development Council (TIDC) in order to remove duplication of work and functions.¹¹ The executive order renamed EDC into TIDC and expanded its mandate and functions by absorbing the functions of IDC and DTDC. The TIDC has the mandate to prepare the Philippine Trade Development Plan (PTDP), and review and evaluate the country's performance with regard to exports, industrial growth and development. Moreover, TIDC is tasked to identify the major problem areas and constraints that affect industry development and the growth and flow of trade. The TIDC is a major step in improving Philippine exports, but in order for the country to benefit from the TIDC the availment of export incentives must have a definite time horizon and must be based on performance (Patalinghug, 1992).

A more powerful trade and industry council, such as the TIDC, will have better bargaining skills and influence when it is time for trade negotiations with the World Trade Organization (WTO). To this end, the Federation of Philippine Industries (FPI) has presented Congress with a draft bill that will shore up the country's negotiating skills at the WTO by creating the Office of the Philippine Trade Representative, similar to the influential US Trade Representative's Office.¹² The proposed Office will be tasked to represent and lobby for the country's interests at the WTO in order to affect more favorable outcomes for Philippine industries and products.

¹¹ Manila Bulletin, June 12, 2000. "EO consolidates [three] industry councils."

¹² Philippine Daily Inquirer, March 17, 2003. "Wanted: Competent trade negotiators."

IV.10 Intellectual Property

A related trade and investment activity wherein the government is making some progress is in the protection of intellectual property rights. As a member of the World Intellectual Property Organization (WIPO), the Philippines revamped the then Bureau of Patents, Trademarks and Technology Transfer and renamed it the Intellectual Property Office (IPO) to spearhead the country's drive to protect and enforce rules that govern the use and misuse of intellectual property - patents, copyrights, utility models, trademarks, product design and patterns, among others. The IPO is tasked to implement the Intellectual Property Code of the Philippines, which "embodies the tides of change in a world where fast development in technologies has become a way of life."¹³ Such changes pose big challenges to the protection of creative, inventive and innovative ideas, which compelled the IPO to reformulate its vision and mission in order to be a proactive agent of change in the intellectual property trade.

The IPO and its activities are the government's commitment to the world community that it will uphold and protect intellectual property rights, making it easier for foreign companies to setup subsidiaries in the country without fear that their technology or other intellectual property will be unscrupulously imitated and traded. It is also a way for the country to appease the demands of industrialized economies to protect their inventions and innovations from getting copied without the proper licensing agreements or face dire economic consequences.

The WTO and WIPO are two institutions that the Philippines is signatory to and as such, the country is bound to uphold the rules governing international trade and the protection of intellectual property rights. The Philippines needs a coherent and rational trade policy for it to influence the conduct of trade that affects its citizens, companies, and products in a favorable manner. As a developing country, the Philippines is slow in implementing intellectual property rights because of the relatively high cost of doing business using licensed copies of software and other copyrighted materials and patented equipment. Moreover, the World Development Report (2002) furthers that "the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement can impose significant costs on [developing] countries, because strong patent [and copyright] protection is not as appropriate for them as it is for [industrialized] countries." Despite the country's slowness in implementing the rules and enforcing the law that govern the use of intellectual property, laws and rules do exist to protect these and this is a good start for the country to enhance its capacity with regard to enforcing these laws.

IV.11 Information and Communication Technology

With the advent of computers and networks, the government has embarked on a journey in making government information available and most government services accessible through the Internet, especially through the World Wide Web. The earliest Internet service in the country can be traced back to the Department of Science and Technology's network in 1994, which connected the country's eight major institutions of higher learning across the country with the DOST to further research and development among academics and

¹³ Taken from the IPO website.

professional scientists in the government. The DOST has been in the forefront of technology research and development, not limited to information and computer technologies, although the application of ICTs has become the one area where the government is making real improvements in the delivery of its services.

The Department of Education (DepEd), in cooperation with private institutions, has embarked to accelerate ICT literacy in public schools to keep up with other emerging economies and in preparation for the imminent globalization. The Philippines needs to beef up its human capital by providing adequate facilities and training to equip Filipinos with, at least, the standard information and communication technology literacy skills that are the main source of competitive advantage in the knowledge age. And by encouraging high school students to develop an interest in ICT through various education and skills programs, the country increases its chances of establishing a large pool of quality information technology (IT) professionals, which will be handy once globalization reaches the country in full-force.

The National Computer Center (NCC) is the lead agency for promoting and directing the use of ICT in government. With a vision of an e-government, the Philippine Government enacted the E-Commerce Act requiring government agencies and their affiliates to have a functional website in which people can transact business and access information and government services online. The NCC strengthens its support to the government IT sector through its active participation in the passing of the E-Commerce Act, advocacy and building of the knowledge-economy framework of the Philippines, and its continuing research of new and emerging ICT technologies.

The NCC recently conducted an ICT usage survey on national government agencies (NGAs), called the "State of Web Presence of National Government Agencies". As of March 31, 2003, a total of 379 NGAs have been studied and the results show that 98.4 percent or 373 NGAs have websites, while only 1.6 percent or 6 agencies have no websites. The results of the survey indicate that the government is serious in preparing for the imminent globalization by harnessing the power and potential of ICTs in enhancing its capability to deliver its services to the people, as well as its capacity to implement reforms in the government bureaucracy by adopting systems that streamline its operations, increase people's participation in the process of public governance, and enhance its transparency and accountability before a more informed and ever-watchful populace. This heightened scrutiny may lead to a better government (World Development Report, 1997).

At present, the government website (www.gov.ph) contains almost everything one can know about the Philippine Government. A number of transactions that used to take hours can now be made online, while information that used to be difficult to obtain is now available and accessible on the website. The government's goal of becoming an e-government is slowly coming into fruition as more and more people who have access to the Internet use its services available online.

Procurement is one area where the government hopes to make a real impact using ICTs. The Government Procurement Act¹⁴ directs all government transactions that pertain to procurement of materials and services to be centralized through a major computer

¹⁴ The Appendix contains a more detailed discussion on the Government Procurement Act or RA 9184.

network infrastructure called the Electronic Procurement System (EPS), which represents the Philippine Government's first step towards electronic procurement practices that will provide both government agencies and suppliers a more open, transparent and competitive environment for the procurement of goods and services by the Government. The Act is intended to help prevent graft and corruption, improve operational efficiency, foster transparency, and encourage competition in the bidding process. By taking the necessary steps to streamline procurement transactions using real-time systems, the government is able to demonstrate that it has the capacity to facilitate government services and the resolve to improve the transparency of its actions, where and when necessary, to enhance its credibility in order to attract more investments in the country. Information technology has revolutionized the way the government currently conducts its functions and delivers its services because real-time transactions tend to create a sense of urgency in the delivery of government services to those who demand it. This sense of urgency may redound to increased efficiency on the part of the government in order for it to satisfy the demands of its clients in real-time. The Government Procurement Act is a step towards this end, and one of the many steps that the government needs to take to improve efficiency of its services and enhance the transparency of its actions.

IV.12 Human and Intellectual Capital

The foregoing agencies and institutions all work together to help the government promote trade and investments in the country and provide an institutional network that is able to seize the opportunities and moderate the threats that are attendant with the coming globalization. One government institution supports this endeavor by making sure that the personnel, intellectual capital and skill requirements of these agencies and institutions are in place even before globalization invades the country in full-force. The Civil Service Commission (CSC) is responsible for the recruitment, development, protection, and retention of a competent, professional, and highly motivated government workforce that is responsive to the needs of the various publics that interact with the government. The CSC is preparing the various agencies and institutions for the impending globalization by providing them with quality and competent personnel with the necessary intellectual and social capital.

The Career Executive Service Officer (CESO) Program of the CSC is one mechanism that ensures a high degree of competence and qualifications among civil servants in the highest echelons of the government bureaucracy. The rigorous program is meant to reward exemplary employees who have both the academic requirements and the professional competence to become permanent government executives. Although the CESO Program is admirable in its intentions to recognize high achievement and commendable performance in government service, it precludes the CSC from firing civil servants with a CESO rank who later become lax and incompetent in their current office. The protection that the CESO affords civil servants from possible dismissal due to incompetence and other causes is also a source of its weakness. It is not uncommon to have government executives that have become incompetent and are no longer useful in their present positions but still continue to be employed by the government because of the tenure that a CESO rank provides.

Complementing the functions of the CSC on a broader scale is the Technical Education and Skills Development Authority (TESDA). The major objective of TESDA is to provide directions, policies, programs and standards towards quality technical education

and skill development to all sectors of society. As the leading partner in the development of the Filipino workforce with world-class competence and positive work values, TESDA assists the government in its mission to improve the level of technical competence of the populace, which is useful in moderating the negative effects of the coming globalization. TESDA plays a crucial role in helping displaced workers (due to the negative impact of globalization on certain sectors) receive the necessary training and learn new skills that are important in the global economy.

V. LEGAL AND JUDICIAL FRAMEWORK

While there are no legal or judicial measures that directly bear on globalization, per se, there are other legal and judicial measures that bear on economic development and, consequently, globalization.

The present Philippine legal and judicial systems could enable the Philippines to benefit from globalization. However, it must be remembered that the benefits of globalization, in terms of enhanced prospects for development, may not be reaped, and its ills warded off or at least delayed, even with all the proper legal and judicial measures in place, where there is no firm political will.

The Ramos Administration, in 1992, laid the foundations for plans and programs¹⁵ to open up the Philippine market to competition and the implementation of an economic reform agenda through various legislative measures and executive orders aimed at preparing for coping with, and ultimately benefiting from globalization.

In 1998 the Estrada Administration continued, to some extent, this economic reform with the enactment of laws on general banking, securities regulation, electronic commerce, and safeguard measures against the possible negative impact of globalization. This administration also enacted numerous measures to combat corruption in government. Ironically, however, people power protests and the withdrawal of cabinet, military and police support resulted in the ouster of President Joseph Ejercito Estrada from office, over high-level corruption.

From the first quarter of 2001 to the present, the Arroyo Administration has seen to the implementation of a five-pronged anti-poverty strategy and the promulgation of executive and administrative orders designed to curb corruption, encourage transparency in government transactions, stop money laundering, terrorism, and in fine, make the Philippines an acceptable global partner.

In the judicial and quasi-judicial sphere, new laws relating to the Court of Appeals, the Sandiganbayan, and the National Labor Relations Commission have been enacted and new rules on criminal procedure, electronic evidence, search and seizure in civil action for infringement of intellectual property rights, among others, have been promulgated.

V.1 Relevant Philippine Laws and Regulations

Philippines economic development, or non-development, is not happening in a vacuum, but in an increasingly global economy. With news, business, technological, and social developments being reported worldwide as it happens or as soon as it happens, quick responses to world events have become more necessary than ever.

¹⁵ Philippines 2000, Peoples 2000, and the Buklod-Buhay Foundation, Inc.

Over the past 18 years, the Philippine government has passed executive and legislative initiatives to spur and protect economic development and, it is to be hoped, to respond to globalization's challenges. At the very least, the Philippines needs to be perceived as a country where business may be conducted without the added costs and barriers created by corruption.

Reforms were introduced through demonopolization of public utilities, privatization of state enterprises, reduced state intervention in the market, trade and investment liberalization, service industry deregulation, taxation reform, tariff reduction and/or elimination, monetary and fiscal reforms, anti-poverty and anti-corruption measures, and improvement of peace and order and administration of justice.

V.1.1 Taxation, Monetary and Fiscal Measures

Significant taxation, monetary and fiscal measures have been adopted:

- | Tax treaties for the avoidance of double taxation and prevention of fiscal evasion have been entered into with 34 countries, to date, Australia, Austria, Belgium, Brazil, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Hungary, Indonesia, India, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Pakistan, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United Kingdom, and the United States of America.
- | Increased penalties for tax evasion and violations of the provisions of the National Internal Revenue Code (Republic Act No. 7642).
- | The Tax Reform Act of 1997 (Republic Act No. 8424) for the simplification of income and excise taxation in order to improve tax collection efforts. Unfortunately, however, the political intervention of Congress and private vested interest groups so diluted The Tax Reform Act of 1997 that the taxation system under the new law still remains very complicated and improvements in tax collection have yet to be realized.
- | Rationalization of the documentary stamp tax system (Republic Act No. 7660).
- | The imposition of taxes for sale of shares of stock through the stock exchange or through initial public offerings (Republic Act No. 7717).
- | Law on Expanded Value-Added Tax (Republic Act No. 7716).
- | Lifting of foreign exchange restrictions, allowing the market to freely trade in foreign currencies (Central Bank Circular No. 1389, Consolidated Foreign Exchanges Rules and Regulations) and allowing the sale of foreign exchange receipts, acquisitions, or earnings for pesos outside the banking system or to unauthorized agent banks, and retention or deposit in foreign currency accounts in the Philippines or abroad, or use for any other purpose (BSP Circular No. 5, s. 1993).
- | Express repeal of the Uniform Currency Law (Republic Act No. 529) which restricted parties to a contract to deal only in Philippine Peso in order to settle monetary obligations (Republic Act No. 8183).
- | The General Banking Law of 2000 (Republic Act No. 8791).
- | Regulations to Implement Section 16 Art XI of the Constitution "No loan, guaranty, or other form of financial accommodation for any business purpose

may be granted, directly or indirectly, by any government-owned or controlled corporation or financial institution to the President, Vice President, the members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure." (BSP Circular No. 195 s.1999).

- | The Securities Regulation Code (Republic Act. No. 8799).
- | Punishment of money laundering, with the promulgation of The Anti-Money Laundering Act of 2000 (Republic Act No. 9160, as amended by Republic Act No. 9189).
- | Creation of the Anti-Money Laundering Council and enactment of Implementing Rules and Regulations of Republic Act No. 9160 (BSP Circular No. 333, s.2002).

These reforms were aimed at improving and strengthening the legal and regulatory infrastructure for doing business in the Philippines. More specifically, taxation, foreign exchange, and securities regulation were revised supposedly to bring these closer to global standards. Some reforms were meant to ease restrictions on business. Others were meant to ensure a more predictable legal regime with stricter enforcement against criminality and corruption. For example, the Anti-Money Laundering Act was an important milestone in securing the international credibility of the Philippine financial system. The law was intended to remove the Philippines from the international watch list of countries involved in money laundering.

However, in the end, these new laws and regulations will only be as effective as their actual implementation and this will depend on honest-to-goodness political will.

V.1.2 Peace and Order and the Administration of Justice

The Arroyo Administration has recognized that poverty directly affects the peace and order situation of the country, and that it is imperative to alleviate poverty even while improving the country's competitiveness and capacity to respond to the challenges of globalization. The 2001-2004 Medium-Term Philippine Development Plan includes an anti-poverty strategy.

Various legislations aimed at fighting corruption and cronyism, improving law enforcement mechanisms, and the judiciary and administrative agencies exercising quasi-judicial functions were enacted:

- | Expansion of the jurisdiction of the Court of Appeals (Republic Acts Nos. 7902 and 8246).
- | Strengthening of the functional and structural organization of the Sandiganbayan (Republic Acts Nos. 7975 and 8249).
- | Vesting of concurrent jurisdiction in the first, second and third division of the National Labor Relations Commission (Republic Act No. 7700).
- | Expansion of the jurisdiction of the first, second and third division of the National Labor Relations Commission (Republic Act No. 7691).
- | Strengthening of the operational, administrative and information support system of the Philippine Center on Transnational Crime (Executive Order No. 100, s. 1999).

- | Philippine National Police Reform and Reorganization Law (Republic Act No. 8351) uplifting of the image of the Philippine National Police.
- | The establishment of the Presidential Anti-Crime Commission¹⁶ (Executive Order No. 3 s. 1992).
- | The reorganization of the Peace and Order Council (Executive Order No. 309 s. 1987), as amended.
- | The Jakarta Agreement of 1996 creating the Southern Philippines Council for Peace and Development (SPCPD) in Mindanao.
- | Court Rules on Electronic Evidence, effective 01 August 2001, implementing Republic Act No. 8792, Electronic Commerce Act (A.M. No. 01-07-01-SC).
- | EO 268 (s. 2000) Creating the National Anti-Corruption Commission.
- | Revised Rules of Criminal Procedure, as amended (Rules 110-127), 01 December 2000.
- | Prohibiting Public Officers and Employees from entering into certain kinds of official transactions with real, pretended or imaginary relatives of the President (Administrative Order No. 1, s. 2001).
- | Creating the National Anti-Crime Commission and Other Purposes (Executive Order No. 223, s. 2001).
- | Reorganizing and Extending the Life of the Special Task Force Created Under Executive Order No. 156 dated 07 October 1999, entitled "Creating a Special Task Force to Review, Investigate and Gather Evidence Necessary to Successfully Prosecute Irregularities Committed at the BIR and Other Government Offices and Agencies under or attached to the Department of Finance (Executive Order No. 38, s. 2001).
- | Creating an Anti-Smuggling Intelligence and Investigation Center to Investigate and Interdict Smuggling and Other Acts Contrary to the Tariff and Customs Code of the Philippines (Executive Order No. 155, s. 2003).
- | Alternative Law Groups (ALG), a coalition of public interest law groups providing legal assistance in issues of justice concerning women, labor, the urban poor, farmers, migrant workers, and the underprivileged.
- | Philippine Judicial Academy (PHILJA), an institution providing judicial education and alternative dispute resolution.
- | Justice Reform Initiatives Support (JURIS) Project, a five-year C\$7 million Philippines-Canada bilateral project, launched in 2003 and funded by the Canadian International Development Agency(CIDA) to support the Supreme Court's Action Program for Judicial Reform and strengthen the "access to justice" of civil society. The project brought together the Supreme Court, PHILJA, the Program Management Office, the Office of the Court Administrator, and the ALG.

Not only does the Philippines have so many laws, rules and regulations, it also has numerous general and industry-specific agencies enforcing the foregoing laws, rules and regulations.

- | National Library, for copyright registration.

¹⁶ Now defunct and discredited with the ouster of President Joseph Ejercito Estrada.

- | Department of Trade and Industry (DTI) and its attached agencies, including Bureau of Trade Regulation and Consumer Protection (BTRCP), Bureau of Food and Drugs (BFAD), Bureau of Patents, Trademarks and Technology Transfer (BPTTT), Bureau of Product Standards (BPS), for consumer welfare and protection.
- | Securities and Exchange Commission (SEC), supervision and monitoring of stock and non-stock corporations, including the resolution of intra-corporate disputes, and the regulation of all forms of securities, brokers and dealers, financing companies and investment houses.
- | Philippine Economic Zone Authority (PEZA), for economic zone developers and economic zone registered enterprises.
- | Bases Conversion and Development Authority (BCDA), for the administration development of former military bases, other than Subic and Clark, and BCDA-registered enterprises.
- | Subic Bay Metropolitan Authority (SBMA), for administration development of the former American Subic Naval Base and SBMA-registered enterprises.
- | Clark Development Corporation (CDC), for administration development of the former US Clark Air Base, and Clark-registered enterprises.
- | Bangko Sentral ng Pilipinas (BSP), for banks and financial institutions.
- | Insurance Commission (IC), for insurance companies.
- | Philippine Tourism Authority (PTA), for the tourism industry.
- | Housing and Land Use Regulatory Board (HLURB), for land use and real estate development.
- | National Food Authority (NFA), for rice, corn, wheat and other grains and foodstuffs.
- | Sugar Regulatory Administration (SRA), for the sugar industry.
- | Philippine Coconut Authority (PCA), for the coconut industry.
- | Garments and Textile Export Board (GTEB), for garment manufacturers and exporters.
- | Board of Investments (BOI), for pioneer or non-pioneer industries and those listed in the Investments Priorities Plan, availing of the incentives under the Omnibus Investments Code.
- | National Telecommunications Commission (NTC), for telecommunications companies.
- | Land Transportation Franchising and Regulatory Board (LTFRB), for common land carrier.
- | Civil Aeronautics Board (CAB), for companies engaged in air commerce.
- | Maritime Industry Authority (MARINA), for the shipping industry.
- | Philippine Ports Authority (PPA), for port operators and arrester services.
- | Department of Energy (DOE), Energy Regulatory Commission (ERC), and the National Power Corporation (NPC), for power generation companies and oil companies.

It is heartening to see that the Philippine Government is serious about curbing and eradicating corruption and other crimes that affect its credibility and capability as a participant in global economic development. It would also appear that with so many measures, in addition to the basic laws like the Philippine Constitution, the Civil Code of the Philippines, and the Revised Penal Code, the Philippines should be well equipped to curb corruption and other crimes.

However, these pluralities of laws and enforcement agencies have created their own problems. Responsibility is too diffused and accountability for implementation of the laws is difficult to locate or fix. For instance, the Philippine anti-trust laws need to be reformed. No agency implements the laws or prosecutes firms. The country has similar anti-trust laws as the US but Philippine anti-trust laws are in the Revised Penal Code, unlike US anti-trust laws which are in the US Constitution and well-developed through jurisprudence and quasi-judicial decisions. Thus, certain anti-competitive and corrupt practices can only be prosecuted in the criminal courts, a long and tedious process that is impractical and useless to the business world where time is often of the essence.

Finally, the general lack of court resources and judges' training in these new laws hinder court proceedings, thus undermining outcomes.

V.1.3 Trade and Foreign Investment Liberalization

The first real barriers to any market are tariffs and other non-tariff structures, such as quantitative or import restrictions. For this reason, most of the bilateral and multilateral trade agreements impose the observance of reduced tariff rates.

The Tariff Reform Program is currently being implemented to reduce tariffs and remove quantitative restrictions.

In compliance with international commitments, various tariff rates for a number of industrial and agricultural products in the Philippines have either been reduced and/or modified through the issuance of Executive Orders.¹⁷ By 2001, the simple average nominal tariff rate was down to 7.7 percent from 13.4 percent in 1997.

Additionally, though Congress enacted Republic Act No. 8178 to remove quantitative restrictions on agricultural products, significant non-tariff barriers remain. To illustrate: sensitive agricultural products, such as live animals, fresh, chilled or frozen beef and other meats, potatoes, coffee, corn, and sugar, are subject to minimum access volume tariff rate quotas until 2005. Increased protection of agricultural products resulted. On a positive note, the government has moved to privatize rice importation, but the process has been slow.

With respect to tariff reduction, the hoped-for response of Philippine industries to restructure themselves into more globally competitive enterprises has not substantially materialized. The inflow of foreign investments resulted in the appreciation of the Philippine peso. This together with tariff reduction made the import-dependent sector of Philippine industries uncompetitive, while penalizing the export-oriented sector. Consequently, Philippine industries were not impelled to become competitive as the appreciation of the peso provided windfall profits to Philippine industries in the non-tradable sectors, such as real estate industry.

The unexpected strength of the peso also encouraged Philippine industries to fund long-term peso project with short-term US dollar loans. The result has been the Asian financial crisis, which wreaked havoc on the financial health of a substantial sector of the economy. The irony is that the sharp devaluation of the peso has made Philippine industries globally competitive, if only they could have the resources to seize the opportunities presented.

¹⁷ EO No. 1 (1992), EO No. 2 (1992), EO No. 8 (1992), EO No. 79 (1993), EO No. 94 (1993), EO No. 106 (1993), EO No. 115 (1993), EO No. 116 (1993), EO No. 145 (1993), EO No. 146 (1993), EO No. 147 (1993), EO No. 148 (1993), EO No. 153 (1994), EO No. 160 (1994), EO No. 172 (1994), EO No. 173 (1994), EO No. 189 (1994), EO No. 204 (1994), EO No. 227 (1995), EO No. 237 (1995), EO No. 264 (1995), EO No. 287 (1995), EO No. 288 (1995), EO No. 313 (1996), EO No. 328 (1996), and EO No. 163 (1999).

Measures to ensure more efficient collection of tariffs have also been enacted. Republic Act No. 7650 amended the provisions of the Tariff and Customs Code on physical examination of imported articles, particularly Sections 1401 and 1403, and repealed Section 1404. Congress also enacted Republic Acts Nos. 8181 and 9135 to shift the basis for the computation of duties from home consumption value to transaction value, which is the global standard for customs valuation.

As a safety net measure, or to safeguard against the dumping of foreign products in the Philippines, Republic Act No. 7843, also known as the Anti-Dumping Act of 1994, was enacted to rationalize and strengthen the provisions on anti-dumping in the Tariff and Customs Code.

Additionally, Republic Act No. 8800, otherwise known as The Safeguards Measures Act, was enacted to allow tariffs to be raised temporarily so that qualified domestic industries could have time to undergo rehabilitation that would enable them to compete with imports coming in as a result of liberalization under the World Trade Organization agreements. Applications for protection under The Safeguards Measures Act are filed with the Department of Trade and Industry for non-agricultural industries and the Department of Agriculture for agricultural industries.

To liberalize the entry of foreign investments, Republic Act No. 7042, otherwise known as the Foreign Investments Act (FIA), was passed. Republic Act No. 8179, amended the FIA, to allow foreign corporations which are 100 percent Filipino-owned to do business in the Philippines as a Philippine national,¹⁸ to allow domestic market enterprises to immediately change their status to export-oriented enterprises¹⁹, to delete Negative List C which reserved certain areas of business to Philippine nationals²⁰, and to grant former natural-born Filipinos the same investments rights as Filipino citizens in cooperatives, rural banks, thrift banks and private development banks, and financing companies,²¹ and ownership of private lands.²²

The Omnibus Investment Code, Executive Order No. 226, was also amended to conform to the current economic agenda. With Republic Act No. 7888, the BOI was granted the power to recommend to the President of the Philippines the suspension of the nationality requirements, to the extent allowed by the Constitution and relevant laws, in the cases of ASEAN projects, investments by ASEAN nationals, regional ASEAN or multilateral financial institutions in preferred project and/or projects allowed through either financial or technical assistance agreements entered into by the President or in the case of regional complementation for the manufacture of a particular project which seeks to take advantage of economies of scale.²³

Republic Act No. 7918 amended the Omnibus Investments Code to rationalize and qualify incentives enjoyed by BOI-registered enterprises. The tax and duty exemption on imported capital equipment and spare parts and tax credit on domestic equipment were restricted by limiting the period when enterprises may avail of such incentives. The exemption from contractor's tax was also deleted.²⁴

¹⁸ RA No. 7042 (1991), Sec. 3

¹⁹ RA No. 7042 (1991), Sec. 7

²⁰ RA No. 7042 (1991), Sec. 8

²¹ RA No. 7042 (1991), Sec. 9

²² RA No. 7042 (1991), Sec. 10

²³ EO No. 226 (1987), Article 7 (13), as amended by Rep. Act No. 7888 (1995).

²⁴ EO No. 226 (1987), Article 39, as amended by Republic Act No. 7918 (1995).

Republic Act No. 7918, as amended by Republic Act No. 8756, provided for the terms, conditions and licensing requirements of regional or area headquarters, regional operating headquarters, and regional warehouses of multinational companies.

A major component for attracting foreign investments was the establishment of Special Economic Zones (SEZs). Subic Naval Base was converted into the Subic Bay Free Port and Special Economic Zone, Clark Air Base was converted into Clark Special Economic Zone, and other former US military bases were converted into SEZs, under Republic Act No. 7227. SEZs were also created in Zamboanga under Republic Act No. 7903 and in the municipalities of Sta. Ana and neighboring islands of Aparri, Cagayan under Republic Act No. 7922. More SEZs have been sought to be created under Republic Act No. 7916, which provided for the legal framework and mechanics in the creation, operation, administration and coordination of SEZs and the organization of the Philippine Economic Zone Authority (PEZA), which succeeded the now-defunct Export Processing Zone Authority (EPZA).

The disqualification of foreigners from owning land in the Philippines has, to some extent, discouraged investors from coming in. To address the situation, Republic Act No. 7652 was enacted to allow foreign investors to lease, but not own, private lands in the Philippines for a period not exceeding 75 years for the purpose of engaging in business.

Republic Act No. 7844 gave the policy framework to support export development,²⁵ provide for the formulation of the Philippine Export Development Plan,²⁶ and grant other incentives to export-oriented enterprises such as exemption from Presidential Decree No. 1853, zero-rated duty for importation of machinery and equipment, tax credit and long-term credit facilities.²⁷ The Export and Investment Development Council was later reorganized into the Export Development Council through Executive Orders Nos. 98 (s. 1993), 110 (s. 1993) and 180 (s. 1994).

Other significant trade and investment liberalization measures are:

- | Liberalization of the service industries, i.e. Republic Act No. 7721 allowing the entry of more foreign banks, Republic Act No. 7718 expanding the contractual arrangements allowable under the Build-Operate-And-Transfer law, Republic Act No. 7942 providing for greater incentives in mining, and Republic Act No. 8366 liberalizing the investment houses industry, and the granting of congressional franchises to new players in the civil aviation, telecommunications and televisions and radio broadcasting industries.
- | Book industry - Republic Act No. 8047.
- | Agriculture and fisheries - Republic Act No. 8435.
- | Jewelry manufacturing - Republic Act No. 8502.
- | Small- and medium-scale enterprises - Republic Act No. 8289.
- | Financing companies - Republic Act No. 8556.
- | Public utilities sector deregulation - Executive Order Nos. 185 (s. 1994) and 213 (s. 1994) which relaxed rules on the entry of new shipping operators and the deregulation of domestic shipping rates, Executive Order No. 212 (s. 1994), which demonopolized government ports, Executive Order Nos. 59 (s. 1993) and 109 (s.

²⁵ RA No. 7844 (1994), Sec. 3

²⁶ RA No. 7844 (1994), Sec. 5

²⁷ Republic Act No. 7844 (1994), Sec. 16. Pres. Decree No. 1853 (1982) requires the deposit of duties at the time of opening of letters of credit covering imports.

1993) which paved the way for the entry of new telecommunications firms, Republic Act No. 7925 which allowed the operation of Value-Added Service providers (e.g., internet and electronic data interchange network operators) without need of a legislative franchise, Executive Order Nos. 215 (s. 1987) and 462 (s. 1997) which promoted private sector participation in the business of generating electricity and in the exploration, development, utilization and commercialization of ocean, solar and wind energy resources for power generation and other energy uses, respectively, and Republic Act No. 8479, which provided for the deregulation of the downstream oil industry.

- | Intellectual Property Code of the Philippines (Republic Act No. 8293).
- | Protection of layout designs or topographies of integrated circuits (Intellectual Property Code of the Philippines, as amended by Republic Act no. 9150).
- | Court Rules on Search and Seizure in Civil Action for Infringement of Intellectual Property Rights (A.M. No. 02-01-06-SC).
- | Electronic Commerce Act (Republic Act No. 8792).
- | The Securities Regulation Code (Republic Act No. 8799).
- | Establishing the Information Technology and Electronic Commerce Council (ITECC), from the merger of the National Information Technology Council and the Electronic Commerce Protection Council (Executive Order No. 264, s. 2000).
- | Rules on the submission, review and approval of government contracts (Administrative Order No. 7, s. 2001).
- | Streamlining the Rules and Procedures on the Review and Approval of All Contracts of departments, Bureaus, offices, and Agencies of the Government, including Government-Owned or Controlled Corporations and their Subsidiaries (Executive Order No. 109, s. 2002)
- | An Act Establishing the Philippine Quality Award in Order to encourage organizations in both the public and private sectors to attain excellence in quality and in the production and/or delivery of their goods and services (Republic Act No. 9136).
- | Electric Power Industry Reform Act of 2001.
- | Consolidating Procurement Rules and Procedures for all National Government Agencies, Government-Owned or -Controlled Corporations and Government Financial Institutions, and Requiring the Use of Government electronic Procurement System (Executive Order No. 40, s. 2001); Department of Budget Management Rules and Regulations Implementing Executive Order No. 40, s. 2001 (28 February 2002).
- | An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes (Republic Act No. 9184).
- | An Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs), providing incentives and benefits therefore, and for other purposes (Republic Act No. 9178).
- | EO No. 156 (s. 2003) Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program.
- | Further Enhancing the Speedy Resolution of Appealed Cases in the Office of the President and Increasing the Number of Authorized Officials to sign "By Authority of the President" for this purpose (Office of the President

- Memorandum Order No. 81, s. 2003).
- | Institutionalizing the "Isang Bayan, Isang Produkto, Isang Milyong Piso" Program to Stimulate Local Economic Activity (Executive Order No. 176, s. 2003).
- | Providing For the Establishment of Greater Manila Mass Transport System (Executive Order No. 179, s. 2003).
- | Omnibus Guidelines for the Issuance of Employment Permits to Foreign Nationals, as amended by Department of Labor and Employment Dept. Order No. 41, s.2003 (DOLE Dept. Order No. 12, s. 2001).
- | Liberalization of the Retail Trade Business, repealing Republic Act No. 1180, as amended, allowing under certain conditions 100 percent foreign ownership of a retail trade enterprise (Republic Act No. 8762).

As may be noted from the foregoing enumeration, the imperatives of global competition have benefited various service industries, including the stock market, banking, insurance, infrastructure, book publishing and mining, among others, through the deregulation reforms instituted.

Changes under the Securities Regulation Code improve listing requirements and insider trading sanctions. The new law also offers better protection to minority shareholders through mandatory tender offers and deterrence of market abuses and fraud through the prohibition of insider trading, affiliated broker and dealer transactions and segregation of broker and dealer functions. However, enforcement of insider trading rules has proven difficult. While investigation of cases has been ongoing for some time, no one has ever been prosecuted. Failure to resolve cases such as that of BW Resources downgrades investor confidence in the country's stock market.

In banking, the basic preparation for change was effected through the reorganization of the Central Bank of the Philippines into the Bangko Sentral ng Philippines (BSP), under Republic Act No. 7653. The BSP continues to play a stabilizing force in the entire economy. Three major laws were enacted to enhance competition in banking:

- | Republic Act No. 7906, which provided for the regulation of the organization and operations of thrift banks;
- | Republic Act No. 7721, which liberalized the entry of foreign banks in the Philippines by allowing foreign equity ownership of up to 60 percent²⁸ of the voting stock of existing domestic banks or the incorporation of a new subsidiary in the Philippines, and the entry of new foreign bank branches with full banking authority and more importantly;
- | Republic Act No. 8791, or The General Banking Law of 2000, which clarified the BSP's prudential responsibilities, imposed tough criteria on bank auditors, consolidated banking supervision, formally adopted risk-based capital requirements, increased allowable foreign ownership of local banks to fully-owned (i.e. 100 percent owned), clarified the legal basis for determining unsafe bank practices, and increased bank transparency and disclosure standards.

With The General Banking Law, the country is now at the forefront of international prudential banking standards, in as far as legislation goes. Though, the actual

²⁸ This percentage was increased under The General Banking Law of 2000, Republic Act 8791.

implementation of bank supervision is still lacking in some areas. However, retail banking is still closed relatively to new foreign bank entrants. Freer entry of foreign financial institutions could strengthen competition, corporate governance, and banking industry standards. The privatization and public listing of government banks would help disperse bank holdings and promote efficiency.

In the insurance industry, the entry of foreign insurance and reinsurance companies or intermediaries was encouraged through various initiatives from the Executive department. With Department of Finance Order No. 100-94, issued on 24 October 1994, several multinational insurance companies have already entered the Philippine market, such as AIG, and Prudential.

The Ramos Administration recognized the inadequacy of government resources to meet all of the public's infrastructure requirements. Accordingly, it supported the amendment of Republic Act No. 6857, otherwise known as the Build-Operate-Transfer (BOT) Law, which allows the private sector to participate in infrastructure and development projects ordinarily undertaken exclusively by government. Private sector participation was further enhanced with the enactment of Republic Act No. 7718 by expanding the contractual arrangements that may be entered into by a government-implementing agency and a private proponent.

Republic Act No. 8047 provided for the development of the book industry through the formulation and implementation of a national book policy²⁹ and national book development plan³⁰ and the creation of a National Book Development Board (NBDB).³¹ Under the law, persons or entities engaged in publishing and registered with the NBDB may avail of incentives provided under the Omnibus Investments Code, subject to the qualifications and requirements set by the BOI. Moreover, books, magazines, periodicals, newspapers, and book publishing and printing, distribution and circulation are exempt from the coverage of the Expanded Value-Added Tax.³²

Republic Act No. 7942, or the Philippine Mining Act of 1995, provided for the requirements and incentives for the exploration, development, utilization and conservation of mineral resources.

In the area of public utilities, Executive Order No. 185 (s. 1994) was adopted to foster competition through more liberalized rules on the entry of new operators for existing routes presently serviced by one operator,³³ new operators of development routes,³⁴ the deregulation of the entry of newly-acquired vessels into routes already served by franchised operators,³⁵ and vessel rerouting or amendment of authorized route and change in sailing schedules and frequency.³⁶

Executive Order No. 213 (s. 1994) provided for the deregulation of domestic shipping rates in the following areas: (a) first and second class passage rate for passenger-carrying domestic vessels,³⁷ (b) passage rates for vessels catering to tourism as certified by the Department of

²⁹ Republic Act No. 8047 (1995), Sec. 4

³⁰ Republic Act No. 8047 (1995), Sec. 5

³¹ Republic Act No. 8047 (1995), Sec. 7

³² Republic Act No. 8047 (1995), Sec. 12

³³ Executive Order No. 185 (1994), Sec. 1.1

³⁴ Executive Order No. 185 (1994), Sec. 1.2

³⁵ Executive Order No. 185 (1994), Sec. 1.3

³⁶ Executive Order No. 185 (1994), Sec. 1.4

³⁷ Executive Order No. 213 (1994), Sec. 1(1)

Tourism (DOT) or those serving DOT-certified tourist priority links/areas,³⁸ (c) freight rates for all commodities classified as Class "A" and "B" and "C", except for non-containerized basic commodities, and where the route/link is still being serviced by only one operator.³⁹

Two new airline companies (Pacific Airways Corporation, Republic Act No. 7909) and All Asia Airlines Company, Republic Act No. 8103) were granted congressional franchises to provide air transport services.

Moreover, by virtue of Executive Order No. 219 (s. 1995), international civil aviation was sought to be liberalized through the designation of at least two official carriers for the Philippines, and the possibility of designating other carriers as official carriers when the total frequency requirements of the Philippines under its various Air Services Agreement cannot be fully serviced by the first two designated official carriers.⁴⁰ Philippine Air Lines (PAL) and Cebu Pacific have been designated as designated official carriers.

Since 1999, frequency of flights and capacities has been increased, in particular for Korean Air, Singapore Airlines, Emirates, Gulf Air, and Qatar Airways. The RP-US Air Transportation Agreement (ATA), signed in 1992, provides unlimited frequency of flights and seats between the two countries. However, PAL has succeeded in delaying implementation for five times already since 1996. The ATA is now scheduled to be implemented beginning 01October 2003. Cebu Pacific has publicly declared that it has no objections to the implementation of the ATA.

For domestic air transportation, a minimum of two operators in each route/link is encouraged, and for routes/links presently serviced by only one operator, additional operators are likewise encouraged to enter.⁴¹ Passage rates for routes/links serviced by more than one operator is no longer regulated but merely monitored by the Civil Aeronautics Board (CAB). Passage rates for routes/links serviced by single operators remain regulated by the CAB.⁴²

In order to accelerate the demonopolization and privatization program for government ports, Executive Order No. 212 (s. 1994) was issued. Competition is encouraged in the provision of cargo handling and other port services. Under the government's demonopolization program, ship owners, operators, charter parties or other users have the option to contract or engage the services of the Philippine Ports Authority (PPA) authorized handler or port service contractor of their choice.⁴³ Under the privatization program, private sector participation in the operation, maintenance and development of government ports is encouraged through capital leases, cargo licenses, and service contracts to private companies to carry out cargo handling, dredging, port security and other services.⁴⁴ The PPA is directed to ensure that free access to the ports is allowed to all sectors of the industry and that there shall be no discrimination in the provision and availment of service contracts.⁴⁵

³⁹ Executive Order No. 213 (1994), Sec. 2

⁴⁰ Executive Order No. 219 (1995), Sec. 1

⁴¹ Executive Order No. 219 (1995), Sec. 2.1

⁴² Executive Order No. 219 (1995), Sec. 2.2

⁴³ Executive Order No. 212 (1994), Sec. 1

⁴⁴ Executive Order No. 212 (1994), Sec. 2

⁴⁵ Executive Order No. 212 (1994), Sec. 4

In no other area has there been a greater display of political will than in the successful breaking up of monopolies and cartels in telecommunications. Executive Order No. 59 (s. 1993) required mandatory interconnection for other telecommunications firms with the Philippine Long Distance Telephone Company (PLDT) backbone.

Executive Order No. 109 (s. 1993) laid down the government's policy to improve the Local Exchange Carrier Service. Authorized international gateway operators were required to provide local exchange service in served and un-served areas, including Metro Manila, within three years from the grant of authority from the National Telecommunication Commission.⁴⁶

Republic Act No. 7925 entitled "An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services", was enacted to provide a comprehensive guideline regulating the public telecommunications industry in the Philippines.

These measures have been met with enthusiasm. New telecommunications companies have entered the market, like Digital Telecommunications Philippines, Inc., Bell Telecoms, IslaCom, Major Telecoms, which were granted congressional franchises to install, operate and maintain telecommunication system throughout the Philippines, and Island Paging, Inc., Multi Media Telephony, Inc., which were granted radio-paging franchises.

The power crisis of the recent past debilitated the economy. To address the situation, the Ramos Administration secured the enactment of Republic Act No. 7648, which granted the President emergency powers, for a period of one year from effectivity of said law, to enter into negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities, to fix the rate of return on rate base of the National Power Corporation (NPC) to not more than 12 percent, and to reorganize the NPC. The law encouraged the entry of foreign power firms and the execution of various power contracts.

In addition, Executive Order No. 215 (s. 1987) was issued to promote private sector participation in the business of generating electricity. Republic Act No. 8180, which provides for the deregulation of the oil industry, was also recently enacted.

However, in both the telecommunications and power distribution sectors, family-owned monopolies would be difficult to break and powerful commercial interests could influence regulatory bodies. For instance, Globe Telecoms (Ayala Group) and Smart Communications (Metro Pacific Holdings Group) virtually simultaneously announced a 60 percent reduction of free short messaging services. When the legality of said reduction was questioned, the National Telecommunications Commission issued a temporary restraining order, but the order was lifted almost immediately allegedly because of lack of sufficient evidence.

Another crisis, this time in the water sector, prompted the enactment of the Water Crisis Act, Republic Act No. 8041. Like in the power crisis act, the President was conferred emergency powers to enter into negotiated contracts for water supply and distribution projects under the BOT or related schemes. The President's authority to negotiate,

⁴⁶ Executive Order No. 109 (1993), Sec 5.

however, expired on 15 July 1996 without any such contract being finalized. The same law provided for the privatization of the Metropolitan Water and Sewerage System (MWSS). In this regard, Executive Order No. 311 (s. 1996) was issued to encourage private sector participation in the operations and facilities of the MWSS. In 1997, the government engaged in its largest privatization effort with the sale of the MWSS to private corporations, Manila Water Corporation and Maynilad Water Corporation, which are now servicing Metro Manila.

Government participation in commercial enterprises discourages the entry of private entrepreneurs in the market. For this reason, the government has long adopted a policy to privatize GOECs as early as 1986 under Proclamation No. 50 and 50-A which created the Committee on Privatization and the Asset Privatization Trust. The same laws remain effective through several extensions affected by Republic Acts Nos. 7181, 7661 and 7886.

The efforts at divestment of some government assets have proven difficult to market. For this reason, Executive Order No. 298 (s. 1996) was issued by the President to provide for alternative and/or intermediate modes of privatization through joint ventures, BOT and related schemes, management contracts, lease purchase arrangements and securitization. Finally, notable by its absence, is the lack of effective anti-trust legislation in the Philippines. In fact, in the region, only the Philippines and Vietnam have yet to recognize the need to establish effective anti-trust legislation and regulatory agencies. Philippine markets lack competition with diverse, horizontal and vertical family-owned conglomerates and large government-owned or -controlled firms. The top five families control approximately 43 percent of total listed corporate assets, the highest in East Asia. Philippine conglomerates operate in a wide range of industry sectors. For instance, the Ayala Group of Companies has 48 companies controlling real estate, local telecommunications, agribusiness, food, and industrial businesses. On the other hand, the government owns and manages 179 companies engaged in agriculture, railways, power, water, technology, and banking and finance. For instance, the government-owned Development Bank of the Philippines may be directed to lend to other government-owned firms and increase the risk of poor investments.

V.2 Country Readiness for Globalization

The foregoing review of existing Philippine law and regulations, which have an impact on the capability of the Philippines to cope with the challenges of globalization and to benefit from it, clearly demonstrated that the Philippines has sought to make its industries globally competitive through certain public policy initiatives:

- | Reduction of infrastructure costs of telecommunications, transportation, and banking by breaking up the monopolies and cartels to reduce the cost of doing business in the Philippines as well as provide cheap and easy access to global markets;
- | Provision of energy requirements by harnessing private sector resources through BOT schemes and deregulation of the oil industry;
- | Reduction of tariff barriers as to gradually expose Philippine industries to international competition and so force such industries to become globally competitive.

While such public policies met with enough success to remove the title "Sick Man of Asia" from the Philippines, certain developments have enabled the doubters of such policies to have a basis for calling for a review, or even a reversal, of such policies.

As with all changes, globalization poses new challenges to existing industry players as well as to the new entrants to the industry. It must be kept in mind that market-strengthening activities are as important as regulatory reform.

V.2.1 Over-Safeguarding, Bail-Outs, and the New Protectionists

Globalization policies give more freedom, which unfortunately carries with it the possibility and, more importantly, the necessity to have the ability to accept failure. That certain companies will fail is a real possibility that challenges public policymakers who would be under public pressure to bail out companies that fail the test of increased competition globalization would bring.

One development, which is a consequence of such policies, has been the demise or the debacle of Philippine companies exposed to global competition. The prime example is PAL and, to a lesser extent, shipping companies such as Negros Navigation. Failing the test of the market place, PAL has been forced to reduce its workforce and ended up being crippled by a pilots' strike. Under the liberalization framework, PAL, Asia's first airline, would have suffered the same fate as Pan Am, the world's first airline. However, the government flinched from such a draconian stance and sought to revive the airline. Fortunately, for the public, the government wisely refused to use public funds to bail out PAL.

PAL has sustained its efforts through the years to oppose the liberalization of the air transport industry. In fact, there is a clamor from other gateways in the country, i.e., Diosdado Macapagal International Airport, Mactan International Airport, and Davao International Airport for the Philippines to declare open skies in order to generate more air traffic.

On the other end of the spectrum has been the PLDT. In spite of the liberalization of the industry and the entry of several big players, PLDT has successfully defended its dominant position through a combination of reforms, such as the Zero Backlog Program, and its stranglehold on interconnection. Even with such stranglehold though, PLDT has not fared so well in the cellular phone sub-market. Observers have raised the troubling issue that PLDT has now the best of both worlds: enjoying the use of its leverage as dominant player and yet not as tightly subject to regulation as before.

There exists another real possibility that the new entrants, having been admitted into the industry, will suddenly switch positions and advocate restrictions on later entrants. Today's free-marketers can become tomorrow's protectionists. Industry players can develop new strategies and evolve new strategic alliances that could, if not anticipated and countered, return the industry into a position of anti-competitiveness and uncompetitiveness.

V.2.2 Promotion versus Regulation

The initial assumption that globalization and liberalization will make the work of public policymakers easier is wrong. The role of public policymakers has shifted from regulatory functions to promotion functions. Instead of being active participants or interveners in the market place, public policymakers have to set the proper environment for competition and competitiveness and to assure a level playing field among all industry players, so that Philippine industries can survive in the global setting.

The basic premise of the liberalization policies and laws of the various government administrations since the term of President Fidel V. Ramos is that Philippine industries

are not globally competitive, with a few exceptions in the industry sector. This is the major reason why the Philippines have lagged behind the Asian tiger economies. The trend towards globalization has become irreversible. Thus, unless Philippine industries can be made globally competitive, the economic future of the country will be bleak.

However, liberalization efforts should not focus on the few exceptional competitive industries but on those industries that have been making such competitive industries less competitive in the market place, e.g. expensive local sugar is making local food processors uncompetitive. The philosophy behind Hong Kong and Singapore as Free Ports is that such policy enables their industries to source from anywhere in the world the best and the cheapest inputs possible for their industries. In sharp contrast, Philippine export-oriented industries have been used and are continuing to be used to subsidize the less competitive industries. Thus, while the industries of Hong Kong and Singapore start with an input advantage, Philippine export industries start with an input handicap.

Inputs here refer not only to the raw materials but even to infrastructure services such as power and telecommunications where cross-subsidies exist. Such cross-subsidies usually consist of charging below market rates to consumers and offsetting the losses by charging above market rates to commercial users. This has been the easy policy way out rather than introducing competition among the infrastructure services providers so as to lower the charges to both consumers and commercial users.

The new role of public policymakers will also breed the selection of and development of new policymakers.

V.2.3 Building Implementation Capacity

The new role of public policymakers requires the building of implementation capacity. As is evident, reasonable laws and regulations to prepare the Philippines for and benefit from globalization are already in place. It is not enough to have international standards in place. Poor implementation hobbles or prevents economic and social growth. To implement all these laws, even more the new laws specifically enacted to cope with globalization, personnel of regulatory, judicial and quasi-judicial agencies have to be trained on the complex aspects of these laws and their enforcement. This will be a long process, entailing, as it does, strong political will, private sector cooperation, and vigilance from public interest groups.

Support for anti-corruption initiatives would increase the capacity of the government to effectively enforce regulations.

VI. TRANSPARENCY AND ACCOUNTABILITY IN TRADE AND INVESTMENT ACTIVITIES

The chief aim of the country's agencies and institutions is to ensure and enhance the country's credibility in enforcing the rule of law that governs market transactions and the enforcement of contracts. Governments that fail to ensure law and order, protect property and property rights, and apply rules and policies predictably are not considered credible by investors, and growth and development in these countries suffer as a consequence (World Development Report, 2002). There are a number of agencies and institutions that promote transparency and accountability in trade and investment activities in the country.

Among these are the National Economic and Development Authority, the Department of Trade and Industry, the Board of Investments, the Philippine Economic Zone Authority, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Department of Finance, the Bureau of Internal Revenue, the Bureau of Customs, and Bureau of Immigration, among others.

The National Economic and Development Authority⁴⁷ (NEDA) is the government's central planning institution, which consists of the NEDA Board and the NEDA Secretariat.⁴⁸ The powers and functions of NEDA reside in the NEDA Board, the country's highest socioeconomic development planning and policy coordinating body. Five cabinet-level interagency committees - Development Budget Coordination Committee, Investment Coordination Committee, Infrastructure Committee, Social Development Committee, and Committee on Tariff and Related Matters - assist the NEDA Board in the performance of its functions. The NEDA Secretariat serves as the research and technical support arm of the NEDA Board. Specifically, it provides technical staff support and assistance that include the conduct of studies and the formulation of policy measures and other recommendations on the various aspects of development planning and policy formulation, and coordination, evaluation and monitoring of plan implementation. A Director-General who also carries the rank and title of Secretary of Socioeconomic Planning and Development heads the NEDA Secretariat. The NEDA Secretariat is composed of three offices - National Development Office, Regional Development Office, and Central Support Office.

The National Development Office (NDO) provides technical staff support to the NEDA Board in coordinating the formulation of national and sectoral policies, plans, and programs; monitors macroeconomic and sectoral performance and prepares the necessary economic reports; and conducts economic and development studies on macro-level plans and policies. The NDO is composed of six bureau-level staff units.

The Regional Development Office (RDO) provides technical staff support as may be required by the implementing agencies at the regional level. The RDO is tasked to monitor regional and interregional development policies, plans and programs; prepare integrated reports on regional planning; and conduct studies on regional development policies. In order to perform its functions, the RDO is composed of two bureau-level staff units and fifteen regional offices. The NEDA Regional Offices (NROs) serve as the technical staff of the Regional Development Council (RDC) in the region, provide staff assistance to the RDC in the coordination of plan formulation and implementation at the regional level, provide staff assistance to implementing agencies in the region in identifying and developing programs and projects, evaluate and review proposed regional programs and projects for consideration by the RDC, monitor and assess project implementation at the regional level, and coordinate with regional offices of other departments and agencies and with local government units outside the National Capital Region in the performance of their assigned tasks.

⁴⁷ NEDA brochure.

⁴⁸ NEDA was created in 1972, exercising the functions then vested in the National Economic Council, the Presidential Economic Staff, and other ad hoc economic institutions. Executive Order (EO) 230, issued on 22 July 1987, reorganized NEDA into its present organization, function, and responsibilities.

The Central Support Office (CSO) provides the NEDA Secretariat with technical assistance and support services in the areas of development administration, internal management improvement, legal services, development information, and administrative services. Five bureau-level staff units comprise the CSO to help implement its duties and responsibilities.

The Department of Trade and Industry⁴⁹ (DTI) is the government's primary coordinative, promotional, and facilitative arm with regard to trade, industry, and investment activities. The DTI acts as the catalyst for intensified private sector activity to accelerate and sustain economic growth through a comprehensive industrial growth strategy; a progressive and socially responsible liberalization and deregulation program; and policies designed for the expansion and diversification of both domestic and foreign trade.

In order to achieve its mandate, the Department sees its role as business and consumer champion guided by its five-point action strategy, namely, to promote and develop business, with focus on small and medium enterprises; to prepare the country for its becoming a knowledge economy; to lower the cost of doing business; to ensure that consumers get the best value for their money; to upgrade the quality of governance in the Department. The overarching goal of the Department through the aforementioned five-point action plan is to grow and expand Philippine trade and industry as the means to generate jobs and raise incomes, so that Filipinos may enjoy continuing improvements in their quality of life.

The Board of Investments⁵⁰ (BOI) is an agency attached to DTI and is responsible for the promotion of investments in the Philippines. BOI is divided into four operating groups: Investments Promotion, Technical Service Group, Industry Development Group, and Project Assessment Group. As the lead agency in promoting investments, BOI assists Filipino and foreign investors to venture and succeed in desirable areas of economic activities such as in food processing, construction, metal products, telecommunications, power and infrastructure projects, among others.

In order to meet the diverse requirements of investors, BOI offers specialized services such as information assistance to local and foreign investors; timely investment advice and facilitation regarding investor's business transactions; assistance in the selection of ideal investment location; joint venture matching services for local and foreign entrepreneurs with international businesses; business linkages with public and private sectors; evaluation and supervision of investment applications; training on investment promotion; seminars on investment networking for local executives; investment briefings, inbound and outbound missions, seminars and conferences for local and foreign investors; entrepreneurial assistance to overseas Filipino workers; after-hours service through the Investment Promotion Network - a system of hotlines connecting Investment Promotion Units across twenty-four related government agencies; and industry sector planning and preparation of industry sector profiles.

The BOI must be transformed from an enterprise-specific incentives-granting agency into a promotional agency with industry-wide assistance (Virata and Associates, 1996).

⁴⁹ www.dti.gov.ph

⁵⁰ www.boi.gov.ph

Instead of focusing its resources on registration of projects and administration of incentives, the BOI can now direct its energies on the formulation of industrial policy: collect, exchange, and disseminate information on industrial productivity and world competitiveness. The authority to grant and administer incentives should be the responsibility of the Philippine Economic Zone Authority (PEZA), while BOI focuses on promotional activities (Patalinghug and Salazar, 1993).

The Philippine Economic Zone Authority (PEZA) is a government corporation attached to DTI responsible for the promotion and establishment of world-class, environment friendly economic zones all over the country as a response to the demand for ready-to-occupy locations for foreign investments and businesses.⁵¹ The PEZA Board, a thirteen-person group headed by the DTI Secretary, is responsible for the formulation and implementation of policies, plans and programs for PEZA, as well as the establishment and enforcement of rules and regulations that govern the establishment and conduct of economic zones in the Philippines. The mission of PEZA is to contribute to the accelerated creation of employment and other economic opportunities, especially in the countryside, and to spur the growth and diversification of exports by encouraging and supporting investments in the development and operation of economic zones.⁵²

The vision of the Securities and Exchange Commission⁵³ (SEC), as an independent and credible regulator adhering to international standards, is to be a prime mover of economic development in the country by ensuring a fair, efficient, and transparent capital market. The SEC shall actively promote the development of a globally competitive capital market, effectively regulate and monitor its operations, and widely disseminate reliable information for the protection of the investing public. In order for the SEC to carry out its mission, it shall harness its empowered human resources, functioning under the culture of efficiency and integrity, and deliver services through systems enhanced by appropriate technology.

The SEC is empowered by law to have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; formulate policies and recommendations on issues concerning the securities market, as well as advise Congress and other agencies on all aspects of the securities market and propose legislation and amendments thereto; approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications; regulate, investigate, and supervise the activities of persons to ensure compliance; supervise, monitor, suspend or takeover the activities of exchanges and other clearing agencies; impose sanctions for the violation of laws and the rules, regulations, and orders issued pursuant thereto; prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders; and enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any institution, corporation, firm, association or person in the implementation of its powers and functions under this Code.

⁵¹ PEZA was established through a legislative enactment known as "The Special Economic Zone Act of 1995."

⁵² www.peza.gov.ph/aboutus.htm

⁵³ www.sec.gov.ph

Moreover, the Commission is empowered to issue cease and desist orders to prevent fraud or injury to the investing public; punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court; compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination of returns, books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provision of existing laws; suspend or revoke, after proper notice or hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

Under the New Central Bank Act, the Bangko Sentral ng Pilipinas⁵⁴ (BSP) was granted increased fiscal and administrative autonomy from other sectors of the Government, which means that it no longer undertakes quasi-fiscal activities that used to be done by the former Central Bank of the Philippines. Moreover, pursuant to the New Central Bank Act, the BSP is not permitted to engage in development banking or financing.

The main objective of the BSP is to formulate and implement policy in the areas of money, banking and credit, with the primary purpose of maintaining stable prices conducive to balanced and sustainable economic growth in the country. The BSP also seeks to promote and preserve monetary stability and the convertibility of the national currency [to other currencies]. Under the New Central Bank Act, the BSP performs the following functions, all of which relate to its being the country's central monetary authority.

- | Conduct monetary policy. The BSP formulates and implements a monetary policy aimed at managing the expansion or contraction of monetary aggregates to affect price stability.
- | Issue currency. The BSP has the exclusive power to issue the national currency.
- | Lend to other banks and the Government. The BSP is authorized to extend discounts, loans and advances to banking institutions for the purpose of influencing the volume of credit consistent with BSP's objective of maintaining price stability. In general, the BSP does not regularly extend credit to the Government although it purchases government securities in the secondary market with regard to its open market operations. The BSP may finance government expenditures (annual appropriations) provided that the amount borrowed is repaid within three months and that the amount should not exceed twenty percent of the average annual revenues of the Government in the most recent three fiscal years.
- | Manage foreign currency reserves. The BSP aims to maintain sufficient international reserves to meet any foreseeable net demands for foreign currencies in order to preserve the international stability and convertibility of the national currency.
- | Supervise and regulate financial institutions. In this capacity, the BSP conducts periodic or special examinations of banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.

⁵⁴ www.bsp.gov.ph

- | Determine exchange rate policy. Currently, the BSP adheres to a market-oriented foreign exchange rate policy such that BSP's role is principally to ensure orderly conditions in the [foreign exchange] market.
- | Lastly, the BSP functions as the banker, financial advisor and official depository of the Philippine Government, its political subdivisions and instrumentalities, and government-owned-and-controlled corporations. The Bangko Sentral also provides the Government with opinions on the monetary implications of any foreign or domestic borrowing operations. Moreover, foreign borrowings of the Government require BSP's approval and the Bangko Sentral also represents the Government in international financial institutions, such as the International Monetary Fund and the World Bank.

The Department of Finance⁵⁵ (DOF) is the government's lead agency in providing a solid foundation for the country's drive to become one of the most dynamic economies in the world -globally competitive and forward looking - by building a strong fiscal position. Specifically, the DOF is responsible for the formulation, institutionalization and administration of fiscal policies in coordination with other concerned agencies and government institutions; generation and management of financial resources for the government; supervision of revenue operations in and of all local government units; review, approval and management of all domestic and foreign public sector debt; and rationalization, privatization, and public accountability of corporations and assets owned, controlled, or acquired by the government.

In order to perform its mandate, the DOF is empowered by law to formulate goals, action plans and strategies for the government's resource mobilization efforts; formulate, institutionalize and administer fiscal and tax policies; supervise, direct and control the collection of government resources; act as custodian of and manage all financial resources of the government; manage public debt; review and coordinate policies, plans and programs of GOCCs; monitor and support the implementation of policies and measures on local revenue administration; coordinate with other government agencies and institutions on matters concerning fiscal, monetary, trade, and other economic issues; and investigate and arrest illegal activities such as smuggling, dumping, illegal logging, and other unscrupulous economic activities that may affect or impact the economic interests of the country.

The Bureau of Internal Revenue has a mandate to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.⁵⁶ Given its mandate, the BIR intends to raise revenues for the government through effective and efficient collection of taxes, quality service to taxpayers, and impartial and uniform enforcement of tax laws. The Bureau envisions a tax-paying public satisfied with its services; an agency that is taxpayer-focused, efficient and transparent; an organization that is streamlined, productive, and responsive in its fiscal and administrative operations; a workforce that is professional, competent, morally upright and properly motivated; and an agency that models good governance in the public sector.⁵⁷

⁵⁵ www.dof.gov.ph

⁵⁶ Section 2 of the National Internal Revenue Code of 1997.

⁵⁷ www.bir.gov.ph

The Bureau of Customs⁵⁸ is an important and the second largest contributor to government coffers. The Bureau aims to be more efficient and effective in customs collection, which adheres to the world's best practices on customs administration and be more responsive to the customs service needs of its clients. In order to achieve its mission, the BOC is empowered by law to assess and collect tax revenues from imported articles, fines and penalties, among other things, under the Tariff and Customs Code (TCC); prevent and suppress smuggling and fraud in customs administration; supervise and control the entrance and clearance of vessels and aircraft engaged in foreign trade; supervise and control the handling of foreign mail arriving in the Philippines for the purpose of collecting taxes on dutiable articles thus imported and prevent smuggling through mail; supervise and control all import and export cargoes, landed or stored in piers and terminal facilities, including container yards and freight stations; exercise exclusive jurisdiction over seizure and forfeiture cases under the tariff and customs laws; and enforce TCC and all other laws, rules and regulations relating to tariff and customs administration.

The four-fold thrust of the BOC revolves around revenue collection, trade facilitation, intelligence and enforcement, and internal administration of its resources. Under revenue collection, the BOC seeks to collect targeted revenues through improved collection efficiency and plugging of revenue leakages; under trade facilitation, it supports government programs through speedy clearing of goods and passengers from customs; under intelligence and enforcement, the Bureau protects society against prohibited drugs and other harmful substances, and illegal trade of natural resources; and under internal administration, it supports the government's thrust to streamline the bureaucracy and to employ resources more effectively and efficiently. In order to expedite customs processing, the Bureau has adopted the SPACE Program, which represents the five general principles underlying progressive clearance procedures and systems. Specifically, SPACE stands for -

- | Selectivity: only high-risk shipments undergo the regular clearance process, while the majority undergoes express processing;
- | Post audit: shipments given express clearance may be subjected to post audit or some form of release clearance processing;
- | Advance processing: the clearance process is initiated well in advance of cargo arrival;
- | Client self-assessment: the Bureau will increase its reliance on client self-assessment and develop of atmosphere of honest and fair dealings;
- | Electronic data interchange: the process will be, to the fullest extent possible, automated and computerized.

In accordance with the Revised Administrative Code of 1987, the Commission on Immigration and Deportation was renamed Bureau of Immigration⁵⁹ as it is more properly called today. Under this Code, the Bureau is composed of three structural units namely: the Office of the Commissioner, the Board of Commissioners, and the Board of Special Inquiry. These groups act as collegial bodies and exercise quasi-judicial powers affecting the entry and stay of foreign nationals in the country.

VII. CONCLUSIONS AND RECOMMENDATIONS

The report describes the various laws, rules, regulations, agencies, and institutions that define the ability of the Philippines government to promote trade, investment, and

⁵⁸ www.customs.gov.ph

⁵⁹ www.gov.ph

growth. Administrative theory posits that states with effective public administration systems and strong institutions have the capacity to channel globalization to their own advantage and to minimize its costs.

The Philippine State is performing a lot of functions, some of which characterize the functions of a state with strong capability. A closer look at the outcomes of the assigned roles to Philippine agencies and institutions seems to reveal the inconsistency between the state's role and its capability.

The Philippine Government has been engaged in activities and functions related to redistribution and protecting the environment, a characteristic of countries with strong capability. However, in doing these activities, it weakens its ability to deliver basic and productivity-enhancing services such as upholding the rule of law, protecting property rights, providing infrastructure, and supporting education. Thus, a state with low state capacity compromises of delivering basic services when it simultaneously and prematurely adds several functions which are inconsistent with its given set of institutions, resources, and stage of development.

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Investment Coordination Committee

The Investment Coordination Committee is one of the five cabinet-level interagency committees that assist the NEDA Board in the performance of its functions.⁶⁰ The ICC is a multi-agency working group that reviews the fiscal, monetary, and balance of payments implications of major capital projects⁶¹, then recommend to the President of the Republic of the Philippines the timetable of the implementation of these projects on a regular basis; submit to the President a status of the fiscal (budgetary), monetary (credit), and BOP implications of the MCPs; and review and evaluate specific MCPs with respect to their technical, financial, economic, social, institutional development feasibility or viability, as well as from the context of sectoral plans and geographical strategies, then recommend to the NEDA Board for approval.⁶²

In general, ICC review is undertaken for MCPs requiring ICC clearance and/or NEDA Board approval as preconditions for loans and guarantees by the national government; private sector access to concessional ODA financing; obtaining BSP authority to negotiate foreign loans and Monetary Board approval of foreign borrowing; and budgetary appropriations [for national line agencies, other government agencies, and government owned and controlled corporations].

The ICC review process covers any independent undertaking of the public sector with total project cost of at least PHP300 million resulting in new capital formation⁶³ in the economy without regard of the source of financing (i.e. whether for local financing or through foreign loans and/or grants); public sector projects with foreign borrowing of at least US\$5 million; private sector projects seeking concessional ODA financing under on-lending arrangements and/or national government financing guarantees, which may include infrastructure projects to be undertaken under the build-operate-transfer and related schemes; and other projects and/or programs that do not fall under the abovementioned definitions shall be considered on a case to case basis.

The ICC review process consists of three levels - the technical board, the cabinet committee, and the NEDA Board. The ICC is supported by the ICC Secretariat, which provides technical support to the ICC TB and CC. The duties and responsibilities of the Secretariat includes but not limited to the evaluation of all projects submitted to the ICC and come up with comments and recommendations for consideration by the ICC; recommendation of the relative priority of projects with respect to sectoral or regional plans; assessment and improvement of existing methods and guidelines for project evaluation to proponent agencies, among others.

The ICC TB deliberates on the economic, social, financial, technical, and institutional aspects and implications of MCPs, including policy issues raised by the ICC Secretariat; identifies priority areas for foreign financing to guide the BSP in the evaluation and approval of foreign loan proposals; refer to the ICC Cabinet Committee for deliberation and review the recommended actions, policies, and issues concerning specific projects; review the fiscal, monetary, and BOP implications of MCPs, and formulate policies

⁶⁰ The other four cabinet-level committees are the Development Budget Coordination Committee, Infrastructure Committee, Social Development Committee, and Committee on Tariff and Related Matters.

⁶¹ Projects that cost at least PHP 300 million.

⁶² ICC Guidelines and Procedures Revised on 11 April 1991 per ICC Cabinet Committee. The ICC Guidelines and Procedures were originally formulated as part of EO 230 reorganizing the National Economic and Development Authority on July 22, 1987.

⁶³ New capital formation refers to real investments involving physical additions to the capital stock of the economy.

appropriate to the review of projects in general, and other matters relevant to the performance of the functions of the ICC.⁶⁴

The ICC CC recommends for approval to the NEDA Board the decisions on specific projects and/or programs submitted for ICC clearance, as well as other issues concerning ICC; recommends to the NEDA Board an annual implementation program for MCPs through the Medium-Term Philippine Investment Program (MTPIP); and submits to the President through the NEDA Board a status of the fiscal, monetary, and BOP implications of MCPs.⁶⁵

The NEDA Board is the country's highest social and economic development planning and policy coordinating body. The Board ultimately decides the approval of MCPs for implementation and budgetary allocation and support.

Legislative Executive Development Advisory Council

The mandate of the Legislative Executive Development Advisory Council⁶⁶ is to act as an effective advisory and consultative mechanism to ensure consistency in coordinating executive development planning and congressional budgeting and to provide the mechanism for generating consensus among the legislative and executive branches on various socioeconomic goals and objectives; and to serve as a consultative and advisory body to the President on certain programs and policies essential to the realization of the goals of national development.

The main functions of the Advisory Council are to facilitate the passage of priority legislation [that support socioeconomic development] and to provide a forum for continuing consultations and consensus building on vital socioeconomic concerns. Under the Advisory Council proper is a LEDAC Executive Committee,⁶⁸ which approves and recommends to the Advisory Council the agenda for the LEDAC meetings; sets the overall thrust and direction of the LEDAC Secretariat; identifies priority areas requiring attention by the Advisory Council; and formulates options or alternative modes for resolving these issues for consideration by the Advisory Council. Under the LEDAC Executive Committee is the LEDAC Secretariat, which oversees and coordinates the provision of the overall technical and administrative support to the advisory Council.

⁶⁴ The ICC TB is chaired by NEDA and co-chaired by the International Finance Group of the DOF. The other members of the ICC TB includes DOF's Corporate Affairs Group, Office of the President, Department of Budget and Management, DTI, Department of Agriculture, BSP, Department of Environment and Natural Resources, Department of Energy, and Coordinating Council for Private Sector Participation. Other agencies may be invited to the ICC TB deliberations when deemed necessary.

⁶⁵ The ICC CC is chaired by the Finance Secretary and co-chaired by the Director-General of NEDA. Its members include the Executive Secretary, the Budget and Management Secretary, the Trade and Industry Secretary, the Agriculture Secretary, the Energy Secretary, the BSP Governor, and the CCPSP Secretary. Representatives from other agencies, private and non-government institutions may be invited to the Committee's deliberations when deemed necessary.

⁶⁶ The legal basis of LEDAC was created on 9 December 1992 through RA 7640.

⁶⁷ The Advisory Council is chaired by the President and composed of twenty members: the Vice President, Senate President, Speaker of the House, seven Cabinet secretaries, three senators, three congresspersons, a representative each from the local government, the youth and private sectors. A number of senators and congresspersons may be invited occasionally to ensure a more thorough discussion and consideration of vital socioeconomic and development issues.

⁶⁸ The NEDA Director-General chairs the LEDAC Executive Committee with representatives from the Office of the President, House of Representatives, and Senate as members.

Development Budget Coordination Committee

The Development Budget Coordination Committee is one of the five cabinet-level interagency committees that assist the NEDA Board in the performance of its functions. The DBCC has three functions, which include the recommendation for Presidential approval of the level of the annual government expenditure program and the ceiling of government spending for economic and social development, national defense, general government, and debt service; the recommendation to the President of the proper allocation of expenditures for all development activities for the various infrastructure or capital projects; and the recommendation to the President of the amount set for allocation on capital outlay under each development activity for the various infrastructure or capital projects.⁶⁹

Civil Service Commission

The Civil Service Commission is the Philippine government's central personnel agency with a mandate to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. The Commission has an adjudicative responsibility and is tasked to render final arbitration on disputes and personnel actions on matters relating to civil service. The CSC is responsible for the recruitment, development, protection, and retention of a competent, professional, and highly motivated government workforce that is responsive to the needs of the various publics that interact with the government. The Commission's specific functions include leading and initiating the professionalization of the civil service; promoting public accountability in government service; adopting performance-based tenure in government; and implementing the integrated rewards and incentives program for government employees.⁷⁰

Republic Act 9184

Formerly referred to as the Government Procurement Reform Bill, RA 9184 directs all government transactions that pertain to procurement of materials and services to be centralized through a major computer network infrastructure called the Government Electronic Procurement System. The implementing rules and regulations of RA 9184 would create a Government Procurement Policy Board whose membership would be composed of government, non-government and private sectors.

The objectives of RA 9184 support the overarching objective of the current administration to minimize graft and corruption and increase transparency in all government activities. RA 9184 is intended to help prevent graft and corruption, improve operational efficiency, foster transparency, and encourage competition in the bidding process. RA 9184 or the Government Procurement Act is a step to streamlining the government's procurement transactions, which, according to a private sector-led watchdog, is plagued by illegal deals.⁷¹

Export Development Council

The Export Development Council⁷² oversees the implementation of the Philippine Export Development Plan (PEDP) and coordinates the formulation and implementation of policy reforms to support the PEDP. The EDC is empowered to approve the PEDP; coordinate, monitor and assess the implementation of the PEDP, and, when necessary, institute

⁶⁹ NEDA brochure.

⁷⁰ www.csc.gov.ph

⁷¹ www.mctimes.net

⁷² EDC brochure.

appropriate adjustments in order to adapt to changing conditions in both the domestic and international environment; periodically review and assess the country's export performance, problems, and prospects; identify the main bottlenecks, problem areas and constraints in all areas that influence export development, such as policy framework, physical infrastructure, finance, technology, promotions and marketing; among other things.

The Export Development Act of 1994 is implemented within the institutional structures and strategies of the Export Development Council. The goal of the Export Development Act is to provide a macroeconomic policy framework that supports export development, especially in the following key areas of concern:

- | Monetary and foreign exchange policies that establish and maintain a competitive exchange rate, supported by measures to provide safety nets for various sectors that may be adversely affected by the implementation of such policies, and that such policies shall be consistent with the objectives and functions of the BSP.
- | Fiscal and credit policies that provide adequate funds for public and private investments and business expansion for export purposes, while keeping the cost of credit comparable to international levels and ensuring access to loanable funds for SMEs as well as highly technical export enterprises.
- | Agricultural policies that build up viability and competitiveness of the country's agricultural sector and facilitate their linkage with industry to strengthen the agri-industrial base of the country's export thrust.
- | Trade, tariff, and customs policies that engender competitiveness of domestic industries and facilitate their participation in international trade.
- | Technical support policies that improve the quality of export products shall be adopted, particularly those related to technology transfers, research and development, technical training, and related activities.
- | Policies that affect infrastructure in order to ensure the adequate supply and quality of power, water, transportation, communications, among other things in the context of the national export drive.
- | Policies that strengthen the link between export growth and countryside development through policies favorable to SMEs, regional industrial centers, export processing zones, etc.
- | Policies that promote labor and industrial relations, which recognize the inevitable industrial shifts that may occur in the effort to achieve international competitiveness.
- | Policies and measures that minimize bureaucratic redtape and simplify procedures to support the country's export development thrust.
- | Repeal the provisions of existing laws deemed detrimental to the export sector.

The Investments Priorities Plan

The Investment Priorities Plan⁷³ identifies specific priority economic areas and strategic activities that are able to sustain economic development. The theme of the 2002 IPP is "Sustaining Economic Development through Globally Competitive Industries". The IPP embodies broad objectives of the current administration for national strategic consensus on a competitive economy that is capable of building wealth for the country in a more interactive global setting and a robust agricultural sector that matches the global benchmarks of efficiency. Regional development is addressed through industry clustering as one primary concern for a balanced economic program for global competitiveness.

⁷³ 2002 IPP provided by the Board of Investments of the DTI.

The 2002 IPP involves the regions in identifying priority industrial and agricultural activities and linkages for a dispersed growth to all regions of the country.⁷⁴

2003 IPP

Under the Mandatory Inclusions of the National List, the 2003 IPP differs only from the 2002 IPP in that it includes RA 9003 or the Ecological Solid Waste Management Act. Moreover, under the Support to Government Programs of the National List, the item on environmental projects is not included in the 2003 IPP, while a new item, printing facilities, is added. There is no additional item for the Regional List, which consists of the Industry Clusters and the ARMM List. However, Item 6 of the 2002 IPP Guidelines on the "testing and/or measuring services for emission and effluent and other related environmental parameters for machineries and equipment to exclude motor vehicle" is amended.

It appears that the non-inclusion of environmental projects in the 2003 IPP is due to the addition of RA 9003 or the Ecological Solid Waste Management Act under the Mandatory Inclusions on the National List, although the item on environmental projects in the 2002 IPP involves activities that are unrelated to solid waste management (e.g. environmental pollution, which may also include air and water pollution; ecological facilities and river rehabilitation; among others). The exclusion of motor vehicles in the amended Item 6 of the 2002 IPP may be due to the existing laws on vehicle emission, which makes the inclusion of motor vehicles in Item 6 unnecessary.

The inclusion of RA 9003 is a step forward in the Government's efforts to stem the worsening problem on solid waste management, especially in highly urbanized centers like Metro Manila. The effort is seen as a commitment of the present administration to formulate policies and come up with solutions to the solid waste management problem in the country. The end result would be a more sustainable and environmentally sound socioeconomic development policy for the Philippines.

⁷⁴ 2003 IPP is not yet approved as of April 4, 2003.

**ASSESSMENT OF VIETNAM'S STATE MANAGEMENT CAPACITY IN
INTERNATIONAL ECONOMIC INTEGRATION AND POLICY
RECOMMENDATIONS FOR IMPROVING MANAGEMENT CAPACITY**

*Pham Quoc Tru**

I. INTRODUCTION

I.1 Objective of the Study

From the late 1980s to date, globalization has developed vigorously into a dominant trend in the world, exerting profound and comprehensive impacts on the socioeconomic and political lives of all countries and on international relations. This very trend has created a strong momentum for countries to pursue economic integration into the regional and global economies. Against this background, in full awareness of the inevitability of international economic integration to development, almost all countries have been trying to participate in this process at different levels and forms, and thus have gained various results. These results depend on many factors, among which the most decisive one is the state's capacity in managing the international economic integration process. A government capable of managing well the international economic integration can maximize benefits (i.e. make full use of opportunities) and minimize challenges and risks brought about by the globalization and international economic integration process.

In parallel with the reform process, Vietnam has gradually carried out its international economic integration, and has achieved initial positive results while encountering not a few challenges. In the years to come, Vietnam will continue to intensify its international economic integration in both depth and scale. This process has been rendering considerable impacts on Vietnam's socioeconomic development, and prompts the need to adjust the role and the state management capacity. In addition, it creates conditions for the improvement of the state management capacity on the economy as well as other facets of the society.

This research aims to analyze and give a brief assessment of Vietnam's current state management capacity for its international economic integration, and then come up with recommendations to further enhance this capacity.

I.2 Definitions of Concepts

To facilitate the analysis on the basis of a consistent understanding, we define some key concepts and terms used in this study as follows:

1.2.1 International Economic Integration

International economic integration is a process in which a country links its economy with the regional and world economies through its efforts to liberalize its economy, open its market at unilateral, bilateral and multilateral levels, thus creating conditions favorable for the effective socioeconomic development. Simply put, international economic integration means the participation into globalization.

1.2.2 Economic Globalization (defined as globalization in this report)

Globalization is a process to form and develop regional and world integrated markets, thus increasing the interaction and interdependence, first and foremost in economic field, among countries through the increase of cross-border trade flows and resources exchanges, in parallel with the establishment of international institutions and organizations responsible for managing international economic activities and transactions.

*Department for Multilateral Economic Cooperation, Ministry of Foreign Affairs, Hanoi, Vietnam.

1.2.3 State Management Capacity

State management capacity refers to the capacity of the State to carry out functions and tasks in maintaining social order and the smooth operation of all activities nation-wide. In other words, state management capacity is the synthesis of factors, which constitute strength to enforce the public power. Major components of the state management capacity are:

- | Structures, apparatus from central to local levels: The state apparatus well organized (this means the constituent elements of this apparatus are well organized and connected, have clearly-defined functions and authority) enables the full and effective exercise of powers and duties of the entire apparatus.
- | Institutions: Laws and other legal provisions, administrative regulations and procedures are the main substantive contents of the institutional system. An institutional system, which is well and scientifically stipulated and articulated, could lay the foundation for the swift, uniformed and smooth operation of the administrative apparatus.
- | Quality of the officers and civil servants: Their good morality, high professional knowledge and skills are important factors for the good state management capacity.
- | Resources allocated: Necessary and sufficient technical conditions are required to guarantee the efficiency and effectiveness of state management capacity. These comprise offices, equipment, and funding, etc.

State management capacity can be analyzed by examining its four constituent elements mentioned above and the results of the realization of the State functions and tasks, particularly the effectiveness and the efficiency of State management.

1.2.4 Efficiency of State Management

Efficiency refers to the correct and successful implementation of the State management with the aim to achieving the set targets. The efficiency of State management is exhibited clearly and mostly in the fact that organizations and individuals in the whole society observe laws and government policies seriously, thoroughly, and swiftly.

The efficiency of State management relies on the following factors:

- (1) The capacity and quality of the institutions, State apparatus, officers, and civil servants;
- (2) The support of the people, in other words, the attractiveness of the administrative regime to the people and the genuine values the regime brings to the people. The higher the attractiveness to the people, the greater the efficiency of State management. This is the outer efficiency of State management. In the meantime, State management also depends on the organization and the operational mechanism of the political system. The efficiency of State management relies very much on the leadership of the governing party, the clear division among the legislative body, the executive and the jurisdiction, and people's mastership role through democratic mechanisms, and social associations. This is the inner efficiency of State management.

1.2.5 Effectiveness of State Management

The effectiveness of State management refers to the result obtained by the State as compared to the consumption of resources and the relationship between social and economic effectiveness. The effectiveness of State management is demonstrated through achieving maximum administrative management targets at minimum resources consumption. Achieving targets is not only in relation to resources consumption (human and financial resources, etc.) but also to social effectiveness.

Capacity, efficiency, and effectiveness of the State management are closely connected. Efficiency and effectiveness are measures of the state management capacity and however depend on the capacity and the quality of state administrative management. In order to improve the efficiency and effectiveness of administrative management, it is necessary to focus on developing and perfecting elements of the state administrative management agencies' capacity. On the contrary, to assess the progress of the state administrative management agencies, it is necessary to build upon concrete parameters and criteria, which reflect the efficiency and effectiveness of the State management.

II. VIETNAM'S INTERNATIONAL ECONOMIC INTEGRATION PROCESS OVERVIEW

II.1 Activities

II.1.1 Unilateral Liberalization

With the said definitions of international economic integration, Vietnam, while skipping the past colonial economic development, has embarked on real international economic integration since the 1980s when it initiated the reform process with a series of measures to gradually liberalize economic activities (gradually shifting from the centrally planned economy to market economy, reform the salary, monetary regimes, restrict the double pricing system and state foreign trade monopoly, intensify foreign direct investment (FDI) attraction, develop non-state economic sector, reform the state economic sector, banking and finance etc), open its market and participate in regional and world organizations/institutions.

II.1.2 Participation in Multilateral Economic Institutions

The break through of Vietnam's participation in international economic organizations/institutions is its accession to the ASEAN Free Trade Area (AFTA) in 1996. Since then, Vietnam has joined many ASEAN economic cooperation mechanisms in such fields as services (ASEAN Framework Agreement in Services), investment (ASEAN Investment Agreement), intellectual property, information technology (E-ASEAN agreement), etc. In recent years, ASEAN's economic cooperation process has developed considerably through its acceleration of the timeframes to complete obligations in AFTA, AIA and active promotion of the idea to establish the ASEAN Economic Community by 2020.

In 1995, Vietnam submitted its application to the World Trade Organization (WTO) and commenced the process of preparation and negotiation for WTO accession. To date, Vietnam has implemented a number of preparatory steps at the WTO's request, namely, convening six sessions with the Working Group on Vietnam's WTO accession, and basically completing the explanatory and transparency-making phase of Vietnam's foreign trade regime. Vietnam has also put forward its initial offers on market access (tariff, non-tariff, and services) and has conducted several bilateral negotiations on market access with interested WTO members. Vietnam sets the target of accomplishing its WTO negotiations and becoming a WTO member before the conclusion of the Doha Round in 2005.

Since early 2002, Vietnam and other ASEAN countries have conducted negotiations with China on the establishment of the ASEAN- China Free Trade Area (ACFTA). Then, ASEAN countries and China signed, in early November 2002, the bilateral Framework Agreement on Comprehensive Economic Cooperation, which lays out fundamental principles of the ACFTA. Among these principles, the deadline for China and ASEAN-6 to accomplish their ACFTA obligations is 2010 and that for ASEAN-4 is 2015. Since 2003, ASEAN and China will carry out negotiations to turn these principles into concrete provisions for ACFTA materialization, especially market access commitments in goods, services and investment. The two years Early

Harvest Program for tariffs reduction to zero percent of agricultural products within chapters 1-8 will begin to be implemented in 2004.

In September 2002, Vietnam and other ASEAN countries signed with Australia and New Zealand a joint statement on the establishment of Close Economic Partnership (CEP) between the two sides. Negotiators from ASEAN, Australia, and New Zealand are discussing concrete measures to realize this CEP.

In November 2002, Vietnam, other ASEAN countries and Japan agreed to establish ASEAN-Japan Comprehensive Economic Partnership (AJCEP) including an FTA between ASEAN and Japan within 10 years. Since January 2003, negotiations for the AJCEP framework have been carried out and it is expected that ASEAN and Japan will conclude these negotiations and sign the framework at the end of this year.

Since the beginning of 2003, Vietnam, with other ASEAN countries and India have been implementing the statement issued at the ASEAN- India Summit on building ASEAN- India Comprehensive Economic Partnership (AICEP) towards a bilateral free trade area. ASEAN and Indian officials have been drafting a bilateral framework on AICEP, which is scheduled to be completed for signing in 2003.

In addition, Vietnam and other ASEAN countries have been carrying out activities to establish ASEAN-EU economic linkages in the framework of the Trans-Europe-Asia Trade and Investment Initiative (TREATI), ASEAN-US economic linkages through negotiations for signing a bilateral Trade and Investment Facilitation Agreement (TIFA), and East Asian economic linkages on the ASEAN+3 basis.

II.1.3 Bilateral Economic Linkages

Vietnam has established bilateral economic relations with more than 150 countries. However, the Vietnam-US BTA is the first bilateral trade agreement based on WTO rules that Vietnam has signed with a country until now. This agreement has entered into force since December 2001. Now, Vietnam has been negotiating and promoting the possibility of the negotiation other bilateral free trade agreements.

II.1.4 Sub-regional Economic Linkages

Apart from multilateral and bilateral economic linkages, Vietnam, in the past years, has concurrently participated in sub-regional economic linkages such as the Greater Mekong Sub-region (GMS), West-East Corridor (WEC), and development triangle among Vietnam, Laos, and Cambodia, etc.

To conclude, Vietnam's international economic integration process from simple to sophisticated stages (the highest stage is now AFTA) takes place at unilateral, bilateral, and multilateral levels, and links sub-regional, regional, inter-regional, and global scopes in almost all areas, namely, goods, services, investment, intellectual property, etc.

II.2 A summary of Vietnam's Principal Integration Commitments

To date, Vietnam's major integration commitments are as follows:

II.2.1 Most-Favored Nation (MFN) and National Treatment (NT) Clause

Vietnam will fully implement the non-discrimination treatment (MFN&NT) to members of ASEAN, APEC, ACFTA, WTO (or in other economic cooperation frameworks where Vietnam participates in) in the fields of goods, services, investment and intellectual property.

II.2.2 Tariff Reduction

- | AFTA: Vietnam started reducing its tariffs in 1996. In general, all its tariffs will be brought down to 0-5 percent by 2006 with regard to goods imported from ASEAN countries, and 100 percent tariff lines will stand at zero percent by 2015.
- | APEC: Vietnam's tariff lines will be at zero percent by 2020.
- | Vietnam-US bilateral trade agreement: Vietnam will reduce around 240 tariff lines for its products according to different schedules.
- | ASEAN-China Free Trade Area: Within the Early Harvest Program, Vietnam will carry out the fast-track tariff reduction to agricultural products from chapter 1 to 8 of the harmonized tariff system.

II.2.3 Abolishing Non-tariff Barriers

- | AFTA: By 2006, Vietnam will complete the abolishment of quantitative restrictions to goods imported from ASEAN countries and will move towards eliminating other non-tariff barriers. Vietnam also started implementing the customs valuation agreement of the WTO in January 2002, and gradually implemented the simplification, facilitation and unification of customs procedures regarding imported goods from ASEAN countries.
- | APEC: Vietnam will gradually reduce and basically abolish non-tariff barriers (NTBs) by 2020.
- | Vietnam-US Bilateral Trade Agreement: The abolishment of NTBs will be implemented according to specific timeframes concerning over 200 products imported to Vietnam from the US.

II.2.4 Services

Vietnam has committed to liberalize many of its services at different timeframes in ASEAN, APEC, and Vietnam-US bilateral trade agreement. In general, Vietnam will gradually open its market and accord MFN and NT treatments to foreign services and investors in this field.

II.2.5 Investment

Vietnam has also made commitments in ASEAN, APEC, and Vietnam-US Bilateral Trade Agreement by opening its market for foreign investors. It will implement trade liberalization and facilitation measures with regard to FDI and finally provide NT treatment to foreign investors.

II.2.6 Intellectual Property

Vietnam's commitments are based on principles of the TRIPS Agreement and WIPO's treaties. In this connection, Vietnam has to honor and protect copyrights, patents, trademarks, designs, industrial patterns, plants and breeds, etc.

II.2.7 Transparency

Vietnam has to make public her policies, laws, regulations, and provisions related to trade, administrative procedures concerned, and guarantee that people can easily access these information. Fine disclosure and transparency of information will contribute to enhancing the predictability of Vietnam's market and facilitate trade and investment activities in Vietnam as well as between Vietnam and other countries.

II.2.8 Government Procurement

The top requirement is that Vietnam has information dissemination mechanism related to government procurement, which ensures transparency, implements public and fair bidding, and allows private and foreign companies to participate in public procurement projects. Vietnam also needs to perfect its legal system related to government procurement.

II.2.9 Mobility of Business People

Within certain bilateral and multilateral frameworks, Vietnam has pledged to loosen its restrictions on entry visa issuance and residence, mobility of foreign business people and professional or high skilled labors, especially those from member countries of the organizations/institutions that Vietnam is a part of.

II.2.10 Custom Procedures

In general, Vietnam has made commitments to multilateral and Bilateral Trade Agreements to build transparent legal frameworks on custom procedures and make these procedures simpler, clearer so as to facilitate import and export goods between Vietnam and relevant countries.

II.2.11 Standards and Conformance

Vietnam has to build new national standards and revise old ones in compliance with the regional and international ones and comply with the terms of Mutual Recognition Agreements.

II.2.12 Dispute Settlement

Vietnam agrees to the methods of dispute settlement regulated by the international organizations or institutions that she has been participating, such as dispute settlement mechanism in ASEAN and dispute settlement provisions in APEC, BTA.

II.3 Implementation of Vietnam's Commitments

II.3.1 Non-discrimination Treatment (MFN and NT)

A review of legal documents issued by various branches of the Government has been done in order to find out and adjust regulations that are inappropriate or hinder the implementation of the MFN and NT principle on trade in goods, trade in service and foreign investments. The government has gradually minimized and eventually eliminated regulations, which discriminate domestic goods, services and investments with those from foreign countries. For example, the extra-high charges on foreigners in hotels have generally been eradicated; differences between prices for Vietnamese and foreigners have gradually been abolished in the fields of transportation (aviation and railway), electricity, water supply, telephone, and telecommunication.

However, this review has only been carried out at the central level and cannot detect all institutional and practical inconsistencies. At the local level, this process is barely implemented. In reality, many inconsistencies remain unresolved at the local level. The extra charges of service (hotel room charges, transport fees, visiting fees, etc.) for foreigners are still applied in many provinces and cities while they have been removed at the central level. Full implementation of MFN and NT would pose more acute difficulties to Vietnamese enterprises, especially state-owned ones (SOEs), as they have to compete in a fairer environment and their advantages of state protection and preferences are taken away.

II.3.2 Trade in Goods

With regards to tariff reduction, until the year 2000, Vietnam has placed about 5500 out of 6400 commodities in the MFN import list for CEPT Agreement reduction with a view to AFTA implementation. In 2003, Vietnam has to put the remaining 760 commodities in the Temporary Exclusion List (TEL) to the Inclusion List (IL). Nevertheless, because of certain difficulties, the Government has decided to postpone the phasing out of 41 tariff lines related to automobile and motorcycle parts from TEL to IL. Tariff reduction of around 245 tariff lines, according to the BTA and APEC roadmap, are specifically formulated and implemented in the time to come.

Tariff lines, which must be reduced in the 2003-2006 period, will have a significant impact on domestic production and Vietnam's imports from ASEAN countries, as the products in the reduction list constitute the majority of Vietnam trading with ASEAN member countries. On the other hand, the current Exclusion List of Vietnam retains many lines (around 130, ranking 2nd in all ASEAN countries). Some of them are very important for Vietnam's economy, but are being requested in the reduction list by the ASEAN (e.g. small cars).

With regards to non-tariff issues, following the regulations of CEPT Agreement, Vietnam has begun eliminating some quantitative restrictions and other non-tariff measures, implementing customs evaluation at the beginning of 2002.

In brief, the implementation of Vietnam's commitments on tariffs and NTBs, reductions in different frameworks has been carried out relatively well. But the country will also meet difficulties, especially when she will be deeply involved in the tariffs and NTBs cut process in the years to come.

II.3.3 Trade in services

Vietnam has unilaterally implemented liberalization policy at the proper pace in such services as banking, insurance, auditing, legal consultancy, health care, education, construction transportation, etc. To some extent, the scope of liberalization has gone beyond its current commitments in ASEAN and BTA framework.

However, to fully fulfill its responsibilities and commitments in the future, especially after becoming a full-fledged WTO member and concluding the negotiations for roadmaps of services liberalization in ACFTA, AFAS frameworks, Vietnam has to continue amending the system of legal and administrative regulations in services so as to conform to and enhance the enforcement power of the State apparatus.

II.3.4 Investment

Vietnam has seriously implemented its investment commitments in AIA and BTA frameworks. Regulations of MFN and NT in investment have been gradually implemented. The government has laid stress on improving the investment environment. Therefore, measures to investment liberalization have been carried out at a faster pace than Vietnam's current commitments in frameworks of ASEAN, BTA and APEC.

However, measures to liberalization implementation have not been synchronous, sometimes even distorted due to bureaucracy and corruption, as well as weak professional qualifications of a number of civil servants at the central and local level. The parallel existence of two investment laws (Foreign Investment Law and Domestic Investment Law) has, to some extent, brought about discrimination in investment activities, and therefore, failed to encourage these activities.

II.3.5 Property Rights Protection

In recent years, Vietnamese government has made efforts to ensure on the implementation of property rights protection. The system of legal regulations in this area has been amended so as to ensure a stronger legal corridor for property rights protection. The Government has paid attention to improve knowledge of the state administrative management apparatus and civil servants in the field of intellectual property; it also plays active role in intellectual protection propaganda towards wide-range public community. Besides, the Government has taken various strict and tight management measures on preventing the production and trading of fake and imitated products, and illegally copied compact disks and videotapes, etc. while treating lawsuits regarding intellectual violation in an objective and fair manner.

However, this remains one of the weakest fields in Vietnam. Though legal regulations have strengthened, they are still insufficient and inconsistent. Law enforcement remains weak. The administrative management system and officers in intellectual property are not qualified to carry out their responsibilities due to the lack of professional capacity, morality and resources. The public awareness is generally limited due to their incomplete understanding, unfamiliarity with regard to personal rights of intellectual property. People seem to get quite acquainted with and regard intellectual violation activities as normal (e.g. the illegal copy and application of intellectual products), while the authorities have not kept close eyes on these activities for a long time. Even many Vietnamese enterprises do not understand well and are not aware of regulations in intellectual protection, thereby not registering their trademarks and goods labels to the competent agencies.

II.3.6 Government Procurement

The Government has made notable efforts in formulating regulations on this field in compliance with general regulations within the international economic institutions/ organizations wherein Vietnam takes part. Yet, the implementation of these regulations encounters numerous difficulties and is ineffective due to the complicated administration procedures and the impacts of negative factors. In the coming time, Vietnam has to further develop its legal regulations, simplify administration procedures and enhance the transparency, disclosure and fairness of the process to consider and select bidders, as well the management and supervision of the implementation of state's projects.

II.3.7 Mobility of Business People

Vietnam has signed with ASEAN countries bilateral agreements on short-term entry visa exemption to ASEAN citizens and this visa exemption has been applied to ASEAN members for recent years, which makes the residence and traveling of ASEAN citizens, especially businessmen, in Vietnam more convenient and easy. Outside the ASEAN framework, Vietnam has issued entry visa to foreign business people and tourists who come to Vietnam for business, working or tourism in a favorable and convenient manner. Vietnam, along with other APEC members, has been applying regulations on facilitating the entry, residence, and travel of business people. In conclusion, Vietnam's regulations and their application are quite favorable and consistent, thus meeting the requirements of international economic institutions/ organizations in which Vietnam participates. However, Vietnam must further improve the procedures of considering and solving the requests of entry, residence, and travel of business people. It should, therefore, apply modern methods to help foreign business people and tourists satisfy their aspirations more quickly and conveniently while still ensuring the necessarily strict control over foreigners.

II.3.8 Custom Procedures

Vietnam has implemented regulations in building ASEAN harmonized tariff nomenclature (AHTN) with 6 and 8 digits. Vietnam has so far brought its AHTN with 6 digits into use, and now has completed its AHTN with 8 digits in 2003 (postponed 1 year as compared to its schedule). The proclamation and simplification of custom procedures in accordance with ASEAN harmonized standards and the application of "green line" have been carried out as required. Vietnam has been gradually modernizing its custom procedures by using effective checking system, computerizing, and net-connecting many stages of these procedures.

The custom officers' ability and quality must be improved in parallel with reforming, managing and strictly controlling stages of customs procedures. At the same time, it is

necessary to settle cases of violation in a strict and fair manner, so as to simplify and make transparent customs procedures, to give the most favorable conditions for goods import-export activities, and minimize the customs cost for enterprises.

II.3.9 Standards and Conformance

Vietnamese Government has made efforts to improve its legal corridor and state management in technical standards and conformance to implement regulations/commitments within the framework of international economic organizations as well as to build Vietnamese standards based on international and regional ones (ISO, IEC, EN, BS, etc), making those comply with TBT Agreement of the WTO. Propaganda and proliferation of these technical standards and qualities have been enhanced to attract attention from the society in general and from the enterprises in particular.

However, the full implementation of Vietnam's regulations/commitments in standards, qualities and conformance requires more efforts in amending and perfecting its system of regulations on technical standards and qualities, developing the infrastructure to assess and supervise the standards and qualities. On the other hand, it is necessary to propagate the technical standards and qualities not only to enterprises but also to the whole society to make everyone fully aware of standards, qualities as well as strict punishments for violating or cheating all regulations on technical standards and qualities.

II.3.11 Transparency

In recent years, much progress has been made in the implementation of transparency and disclosure towards Vietnam's trade policy and regulations. However, this is one of Vietnam's weakest areas. There are too many types of information, which are not disclosed, while being allowed for disclosure in other countries (e.g. export-import tariff list, State budget contents, economic data, financial situation of enterprises).

The dissemination of information to interested people (especially foreigners) remains limited. Many State agencies responsible for issuing and providing information to people have not fulfilled their responsibility, even some individuals use information to seek profit or ask information seekers for money.

II.3.12 Dispute Settlement

Many efforts have been done to set up and improve Vietnam's legal system, and to strengthen the capacity of judicial officers in courts, boards of control at central and provincial levels. Addressing trade and investment disputes in Vietnam, including those between Vietnam and her foreign partners, have been partly supported by the existing Enterprise Law, the Commercial Law, the Investment Law, the Safeguard Decree, the amended MFN and NT Decree, and the Anti-dumping Decree (which is under drafting). The government has been taking into account the signing of and joining in some international conventions on dispute settlement, such as the International Convention of Settling Investment Disputes (ICSID). However, in general, in terms of institutions and the capacity of officers and civil servants, Vietnam still has many weaknesses and cannot successfully solve trade disputes. These weaknesses include:

- | The lack of specific, consistent and reliable rules and regulations for settling trade disputes related to Vietnam (in the fields of investment, intellectual property, anti-dumping, subsidies, etc. Vietnam's regulations remain weak);
- | The limited capacity for trade dispute resolution of judicial bodies, including courts, boards of control. In Vietnam, the number of courts capable of handling cases of trade disputes, especially international ones, is limited. In disputes related

to foreigners, the latter rarely used to solve their disputes through Vietnamese courts because they do not believe in capacity, independence and impartiality of these bodies.

- | Legal procedures in addressing trade disputes remain complicated, unspecified and sometimes misused by some incapable, bureaucratic and corrupt officers.
- | There are not enough advocates and experts with good knowledge and experience in the field of trade dispute settlement.

II.4 Economic and Social Impacts of Globalization and International Economic on Vietnam

II.4.1 Positive Impacts

Globalization and international economic integration have rendered several important positive impacts both in terms of economic and social aspects. Main points are as follows:

- | Speed up the restructuring of the national economy towards higher efficiency and competitiveness, and the reform of state-owned enterprises with a view to improving their effectiveness and competitiveness. Therefore, they also contributed to the reduction of state inefficient investments;
- | Helped bring about important changes in adjusting, supplementing Vietnam's trade and economic laws and regulations in the direction of being more consistent with the rules of regional and international economic institutions of which Vietnam is a member;
- | Expanded market for the consumption of Vietnamese goods and services, increased the number of trade partners, especially maintained high and sustainable growth of Vietnam's trade in the past years;
- | Improved the investment and business environment in Vietnam so as to increase the attraction of capital and technology transfer from abroad, while encouraging significantly domestic investments, helping economic growth;
- | Build up the new business thinking in line with market economy, regional and world economic integration, while training and enhancing the capacity of officers, and managers of enterprises and human resources;
- | Laid the foundation for thorough national reform.

II.4.2 Difficulties and Challenges (Negative Impacts)

A lot of difficulties and challenges Vietnam has had to face, including:

- | Lack of uniform and common understanding and high determination from central to local levels in carrying out the international economic integration. The guidance and coordination remain inconsistent, and there is no master integration plan.
- | Slow domestic preparation for integration process: economic restructuring, amendments and completion of the legal system, enterprises reform, institutional and administration reforms did not meet the requirements of international integration; the infrastructure is not yet developed.
- | Lack of researches on various aspects of economic integration and consultations among policymakers, researchers and business people in the process of making policies and building up of commitments in international economic integration.

Beside the abovementioned weakne, Vietnam has to cope with many serious difficulties and challenges, which can be identified as follows:

- | Competition is getting more and more fierce from foreign goods and services. This kind of challenge will be increasingly serious in the context of Vietnam's international economic integration from an underdeveloped economy, relying mainly on agriculture (in the process of shifting from centrally planned economy to

market economy). Apart from a small number of goods, which are competitive, the bulk of Vietnam's goods and services have low competitiveness. The majorities of Vietnam's enterprises are small-sized; use outdated machines and technologies, insufficient management. The business environment in Vietnam, despite certain recent improvements, still remains unfavorable for business due to many difficulties, which make the opportunity cost of investment and business in Vietnam higher than other countries in the region. This hinders very much Vietnam's competitiveness.

- | Danger of increasing division and contradiction among social groups whose interests adhere to state protection or the opening of the economy, and hence widening the gap between the poor and the rich in the country.
- | Threat to Vietnam's economic and political independence; and also many risks for the economy.
- | Erosion of Vietnamese traditional cultural values and national identity.
- | Increase of transnational crimes and unhealthy activities such as terrorism, prostitution, epidemics (AIDS, SARS), and illegal drug uses and trafficking, etc.

III. STATE MANAGEMENT CAPACITY OF VIETNAM IN INTERNATIONAL ECONOMIC INTEGRATION

III.1 Overview of the State Management System in International Economic Integration

III.1.1 Overview of Vietnam's Administrative Management System

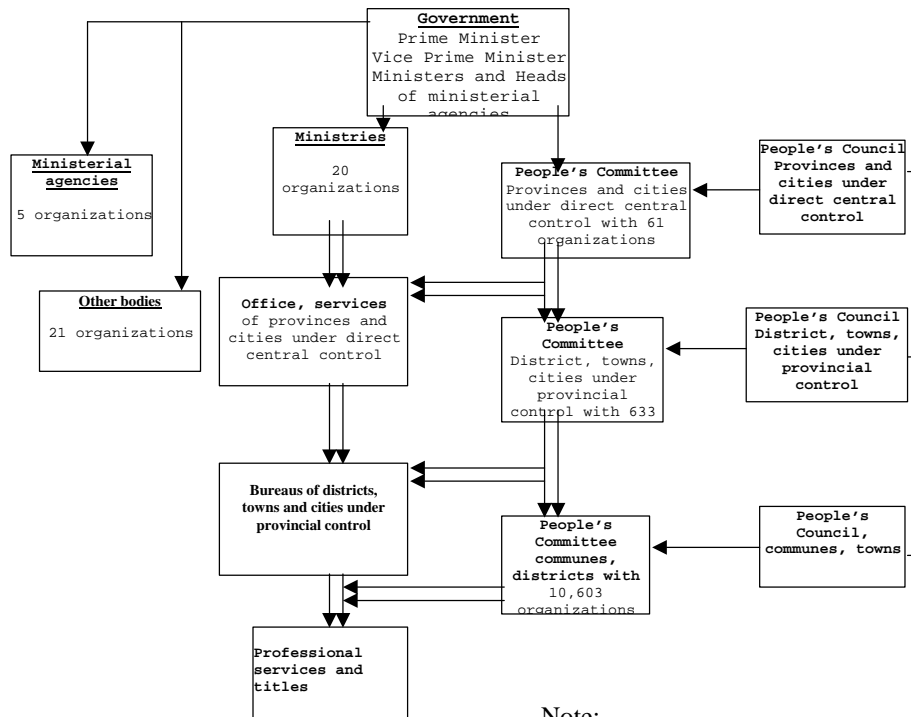
The State power structure in Vietnam comprises of three components:

- | The Legislative body composed of the unique National Assembly, which is a representative organization of people and the most powerful State organization that is elected by direct elections and has the tenure of 5 years. Most of the members of the parliament are unprofessional.
- | The Executive body includes government and local authorities at various levels (provinces, cities belong directly to center authority; districts, towns belong directly to province; communes, wards) in which Government is the executive body of the Assembly and the most powerful State agency. The Government consists of 26 Ministries and some other agencies. The local authorities include People's Council (the representative organization of the people and also the powerful state one in the region) and People's Committee (the executive body of the People's Council and also the administrative organization at the local levels).
- | Juridical body includes a system of courts hierarchically organized from the central to the local levels, a system of People's organ of control and the State Inspection Organ.

The three powerful State bodies are not independent from each other according to the principle "the separation of the three powers". In Vietnam, the division of competence and the relationship between these three bodies are based on the philosophy of Vietnam's Communist Party which maintains that power has to be divided and coordinated among different bodies but united under the leadership of the Party (by making policies and guidelines). The guidelines are concretized in policies and legal system of the State and realized through the party members who seize most of the important posts in the powerful State agencies from the central to the local level.

The system of state administrative management agencies in Vietnam can be exhibited as follows:

Overall Chart of the Administrative Apparatus



Note:

- ↓ Leadership relations
- ⇓ Professional guidance
- ⇐ Organizational affiliation
- ⇨ Financial and personnel affiliation
- State authority at localities

III.1.2 System of Vietnam's Administrative Management Agencies in International Economic Integration

International economic integration has close links to the whole administrative management agencies of Vietnam. At the central level, the administrative management performance on international economic integration is under the control of ministries and ministerial agencies; and at the local level, it is mostly under the provincial or municipal administrations.

All ministries and ministerial agencies have a focal unit taking major responsibility for the implementation and coordination of international economic integration activities among inside-ministerial agencies, as well as the cooperation with other ministries/agencies and localities in the process of international economic integration. Among ministries, the Ministry of Trade takes responsibility to play a leading role in Vietnam's negotiation process of bilateral

and multilateral trade agreements as well as its trading commitment arrangement. However, the focal role in managing each specific field is allocated to different ministries/agencies, depending on their functions and responsibilities:

- | The Ministry of Finance is focal point responsible for the building of commitments, and the negotiations on tariffs and custom procedures.
- | The Ministry of Planning and Investment is responsible mainly for the building and negotiations on investment, government procurement and services. However, the focal role of managing services related to specific service sectors is allocated to other specialized ministries/agencies up to their administrative management functions.
- | The Ministry of Trade takes responsibility in the fields of non-tariff, competition, anti-dumping, and transparency.
- | The line Ministries such as Industry, Agriculture and Rural Development, Construction, Agriculture, Transportation, Health, Education, Culture, Science-Technology, Telecommunication are responsible for building commitments on market access, negotiations and implementation of commitments in the fields of goods, services, investment, intellectual property, government procurement fallen under their competence.
- | The Ministry of Foreign Affairs and Ministry of Public Security are responsible for mobility of business people traveling.
- | The Ministry of Science and Technology is responsible for intellectual property rights, standards and conformance.
- | The Ministry of Justice is responsible for dispute settlement.

At the governmental stage, the National Committee of International Economic Cooperation is an inter-ministerial mechanism bearing the task of providing assistance to the Prime Minister in coordinating international economic integration activities throughout the country. This Committee is led by a Deputy Prime Minister meanwhile the Minister for Trade holds the position of the Committee's Vice Chairman. Committee's members are representatives of the leadership of various ministries/agencies. The Committee does not have authority to issue legal documents, but provide advices and recommendations or policy proposals to the Prime Minister or other administrative agencies, and make administrative decisions in order to coordinate governmental agencies' activities of international economic integration. The Committee holds regular 3-month meeting (except extraordinary meeting). The Committee is assisted by an office operating generally as a secretariat board in order to ensure administrative and other specific functions. Moreover, the Government's trade negotiating delegation is also considered a component of the National Committee of International Economic Cooperation. Delegates are negotiators appointed by ministries/agencies. However, the participants are not fixed, and depend on negotiating issues and the kind of Agreement to be negotiated. In reality, the negotiating Delegation has been established mainly to carry out negotiations for Vietnam's accession to the WTO.

At the local stage, each province or equivalent city has its focal units to assist the local administration in the realization of international economic integration activities. Local administration does not have the authority to make commitments or policy on international economic, but to ensure the implementation of commitments made by the central Government in their provinces/cities. However, in order to assume their responsibility on international economic integration, local administration could make administrative decisions, including some of policy nature aimed at promoting the province's socioeconomic development in accordance with the requirements of international economic integration process.

Besides the State agencies that are directly involved in the management of international economic integration in Vietnam, it is necessary to note the role of other non-State agencies in the process of international economic integration. They are the Party's agencies. Their role are very important as they provide leadership and guidance, and at the highest stage, policy decision to be implemented by the Government (There are at the central-level: the Politburo, the Board of Secretaries, the Central Committee and other bodies of the Party, especially the Central Committee for Economics; at the local-level: Different executive committees of the Party in the provinces, districts and villages).

III.2 Assessment of Vietnam's State Management Capacity in International Economic Integration

As stated in the introduction part, evaluating state management capacity requires examinations and assessments of the key constituent elements of state management capacity (organizational structures of, institutional system, officers and civil servants, and resources allocated), the realization of economic integration activities, particularly the results of the commitments implementation in various specific sectors of the international economic integration process (in comparison with the requirements to meet), and especially the efficiency and effectiveness of state management in each sector. We make general assessments based on the information and reports we have received from various sources.

III.2.1 Organizational Structures

The current organizational structures (as introduced in the above point 1) have the following weaknesses:

- 1 Too cumbersome: There are too many administrative levels from the central to the grassroots (Government/Ministries and ministerial agencies, provinces/cities, districts/blocks, villages/precincts, hamlets/people groups); not to mention the various level of Party's agencies and union (Fatherland Front, Trade Union, Youth, Women, etc.) who also carry out different forms of State management activities.
- 1 There is an inappropriate, unclear and encroaching (overlapping) division of jurisdiction of State management among agencies of equal level (ministries and ministerial agencies, provincial and municipal administrations; district administration, commune and village administrations, people committees and people councils at the different local levels, etc.) and among different levels of authority (central government and provincial/municipal administrations, province/city and district, district and commune, commune and village). In many cases, it is not clear to whose jurisdiction some certain things belong to. In particular, the definition of the boundary of roles and tasks of the State administrative agencies and those of various bodies of the social unions in many sectors/fields or kinds of activities is also unclear. In addition, the collective leadership mechanism also contributes to slow and ineffective decision-making and implementation. Though the National Assembly's jurisdiction of law making has recently been improved, its performance is still inefficient and the quality of law making is very limited because of the fact that the delegates are merely representatives of their social strata, and unprofessional politicians and the method of making law is imperfect. Moreover, the National Assembly is inclined to engage discussions on issues, which are under the competence of the executive branch (like economic targets, socioeconomic development programs, even big projects, etc.) Meanwhile, rooms for the under-law and regulatory decisions making of the various agencies of the executive branch are too large, because the system of laws in Vietnam is insufficient and consists mainly of framework laws. Thus,

encroachment of jurisdiction is a big remaining problem.

In relation to the international economic integration, the abovementioned organizational structures create various problems and difficulties to which Vietnam has to face and settle in order to ensure her smooth international economic integration process. Besides the weaknesses and limitations of her system of State management in general, the mechanism of State management for international economic integration has also several shortcomings.

Firstly, Vietnam has the lack of a national body with sufficient power to perform the unified state management on economy and international economic integration in the whole country. The current National Committee of International Economic Cooperation, which is merely an inter-ministerial mechanism of consultancy and coordination nature without competence of administrative management, thereby could not perform the function of unified State management on international economic integration, a field having close links with many other sectors of the economic, political and social life. In reality, this mechanism has shown a limited effectiveness over the past few years of its existence. Meanwhile, the State management competence performed by ministries and governmental agencies as well as provincial administrations are so important that they could be compared to "kingdoms in a State". Most ministries are also representatives of the Government who take in charge of state-owned enterprises operating in sectors belonging to their State management competence, thus, they are eager to "protect their own back-yard" and are not really willing to cooperate for openness and liberalization efforts.

Secondly, there is no clear and appropriate division of tasks in relation with international economic integration. The existence of three different bodies performing almost the same task of focal point for the Government (National Committee for International Economic Cooperation, Ministry of Trade and the Department of International Economic Organizations of the Government's Office) creates encroachments and confusions, making the work complicated and in many cases not even on time. There are also overlapping and sometimes inappropriate distribution of tasks and works between ministries. Take the case of APEC for example: the assignment of the task of focal point for Senior Officials Meeting (SOM) and Economic Ministerial Meeting was given to the Ministry of Trade while the Ministry of Foreign Affairs was given the task of focal point for the Joint Ministerial Meeting.

Thirdly, in many ministries, organizational structures to perform tasks and works on international economic integration are inadequate and there is also the problem of unclear division of tasks and works, and of encroachment. In MOFA, although there is the Department of Multilateral Economic Cooperation whose function is to cover the responsibility of issues relating to economic integration and multilateral economic cooperation, many issues of the same nature have been given to other departments (Department of General Economic Issues, Department of International Organizations, Department of Asia II). The same situation could be found in many other ministries. This contributes to complication of the process of doing works, making it more difficult and less efficient. In several ministries, there is not any responsible leader specialized in international economic integration issues, thus the guidance and decision from the leadership for dealing daily integration works is lack of rapidity, exactness and coherence.¹ Finally, there is short of competence given to officials in various departments and units who deal with everyday integration issues. This has rendered the dealing process to be slow and lack of dynamism.

¹ Research report "The Limitation of International Economic Integration Capacity of Ministries/Agencies and Technical Assistance of International Community" (VIE 01/004 Project) conducted by the National Committee of International Economic Integration, 2002-2003.

Fourthly, it is important to add to the above said points about the shortcomings of Vietnam's current organizational mechanism dealing with international economic integration issues that there is a serious lack of coordination and cooperation between ministries, and between the latter and the provinces, even between different departments and units within each ministry or province. The information sharing is not good. The consultations among ministries concerned and between the Government, the academic circle and the business community in the policy making process are far from being good. The role of the academic circle is not sufficiently respected and the business community has been rarely consulted.

III.2.2 Institutions

Over the past few years, Vietnam's National Assembly has made great efforts in the law-making process. It has issued, amended a number of laws and ordinances in accordance with requirements of the international economic integration process, especially with the demand for the implementation of Vietnam's international economic integration commitments. Moreover, other state management bodies (Government, ministries/agencies and local authorities) have actively contributed efforts in the amendment and completion of the regulatory system (under-law documents, administrative decisions and procedures) in order to conform to international rules and requirements of Vietnam's commitment implementation. However, until now, the system of social, political and economic institutions in Vietnam remains inadequate, incoherent and not totally favorable for the sake of international economic integration.

Vietnam has not completed the transition period from the centralized (socialist) and planned economy to the market economy. The socio-political and economic institutions have not yet escaped from the shadow of the old regime. A globalized market economy must be based on institutional foundation of an open market economy operating in conformity with the principles and rules of economic and trade liberalization. Such economy must be supported by adequate and appropriate socio-political institutions. Efforts deployed by Vietnam in the past years to change the old foundation, build new institutions have obtained good results, but these results have not created a complete system of adequate and coherent institutions needed to ensure a good operation of the market economy integrated in regional and world economy. The initial review and comparison, done by Vietnam's Justice Ministry in cooperation with other ministries, of over 200 legal texts issued by different State management bodies at the central level vis-à-vis the provisions of WTO's agreements and the Vietnam- US BTA have shown quite a good deal of inadequacies and inconsistencies of Vietnam's legal system.

In this regard, following section will give a brief outline of Vietnam's legal framework in trade, investment, intellectual property and some comments.

III.2.2.1 Regulatory Framework for Trade and Investment

(i) Trade Regulatory Framework

The legal framework for trade in Vietnam comprises different legal documents from two sets of different sources: documents issued by various Vietnamese State management bodies and international commitments in various international frameworks (AFTA, BTA, APEC, ACFTA, Miazawa Program, IMF and WB (as summarized in Part II of this report). Provisions of the two sources of documents cover most of dimensions of trade such as tariff, NTBs and NTMs, custom procedures, trading State enterprises (monopoly issues), MFN & NT, subsidies, dispute settlement, etc.

With regards to tariff and NTBs/NTMs, Vietnam's legal framework has been the most developed sector until now. Moreover, the tariffs system of Vietnam is always changing and

unpredictable, therefore creates difficulties to enterprises. In this regard, business people's confidence in Vietnam business environment is weak. The current Vietnam's non-tariff measures system has been regarded as complicated, and has been hindering significantly commercial activities. This system includes some measures, which are not in conformance with international regulations; some measures are too simple and rudimentary. Meanwhile, there is still a lack of effective measures to control and regulate trade.

Concerning custom procedures, the legal framework is quite complete and basically consistent with international rules. Right now, Vietnam has applied the Harmonized System of Customs (HS) with 8 digits. The Custom Valuation Agreement (CVA) provisions have been applied for ASEAN and US imports, but not yet for other countries.

Together with the market-oriented reforms, the crucial steps of abolishing the SOE monopoly on trade have been undertaken. The entry into international trading activities (foreign trade rights) has been gradually relaxed. The Foreign Invested Enterprises (FIE) are granted with the same export rights as domestic firms, but subject to more restrictive measures regarding imports. FIEs that are established for manufacturing are only allowed to import inputs for their production process, but no other goods. Amendments to the Foreign Investment Law passed in May 2000 have not changed this situation. In general, Vietnam's trade policy has become more transparent and stable. As of April 2001, the Ministry of Trade (MOT) submitted a five-year blue-print on export-import management regulation for 2001-2005. The blueprint was approved and issued as Decision 46/2001/QD-TTg in April 2001. According to this decision, all enterprises are allowed to trade freely commodities/items, except those prohibited or under specialized management.

Vietnam's legal framework is quite weak in the fields of subsidies, anti-dumping, and dispute settlement and competition policy. Lack of regulations in these fields, particularly in anti-dumping and subsidies, is serious and causes difficulties for Vietnam to ensure fair trade.

(ii) Investment Regulatory Framework

Vietnam's legal framework for investment also has two sources: domestic source and international source. The latter comes mainly from AIA, BTA, and APEC.

Since Doimoi has been undertaken, the investment regulatory framework has improved step by step and consolidated (with major laws like Law on Foreign Direct Investment (FDI), Domestic Investment Encouragement Law, Enterprise Law and a numbers of under laws), hence investment climate has become more friendly and attractive for investors, especially foreign ones.

In general, investment regulatory framework tends to create a level playing field for enterprises of all kinds of ownership (state, non-state and foreign invested) but more in favor of foreign invested enterprises (in terms of tax incentives, price discrimination, foreign trade rights, etc.). The existence of two different laws in investment and of many other provisions creates discrimination between domestic and foreign investors. This is inconsistent with NT principle that Vietnam has made committed.

III.2.2.2 Intellectual Property Rights Regulatory Framework

Along with its commitments in agreements, treaties, and international economic institutions where it has signed or acceded to such as ASEAN, APEC, BTA, WIPO, Vietnam's legal framework in intellectual property has been gradually supplemented and adjusted in compliance with international rules. Vietnam's great efforts to build her legal framework in intellectual property and guarantee enforcement are:

- | Enactment in 2000 and 2001 of several legal instruments to regulate IPR: Circular No 825/2000/TT-BKHCHMT guiding Implementation of Decree No 12/1999ND-CP on the handling of Administrative violations in the field of Industrial Property; Decree No 06/2001/ND-CP on the protection of the business secrets, geographic indications, trade names and protection against unfair competition related to IP; Decree No. 06/2001/ND-CP on amendment of Decree No 63/CP on detailed provision concerning IP.
- | Measures have been taken to deal with the problems of backlog of applications through automation of office operations, enhancing capacities of staff, simplification of administrative procedures; conducting of education, training, propaganda, dissemination of industrial property laws have been conducted on a more regular basis; setting up and strengthening mechanism to protect property rights.

Despite all the efforts made, Vietnam's regulatory framework in the field of IPR is not strong enough to allow the strict observation of IP rules. Implementation of IPR rules has still low effectiveness and efficiency in Vietnam (as we have analyzed in point 3 of Part II). As a result, the piracy has been a prevailing phenomenon.² According to the World Economic Forum (2001), Vietnam has been ranked 57th by Intellectual Property Protection out of 59 selected countries.

To sum up, building on the above analyzes about the implementation of Vietnam's international economic integration commitments (point 3 of part II), several features of the most acute inadequacies of Vietnam's legal system and policies in this regard are as follows.

First, the legal system and policies on market economy management are still not synchronous, completed. There are lack of regulations for various sectors, usually changing and short of transparency as well as not in full conformance with international rules and practices.

Besides the weaknesses and shortcomings of the trade, investment and IP regulatory frameworks as we have pointed out above, it is necessary to note that

- | There exist leaks and shortcomings in legal frameworks on several other sectors like service, finance, monetary and stock market, banking, implementation of foreign arbitrators' decisions in Vietnam, etc.
- | There remain out-of-date measures taken by the Government in favor of state-owned enterprises such as capital supply, subsidies, debt suspense, preferences and privileges. This results in mistletoe-mentality of these enterprises and inequality among economic sectors.
- | A great number of economic experts argue that the most fundamental limitations of the current economic legal system of Vietnam are old-fashioned settlements of economic disputes without reflection of common practices of the world. This makes it difficult for business partners to accede and master the contents of Vietnamese laws and regulations. This also is of no interest for Vietnamese enterprises in their business and economic intergration. For example, the obstinate existence of a series of stiff and irrational regulations of the 1989 Ordinance on Economic Contract regarding definition, signatories, implementation and forms of contract, etc. in the highly centrally planning and subsidized economy which is not in conformance with market economy. At the same time, a number of articles of the 1997 Trade Law which is considered an important tool for Vietnam's international economic integration has become irrelevant to regulations of market economy countries and to international practices. A narrow definition of trade as written in Vietnam Trade Law, which is irrelevant to international practices, would make it difficult for Vietnamese enterprises to sign and implement contracts with foreign partners and limit Vietnam's ability to fully implement international conventions in which Vietnam has adhered.

² According to official statistics, over 90 percent of the soft-wear products that have been used in Vietnam are illegal.

Second, although administrative procedures that assure the State management on economic activities and settlement of economic disputes in Vietnam have been improved, they remain rather complicated and often distorted due to corruption.

III.2.2.3 Judiciary Framework

Vietnam's judiciary framework is stipulated in its constitution and many law and under-law texts. Along with her reform process and international economic integration, Vietnam has made many efforts to reform her judiciary system with a view to improving the effectiveness and meeting the demands from socioeconomic development and international economic integration.

Since several years, the principle of independence of the court in judging has been relatively improved. The judge is now selected through the assigning system instead of the voting one. The incentives for judges also have been improved. Lawyers increasingly engage in courts. And many courts have not only opened to the public, but also attracted the attention of many more people. Therefore, judgments are becoming more and more prudent and unprejudiced. Economic arbitration courts have been established, replaced the old system, which belongs to the Government, and are remaining now relatively independent from the Government. This establishment has radically changed the administrative characteristics of this kind of institutions and makes it more suitable in a market economy.

Enforcement of civil sentences has been separated from the Courts' functions and becomes a function of Government. A system of enforcement has been set up from the central level to the lower local level. This system is increasingly decentralized.

However, Vietnam's laws and judiciary practices in general do not grant independence to judiciary agencies (courts, boards of control, etc.) These agencies operate under the leadership and guidance of the National Assembly, the Government, and especially the Party. Litigation process is still not truly democratic, unprejudiced and impartial. Lawyers, judges and prosecutors still do not have equal rights to advocate in the courts. Prosecutors and people judge is not truly independent in making decisions obeying the laws. During this process, they are still pressed by the interventions of powerful forces. Besides, there is a lack of codes of ethics, which can draw compliance from judges and lawyers.

In addition, the limited knowledge and capability of judges and lawyers coupled with negative impacts of corruption also contribute to the weaknesses of Vietnam's judiciary system.

III.2.3 Civil Servants and Cadre Contingent

Although Vietnam's current civil servants and cadres contingent has been trained and provided with basic knowledge of culture, expertise and skills at a much higher level than ten years ago, the number of graduate civil servants and cadres is prominent in central agencies. However, due to the reducing quality and backwardness of Vietnam's education and training system as well as modes of recruitment, employment, treatment, fostering and career training for civil servants which have not been well carried out, the civil servants and cadres contingent of Vietnam in general and the people directly dealing with international economic integration in particular are still short of knowledge, professional skills and foreign language practice. Almost people of more than 40 years old have been educated and trained in the old system, thus they have not very much knowledge about market economy and international economic integration. Few of them can use English. Vietnam is particularly lack of good negotiators, legal experts and good policy analysts and makers.

Another weakness of the civil servants and cadres contingent resides in the low quality of a great number of civil servants and cadres being corrupted, weakness of professional capacity, lack of sense of responsibility, authoritative and bureaucratic.

There is also lack of common view and willingness among civil servants and cadres about the need of carrying out international economic integration. Many of them have not been convinced and are not ready to take part actively in the process.

Faced with present the increasing high demand of broadening international economic integration of Vietnam, the civil servants and cadres contingent should be provided with more fundamental knowledge and professional qualifications in particular, especially foreign languages (first and foremost English) and ability to make contribution to economic policy-making process, law and regulation making, participate in negotiations, building international commitments as well as implementing commitments. This team needs to be morally-better trained and fostered, endorsing higher sense of responsibility, patience, sound spiritual life and ability to serve people.

III.2.4 Resources Allocated to the State Management of International Economic Integration.

Vietnam is a poor country (GDP per capita is about US\$400 per year); administrative expenses for civil servants per head are low (salary, office expenditure, and other necessary equipment).³ In general, good working conditions and sufficient tools including financing sources must be ensured to effectively fulfill all administrative functions and tasks in the field of international economic integration. At present, there remain numerous weaknesses in this area. Particularly, there is a shortage of money for various activities such as hiring foreign consultancy companies to help the process of law and policy making, dispute settlement; training of officials and cadres; conducting comprehensive research of all aspects of international economic integration that will be the foundation for making policies and strategies in specific areas; sending officials abroad for negotiations or international workshops to learn and share experiences; disseminating information and knowledge on international economic integration to all people in the society to improve their understanding and hence encourage them to participate in the process of integration.

Insufficient resources for economic integration activities are one of the important causes of the limitations of Vietnam's state management capability in international economic integration.

In a word, Vietnam's state management in international economic integration has been facing important weaknesses and shortcomings in both terms of organizational structures, institutions, human contingent and resources to be used. These have made it difficult for Vietnam to perform well in its State management function in international economic integration while the country is going to deepen more and more into the process in the years to come.

III.2.5 Vietnam's State Management in Specific Sectors of International Economic Integration

III.2.5.1 Trade, Investment and Finance

The achievements of Vietnam in its international economic integration process over the past decade (as mentioned in Part II) also stem from the economic reform carried out by Vietnamese Government, especially in trade, finance and investment. A score of measures of trade and

³ It is also because of a large contingent of parasites of Vietnam's budget.

investment liberalization have been put in place to better liberate, allocate and utilize national resources, build freer market ties and mechanism, and gradually open Vietnam's market to the region and the world. The pivotal results gained during the course of trade, finance, and investment reforms have made Vietnam's economic and trade regime more open, gradually removed barriers to trade, investment and finance activities, and created incentives for the vigorous growth of its international trade and investment, thus contributing to maintaining its relatively high and sustainable growth rate over the last decade. All of these show encouraging improvements in Vietnam's State management capacity in trade, investment, and finance.

However, in these very areas, state management capacity displays a few limitations and weaknesses which are as follows:

(i) Leadership and strategic planning and management capacities at all levels of government, from the central to the local, are still weak and inadequate. The current administrative system is decentralized only in a very limited sense. While there has been a delegation of tasks from the central government to the local ones, it is less clear how to promote two-way communication between them in the area of planning and management. The central government reflects valid national concerns, though there is also the need to incorporate appropriate local information in the process of planning. Scope for planning and management autonomy is limited at the district and commune levels. As well, the top to down planning system may not encourage honest assessment of performance of local authorities. The detailed shortcomings of leadership and strategic planning capacities will be analyzed as follows.

- | Leadership of some departments (at the ministerial level) has short-view horizon on preparing measures to challenge economic integration, case-by-case solution instead of package and comprehensive policy to promote efficiency of economic integration.
- | Bad coordination and cooperation between various levels of government and between ministries, even between different departments in each ministry.
- | Roles of policy study, policy implementing and policy monitoring have not been clearly defined and distributed among different departments.
- | Professional databases and other information on international trade, investment, finance, integration process, etc. are insufficient, inconsistent and not timely updated.

(ii) The policy of adjusting the economic and investment structures is inadequate, incoherent, and has not focused on economic efficiency. The formulation of financial, investment, and especially trade policies and economic development plan on national and sectoral levels are not well connected to the international economic integration process. Therefore, the making of market access commitments or the implementation of such commitments always encounter difficulties due to the protection pressures for domestic production, not least to those products in the national development program (for example, automobiles, motorbike, sugar and sugar cane, cement, steel, etc.).

Globalization and international economic integration interact among economies and deepen international labor division. Countries all try to adjust their economic structures towards developing industries and sectors where they have more advantages than other countries, thus maximizing socio-economic efficiency of the investment, production and business activities and enhancing the mutually beneficial international investment and trade exchanges. Reality shows that the economic adjustment process in Vietnam over the past years takes place slowly,

incoherently and not in a uniformed manner. This adjustment is spontaneous and has "planning" character. It is not based on a long-term economic adjustment strategy, which is formulated on the basis of specifically analyzing, researching, forecasting, and calculating all factors, and especially not linked to the context of globalization and Vietnam's integration. The development of such a strategy has been touched upon and carried out in the past few years and then incorporated into the national 2001-2010 and 2001-2005 socioeconomic development strategy with a view to swiftly shifting the economic, investment, labor structures in the direction of industrialization, and modernization on the basis of building on national comparative advantages, and linking with demands of domestic and international markets.

It is obvious that the most acute problem of Vietnam's economic structures adjustment in the past years is the failure to focus on exploiting and developing sectors and industries where Vietnam enjoys advantages and can perform most efficiently. The State investment is scattered and concentrated on low economic efficiency industries and sectors (sugar, cement, steel, coal, etc.) This reality prompts from many factors. Among them the most significant are:

- i) Policymakers and consultants have lack of sufficient capacity in analyzing, assessing, forecasting, and formulating investment plans, examining and approving investment plans and projects;
- ii) Corruption and personal interests of a group of officials engaging in investment projects and partial interests of localities.

In agriculture, although there have been great achievements in the past decade, biological, post-harvest, and processing technologies have yet to be adequately invested to elevate the production efficiency and product value. In the meantime, the sector-based economic restructuring in recent years has not seen considerable changes, partly due to the slow reform pace of state-owned enterprises, partly due to the relatively small proportion of the private enterprises (amounting to 9% of GDP in 2002), despite its swift development in 2000. The private enterprises, therefore, have not been able to generate pivotal changes to the whole non-state economic sector.

Investment and trade policies to date focus mainly on developing sectors which are capital-intensive, inefficient, rely on high protection, reflect the high unemployment rate in Vietnam, and therefore restrict the growth and development of the national economy. With regard to foreign direct investment, policies often grant priorities to investment projects in import-substitution products and services, thereby creating an environment, which encourages foreign investors to seek and receive state protection for guaranteeing extra-high profits. However, the legal environment and policies still pose a few difficulties to foreign investors. This is one of the reasons that prompt these investors to cover their costs by asking the state to ensure their market share, and protect their business activities. In the case of domestic investment, protection is always accorded to projects that develop the state economic sector. Sugar and cement are typical examples for the protection associated with large-scale investment from the government. Meanwhile, due attention has yet to be paid to develop the private sector, and small- and medium-sized enterprises.

(iii) There has not been necessary transparency and stability of the tariff and non-tariff systems, as well as the proper usage of these tools. The policy for more active international economic integration to replace the trade policy, which relies on the said tools, has not been worked out.

(iv) The financial market remains at low stage of development and there still exist considerable barriers to financial activities.

(v) The weakness of the State administrative apparatus, the lack of close, uniformed coordination among ministries and agencies, local and central levels of administrations, government and enterprises, make the policy-making, negotiating, formulating and implementing commitments in international economic integration areas more difficult, time-consuming, costly and less effective. Moreover, this reality also obstructs foreign investment into Vietnam and weakens Vietnam's economic competitive capacity.

III.2.5.2 Enterprise Policy

Multi-sectoral economic policy and integration over the past time has brought about initial achievements, namely, the increased number of enterprises and entrepreneurs, significant change of economic sectoral structure, significantly enhanced financial potential of enterprises. As compared to the period previous to the reform process, when the private sector was tiny and FDI-funded sector barely existed, the State-run sector just now accounts for 38.3 percent of GDP, while the combination of the non-state and FDI sectors accounts for over 61 percent of GDP, 13.9 percent out of which belongs to the FDI sector. However, Vietnamese enterprises are largely of small size and capital, and an important proportion of them were formed and operated a long time in the subsidized regime. Apart from a limited number of enterprises, which have made obvious progress in business activities in the market mechanism, the remainder is still slow at modernizing technologies, management method, design, quality, and technical specifications of products to meet market demands. Moreover, due to weak financial potential, they have low international competitive capacity. Meanwhile, most of state-owned enterprises (SOEs) operate inefficiently, and rely on state protection. The loss-making and inefficiency of SOEs pose a serious concern. Many SOEs do not have long-term business strategy, do not invest in market research and creating new products, and do not cooperate well with each other in their respective associations and profession with the view to enhancing their competitiveness. Furthermore, a good deal of enterprises has not paid due attention to business prestige.

The relatively common assessment of many analysts has it that the current policy system, management mechanism of the Vietnamese government has not only failed to create a real competitive environment among enterprises of all economic sectors, but also promoted the tendency of relying on State subsidy and protection. Typical examples are as follows:

- (i) There is a lack of laws and policies guaranteeing fair competition and anti-monopoly practices, and preventing unhealthy competition practices among enterprises of all economic sectors.
- (ii) The reform of SOEs remains slow and inefficient.
- (iii) There remain a good deal of administrative interventions into business activities, not least the rising tendency to criminalize economic activities.
- (iv) Policies and measures in support of enterprises which actively restructure their investment, modernize technologies and management, train and re-train workers remain limited and inconsistent.

A recent survey of enterprises' opinion shows that most of them are not satisfied with the current business environment due to reality- inconsistent legal regulations and unfair treatment to enterprises where advantages are mostly in favor of state management agencies. Along this line, they hold the view that the immediate reform priorities should focus on reforming more

robustly administrative procedures, then tax policies and procedures, banking system, investment environment and the salary regime. Many scholars are also of the view that there are three big obstacles to the sustainable and efficient development of Vietnam's economy, which are:

- (i) The discrimination in practice against the private sector, and the incomplete disposal of loss-making SOEs;
- (ii) The maintenance of the begging-giving mechanism, and many administrative and subsidization forms; and
- (iii) The hesitation in international economic integration which is evident through the over-protection, the tendency to focus on import-substitution investment, and the failure to link with the supply-demand ties of the whole region.

Consequences are that the competitive capacity of the whole Vietnamese economy remains at very low ranking, and unstable as compared with other countries and improves slowly. According to the World Economic Forum (WEF), the competitive capacity of Vietnam was ranked 49th out of 53 countries in 1997, 39th in 1998 due to crises in other countries, 52nd out of 59 countries in 2000, 60th out of 75 countries in 2001, and 65th out of 80 countries in 2002.

III.2.5.3 Propaganda and Information Dissemination and Training in Service of International Economic Integration

During the past years, despite significant efforts in propagating, and disseminating information about international economic integration among officers, businessmen, and people, focusing on educating officers and businessmen, the achievements are modest and the target groups remain quite limited, mainly officers engaging directly in international economic integration of ministries, agencies and big cities, provinces and a small proportion of enterprises in big cities.

The propaganda contents remain narrow, have not focused on quantitative analysis of advantages and disadvantages of international economic integration to the whole society as well as to individuals, ways and means to maximize advantages and minimize disadvantages. Therefore, public opinion has not been mobilized to support opening door, liberalization, integration policies and measures, and reduce protection and door closing. Meanwhile, there is increasing demand of propagating and disseminating information to all social strata, especially the business circle about such issues as laws and regulations of regional and world trade economic institutions and their member markets, as well as Vietnam's policies, regulations and trade partners, etc.

III.2.5.4 Information Technology in Government Operations

Modernizing state management through the application of information technologies and modern management models is one important aspect of Vietnam's current administrative reform. In September 2001, the Prime Minister issued a decision on state administrative management computerization. However, several important obstacles remain for implementation.

In the area of computerization, e-business and e-government, the key obstacles are related to the lack of cyber laws, including legislation on privacy, digital signature, certification, and authentication. An appropriate legal framework to permit effective development of e-government and public service delivery systems, and to protect the interest of both service

providers and end users is missing as well. The lack of adequate international standards of professionalism in information technology management, including strategic planning, system support, operation and maintenance, is another important problem area. Properly trained human resources for information technology management are still in short supply.

The Government recognizes that a process of modernization needs to go beyond the introduction of new technologies. Equally important are the measures and actions to review and streamline work procedures and processes so that efforts at introducing e-government application, computerization and related upgrading of database 'Monitoring and Evaluation' systems and tracking systems can bring about more focused and effective results in terms of organizational and individual performance. In order to ameliorate e-government in Vietnam and upgrade her worldwide e-government rank of 90th on 133 countries, a national e-government development program is under consideration by the Government.

The government information network, CPNET, is still at an initial phase of development; it has not yet been able to resolve the crucial issue of integrating all ministries, agencies and local governments' networks. Lack of integration hinders the data interchange processes between government agencies. Expensive and less efficient telecommunication systems have adversely affected the growth of information technology application in Vietnam, especially in e-businesses.

The introduction of computerized personnel information system in ministries and provinces is proceeding and will, when completed, facilitate a macro management approach to personnel management. Currently, 8 ministries and central agencies, and 53 provinces have installed and operate computerized system for this purpose.

On the whole, the administrative modernization program will require considerable technical and financial resources to accomplish its objective. It will also require that government agencies shift away from a culture of not sharing information.

III.2.5.4 Transparency and Accountability

As we mentioned in Section II.3, despite Vietnam's efforts to exercise transparency and build accountability in its trade, investment laws and regulations, its transparency and accountability remain low, as manifested as follows:

- (i) There are many types of information which cannot be disclosed;
- (ii) There lacks a mechanism to guarantee transparency, and publicity;
- (iii) Difficulties and expenses in accessing information sources, even those allowed for disclosure; things are more difficult for foreign due to limited information in English;
- (iv) Widespread corruption contributes to distorting information or cause difficulties for information access;
- (v) The low reliability and inaccuracy of many information sources, even data from the General Statistics Department (this agency does not have the sufficient independence).

Regarding corruption and anti-corruption in Vietnam, according to the World Competitiveness Report (2001), Vietnam has been ranked 47 out of 59 selected countries by Corruption in Legal System Index. Corruption in Vietnam thrives because of:

- ┆ Complicated and unclear administrative procedures,
- ┆ Ex-cassava regulations,
- ┆ The opaque nature of decision- making,

- | Lack of public information,
- | Bureaucratic dissection on the part of middle-level officials, and long delays,
- | Low salary in the public sector. This results in civil servants pursuing various strategies to augment their incomes, ranging from holding multiple public sector offices or maintaining other employment to petty bribe taking and corrupt practices
- | Another factor that increases the risk of corruption is the strong autonomy of major provincial areas, for example, some municipalities have set up dozens of public enterprises, many of which are nonproductive vehicles for rewarding loyal cronies. The Government had to cut back on the creation of such new enterprises through stricter regulations but with only intermittent success.

The Government of Vietnam has passed a number of ordinances and decrees to address corruption, such as the 1998 Ordinance against Corruption. In 1998, the Prime Minister established a hotline to receive business complaints, and in addition to the General State Inspectorate, several ministries now have units for tackling grievances and corruption. The Vietnam Communist Party launched an anti-corruption campaign in 2000, but results have been limited. Promulgation of the Civil Code in 1998 provided the public with avenues for redressing complaints and for mediation in disputes with government administrators. However, further measures are needed, for example, minimizing red tape and arbitrary discretion, increasing the amount of information in the public domain, harnessing citizens' groups to fight corruption, and developing an appropriate legal framework.

Besides, to minimize the risk of corruption and local governance failures, empowerment, transparency and accountability are important. Civil society organizations can mobilize citizens and make their voice heard in decision-making. The mechanism like Grassroots Democracy Decree and the envisaged steps to increase the jurisdiction of administrative court system could serve as safeguards in Vietnam's decentralization process and corruption combating.

Grassroots Democratization is intended to combat corruption via four mechanisms. The first is via provision meant to increase the transparency, participation and accountability of budget and special program allocations and to improve the two-way channel of information between the Government and the citizens in Vietnam. The second mechanism is via increased participation of "the people" in decision-making and establishment of various procedural safeguards. The third is that the Decree foresees an active role of the people in policing or monitoring local government, and lodging complaints where the law has been broken. A final mechanism is implied in the title of the decree. Although not a formal level of the government, the village is recognized as the basic residential and social unit with a long and sustained history in Vietnamese society; it is level at which democratization can be most directly and widely implemented."

Ensuring financial transparency and accountability is a crucial dimension of good governance. However, accounting and auditing practices in Vietnam have several shortcomings with the current systems. International accounting and auditing standards are yet to be introduced. There is also need for more qualified accountants. The profession itself, and Vietnam Accounting Association, should be strengthened.

As for procurement, the legal framework is sound, but shortcomings have been rooted in institutional and human resource capacity deficiencies. The introduction in 1996 of a procurement system with some competitive elements might have led to significant savings. According to Government estimates, in 1999 those savings reached 14 percent of

the pre-bid estimates. However, even larger savings could be made and corruption curbed if further procurement reforms were undertaken.

A comprehensive review of the oversight function should be undertaken to streamline the roles and the responsibilities of various agencies involved in audit and inspection. Ensuring that the State Audit of Vietnam has a formal and direct reporting relationship to the National Assembly, and makes audit report publicly available are important steps towards effective oversight.

Regarding conventions against cross-border corruption, Vietnam is still in the process of drafting the Anti-Money Laundering Legal Document. It will be not easy for Vietnam to build up this legal document and implement it effectively. Main reasons are:

- | It would contradict with the existing foreign exchange regulations (e.g. customers have not to reveal the origin of foreign exchange deposits);
- | Dollarisation and smuggling/contraband have been prevailing phenomena in Vietnam as "cash" economy;
- | Regulatory and supervision of banking system are still very weak.

III.3 Recommendations about Measures to Improve State Management Capacity in International Economic Integration

III.3.1 Continuing Accelerated Administrative Reform

To improve the capacity, efficiency, effectiveness of State management to meet the requirements of industrialization and modernization, the Vietnamese government has formulated the 2001-2010 administrative reform programs with the major contents as follows.

III.3.1.1 Institutional Reform

The main contents and guidelines of the state administrative management reform program consist of:

- | Building and perfecting institutions, first and foremost those of the market economy with socialist orientations and those related to the organization and operation of the state administrative system.
- | Regarding economic institutions, the reform program immediately focuses on a number of core institutions like those related to the capital, monetary, stock, real estate, scientific and technological, labor and services markets.
- | Concerning institutions related to the organization and operation of the administrative system, the reform concentrates on such issues as the relations between state administrative agencies, the state and people, State management authority to enterprises in general and to SOEs in particular, the processes of formulating and issuing legal texts, the legal enforcement of state agencies and officers, grassroots democratic regulations, inspection, supervision, and administrative procedures. Administrative procedure reform plays an important role in ensuring the legality, effectiveness and fairness in managing administrative works.

III.3.1.2 Reforming the Administrative Apparatus

The reform focuses on the following issues:

- | Adjusting the functions and duties of the government, ministries, ministerial agencies, government-affiliated agencies, and local authorities at different levels in conformance with the State management demands in the new context.

- | Clearly defining the authority and responsibility of all the bodies and agencies of the government from the central level to the local one.
- | Restructuring the organization of the government and all bodies, agencies related with the view of:
 - Separating the State management function of ministries, ministerial agencies along the industries and sectors from the function of managing public professional organizations which are under the direct control of these ministries and ministerial agencies. Therefore, administrative organizations are separated from the public professional organizations, and they operate under different, appropriate, and efficient mechanisms.
 - Restructuring the internal mechanism in a streamlined and appropriate manner.
- | Reforming the local authority apparatus and organization towards:
 - Clearly defining functions, duties, authorities and responsibility on the basis of clear arrangement between central and local levels.
 - Restructuring professional agencies under people's committees at different levels towards identifying clearly responsibilities, streamlining the apparatus, enhancing the professionalism, and promptly handle affairs.
- | Reforming the management method and working style of administrative agencies at different levels.
- | Gradually modernize the administrative management through the use of information technologies, modern and advanced management methods and instruments.

III.3.1.3 Improving the Quality of Officers and Civil Servants

The program focuses on:

Reforming of management works concerning officers and civil servants in conformance with the socioeconomic development and administrative reform with the following measures.

- | Reforming salary and compensation regime for civil servants and officers.
- | Training and retraining of officers and civil servants both in general and professional knowledge, foreign languages and skills on administrative works.
- | Improving the responsibility and morality of officers and civil servants through enhancing educational measures about responsibility, dedication to one's job. Formulating criteria for the professional morality of officers and civil servants, highly praising their professions and virtues, issuing and implementing strictly civil regulations in connection with the democratic regulations in state administrative agencies, fully implementing the disclosure regulation of civil activities, guaranteeing the discipline of the apparatus, and strengthening the combat against corruption and redtape in the state apparatus.

III.3.1.4 Public Financial Reform: with major directions and measures are as follows:

- | Reforming the mechanism to divide the levels of financial and budgetary management, guaranteeing the integrity of the national financial system and the leading role of the central budget, concurrently promoting the activeness, dynamism, creativeness and responsibility of localities and branches in managing their finances and budgets.
- | Basically reforming the financial mechanism to professional organizations and the public service sectors. It is necessary to develop correct perception about public services and the state's role to public services. In each area, it is necessary to identify clearly the work that the state must directly carry out, and

those should be handled by non-state organizations. The state should have policies to assist enterprises, social organizations in providing directly services in support of production and everyday life, under the guidance, assistance, inspection and supervision of state management agencies. Eliminating the "begging-giving" financial distribution system, promulgating mechanisms and policies to implement financial independence for professional organizations such as universities, hospitals, research institutes, etc. on the basis of identifying the tasks which must be fulfilled, the level of financial support from the state, and the remainder covered by these organizations.

Reforming the auditing to administrative and professional agencies with a view to enhancing responsibility and the effective use of expenditures from the state budget. Exercising democracy, publicity and transparency in public finance.

During the three years of implementing the administrative reform program, Vietnam has met many requirements set for the first stage (2001-2005) of the national administrative reform program (amending the 1992 Constitution and State organizational laws; reviewing functions and tasks of ministries, provincial people's committees; re-identifying the organizational structures and reducing administrative staffs; constructing and implementing new mechanism for the organization and operation of universities, hospitals, scientific research institutes; preparing the project to fundamentally reform the salary regimes for officers and civil servants for possible implementation by 2004; submitting to the National Assembly the organization and structure of the government for approval, which have been renewed in line with the administrative reform spirit, and issuing the ordinance which stipulates functions, duties, authorities of ministries and ministerial agencies. However, results are still limited, the reform pace remains slow. It does not catch up with the practical demands and has not improved significantly the efficiency and quality of State management in general and in international economic integration in particular.

On the basis of the results achieved in the first stage, Vietnam needs to continue strengthening comprehensive administrative reform, linking it with the continued economic reforms, and gradual renewal of respective political and social institutions in conformance with the development level of the economy and the international economic integration process.

III.3.2 Building and Ameliorating the Legal System

Vietnam needs to further promote the formulation and perfection of her legal system in trade and other related areas with the aim to guaranteeing the stability, transparency. Besides, she also needs to strengthen the compliance monitoring and dispute settlement mechanisms towards implementing sufficiently and effectively her international economic integration commitments.

In the immediate future, Vietnam should focus on amending and supplementing laws and regulations, which have been pointed out by the recent legal review in comparison to WTO's rules and other international economic institutions of which Vietnam is a member. Striving to abide by BTA's provisions is also another important step in preparation for Vietnam's accession to the WTO and other international economic organizations/institutions.

However, Vietnam's early accession to the WTO should be regarded as one important goal and therefore requires the strong determination in the government's guidelines and coordination of implementation efforts by ministries and agencies.

III.3.3 Building a Comprehensive Strategy for the Whole Integration Process

Vietnam needs to swiftly complete the formulation of a master international economic integration strategy, which identifies the overall roadmap for the next decades and the roadmap of commitments in each area, and in each international economic organizations/institutions. This would form the basis for the government to exercise uniformed guidance and active management of Vietnam's entire international economic integration process, and at the same time for ministries, agencies, provinces, cities, and enterprises to devise their development and operation strategies and plans of actions.

III.3.4 Improving Coordination and Cooperation

Vietnam also needs to promptly put an end to the fact that each ministry, agency, province, city is a "kingdom" and these bodies lack close coordination. To that end, it is necessary to have a strong mechanism which exercises uniformed guidance and state management of international economic integration (the current National Committee for International Economic Cooperation does not have sufficient authority and capacity to carry out this function). This mechanism will draw several authorities from ministries and agencies. Besides, it is necessary to improve the coordination and cooperation mechanism between ministries, agencies with a view to ensuring uniformed and close coordination. There is equally an urgent need to improve the division of tasks and works concerning international economic integration of different State management bodies such as ministries, agencies, and departments/units inside each ministry/agency.

III.3.5 Training of the Personnel

Training of the human resources, especially the people who are directly involved in the process of integration such as negotiators, officials dealing with economic integration issues, policymakers, lawyers, judges, parliament members, etc. Among other things, trade and international economic integration become an increasing need to meet by Vietnam's government in order to improve its State management capacity in international integration.

III.3.6 Building Information Exchange Mechanism

Building and strengthening the information system which guarantees the prompt, sufficient, cost-effective information sharing among government bodies and agencies, research agencies, enterprises, associations and individuals in the society. To realize this goal, one of the pivotal measures that the Vietnamese government should pay special attention is to promote the use of new information technologies for State administrative management, and build a strong e-government.

III.3.7 More Resources Reserved for Integration Works

Reserving more financial resources to international economic integration works is another important need to improve Vietnam's State management in economic integration. Vietnam has to pay a bigger attention to this issue with priority given to the training of the "first needed people", the amelioration of the legal system, the formulation of policies and the implementation.

III.3.8 Technical Assistance

Enhanced international technical assistance to improve state administrative management capacity for Vietnam's international economic integration process is no less important, especially in the context of Vietnam's backward, poor, less-developed economy. Vietnam needs to be assisted in improving the institutional system and human resources training,

first and foremost the civil servants directly in charge of international economic integration affairs, policymakers, as well as those responsible for the enforcement of Vietnam's policies, laws and international commitments.

IV. CONCLUSION

Since its reform and international economic integration, Vietnam has reaped important socioeconomic achievements. After over ten years of reform and opening, Vietnam, from a centrally planning economy which was almost separated from the world by her closing doors and the embargo imposed by the US and other Western countries, has completed quite a long leg on its path of international economic integration. Vietnam's current economy is among the most open economies in the world if we regard the ratio between trade turnover and GDP as the first parameter (more than 100 percent in 2002).

Vietnam has been concurrently participating in many economic linkages at bilateral, multilateral (sub-regional, regional, inter-regional, global) and regional levels. In the future, Vietnam's international economic integration process will develop in both depth (the level of liberalization) and scale (in terms of organizations/institutions and linkage areas). This process will expose Vietnam to both a score of opportunities and not a few difficulties and challenges.

Despite the fact that the Doimoi and the international economic integration process in the past years have considerably improved Vietnam's state management capacity in international economic integration, her capacity remains a problematic issue and has not been able to successfully meet the requirements of the international economic integration process. To meet the demands of the international economic integration process, which increase in both number and complexity in the years to come, Vietnam must be determined to push up efforts towards improving comprehensively the State management capacity both in terms of organizational structures, institutions, personnel and resources. The continued good implementation of the administrative reform program is one major issue of the above-said efforts, among others.

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Part C

Report on the Follow-up of The World Summit for Social Development (WSSD): State and Globalization, and the Challenges for Human Development

Bangkok 17-19 December. 2003

PART ONE

Summary of Proceedings

I. BACKGROUND

Globalization, being a dominant force in the twenty five century, is providing new opportunities to countries around the world through economic liberalization, foreign investments and capital flows, technological change and information flows. Yet, the impact of globalization has not been equal, nor has its benefits spread equitably across countries. In many cases, globalization seems to be contributing to undesirable social consequences. Financial pressures are forcing governments to cut back on the supply of basic social services. Further, while globalization has induced growth in many cases, the fact remains that nearly 1.5 billion people continue to remain poor, many lack adequate access to clean water, and a large percentage of these people are in South and Central Asia. Inequalities between countries and among groups are increasing.

People are facing new threats to human security - such as the financial turmoil in East and Southeast Asia during the late nineties, insecurity in employment and income deriving from economic and corporate restructuring, the spread of HIV/AIDS, illicit trade in drugs and weapons, money laundering, physical violence and environmental degradation. Poor people and poor countries are being marginalized within the rapidly expanding global economy. In addition, both the role and the coverage of the State in management of societies have been altered as a result of globalization and liberalization.

The World Summit for Social Development (WSSD) is putting people at the centre of development and the State remains a key actor in the development process. It has a major role to play in making globalization work for all; alleviating poverty and reducing income inequality; in advancing human rights and democracy; in protecting the environment and promoting sustainable development and strengthening the vulnerable. The World Summit for Social Development, the 24th Special Session of the United Nations General Assembly 2000 and the United Nations Millennium Declaration underscore that state capacity and good governance are paramount to eradicating poverty, protecting the vulnerable, and increasing the participation of women and disadvantaged groups in policy and decision-making in a globalizing world.

The quality of the public sector has a direct bearing on the quality of the State. How the public sector is structured, how it is administered and how it operates, and indeed how policies are formulated and modified have a great impact on people's well-being. Managing the public sector in today's environment of change, particularly in view of globalization, has become an increasingly demanding challenge for national decision makers, policy advisors, service delivery managers and civil servants at large. Reforming public administration systems and strengthening state institutions is key to exploiting the opportunities and facing the threats that emanate from globalization.

Experience has shown that States with effective public administration systems and strong institutions have the capacity to channel globalization to their own advantage and to minimize its costs. Without building strong institutions and effective regulatory frameworks at the national level, including independent and effective judiciaries, strong parliaments, accountable executives, mechanisms of transparency and accountability, and without adequate social policies, including those on health, education, and social security systems, there are too many risks that either a country will be marginalized or it will not be able to shield the most vulnerable groups of society from the negative effects of globalization.

Strengthening good governance is therefore key to the promotion of human development in the Asian and Pacific region. A variety of tools, techniques and methodologies can be applied to mainstream the concerns of the poor and disadvantaged into policy making processes of government. For example, in several developing countries Human Development Reports are increasingly used as important inputs for planning social development. In terms of linking citizens' voices into policy deliberations some countries and regions are promoting new initiatives such as engaged governance. These and other issues need to be highlighted and discussed further for learning lessons and, where needed, for capacity building. In recent years, the UN-DESA has collaborated with a range of institutions, including governments, and civil society organizations, as well as the United Nations Development Program (UNDP), to research and analyze the implications of globalization and to identify options, tools and institutional adjustments that may help in mitigating the negative effects of globalization and at the same time, develop processes and arrangements that may help in mainstreaming the concerns of the poor and the disadvantaged into policy and program processes of government.

II. GLOBALIZATION AND STATE: CONCEPTS, ISSUES AND CHALLENGES¹

Taking into consideration the points made in the background notes, the Socio-Economic Governance and Management Branch of UNDESA convened the follow-up meeting of the World Summit for Social Development in partnership with UNESCAP. The meeting which took place in Bangkok, Thailand from 17 to 19 December 2003, brought together 25 experts from around the region to consider the issue of the role of the State in assisting human development, with particular reference to the impact of globalization on human development.

A. The Changing Role of Government in the Era of Globalization

Globalization implies integration of markets under a common set of rules within a generally agreed framework. Markets include the commodity markets, capital markets and labor markets. Hallmarks of globalization on national economies include privatization of state owned activities, privatization of state owned enterprises in the manufacturing sector, privatization of state owned enterprises in the service sector and privatization of activities producing public goods. In addition, there is generally an outsourcing of activities of government and a deregulation of investment, as well as an opening up of all activities for the private sector and an opening up of the service sector for foreign actors. There is generally no discrimination between local and foreign investors. The result is an increase in the flow of short-term foreign capital along with foreign direct investment, as well as cross-border borrowing and often the development of a common regional currency.

Another common outcome of globalization is trade liberalization, and with it a reduction in tariff rates and dispersions, reductions in non-tariff trading, an increased exposure of the service sector to international competition and more international cooperation through bilateral, regional and multilateral agreements.

Common global rules and standards are also developed, as a result of globalization, resulting in, or requiring a broad consensus on macroeconomic policy framework, a common set of rules for global trade, a common set of rules for global financial transactions, international dispute settlement procedures, common standards for products and processes, higher demand on universal social standards (labor, human rights,

¹ This is a summarized version of a paper presented by Dr. Debapriya Bhattacharya.

environment etc.), increased transparency in public affairs, more transparent and simpler regulatory systems, increased global oversight for ensuring transparency and broader involvement of civil society.

Despite the many positive outcomes of globalization, there have been some limitations noted in the current globalization process. One such limitation is that liberalization of markets is sequenced to benefit developed countries, as is the legal framework which largely protects the interests of the developed countries. For example, traditional knowledge (TK) is not protected, whereas lifesaving drugs are patented. Further detracting from the benefits of globalization for developing countries is the conflict between trade and aid policy. In addition, the benefits are not just spread unevenly between developed and developing countries, even within countries there is often an unequal distribution of benefits from globalization.

This paper does not seek to address the issue of globalization and its benefits or otherwise, but more specifically it addresses the issue of state capacity, and the new demands placed on it by globalization.

As States have endeavoured to reap the rewards of globalization for their people and countries, they have also been forced, often rather rapidly, to change their role, many from governments who saw themselves as "controllers" extensively involved in production, to governments who now must become "enablers". However, whilst pursuing efforts to make their economies more opening and inviting for global trading partners, the important role of the State in ensuring the provision of public goods must be maintained. They must also play a role in rule setting and enforcement of terms for engagement in globalization, and seek greater engagement in international rule making for national benefit. However, the real challenge is to allow for participatory policy-making.

B. Emerging Challenges and Capacity Building needs

Globalization can be an integrating force. It is an old phenomenon with a new manifestation. It offers real threats and illusive opportunities. As such, globalization is putting new demands on state capacity, and the national and global interface is the new challenge facing States. The major conceptual debate around globalization, however, is how to ensure that the benefits of globalization reach all, including the poor and disadvantaged. One way is to strengthen the capacity of States representing these groups - such that the pace of government reform and strengthening matches the pace of globalization.

Major areas of capacity building beginning with internally oriented capacity include most importantly, strengthening the supply-side capacities of States to engage in external markets. Other challenges include the development of trade and investment supportive infrastructure, the improvement of quality of the workforce and linkage industries development.

Secondly, there is a need to improve governance for more efficient economic transactions. Such improvements include legislative reforms for strengthening property rights including community property, judicial reform for faster enforcement of contracts, and benefit sharing to cope with the social costs during adjustment and restructuring and to engage disadvantaged groups in the globalization process.

Finally, to meet the challenges of globalization, there is a need for new social and political tools to match the economic demands. Greater emphasis on corporate social responsibility is required, particularly to reflect stakeholders' concerns. Ways to ensure that

globalization and economic development are in compliance with core social standards should be developed. So too should ways to increase transparency and accountability of governments, for example e-governance. All States should establish independent Anti-Corruption Commissions if one is not already in place, along with independent Human Rights Commissions, and the appointment of Ombudsmen. Finally, there should be effective parliamentary oversight bodies to ensure the process of globalization in a democratic one.

III. STATE CAPACITY IN PROMOTING TRADE AND INVESTMENT: THE CASE OF BANGLADESH²

Globalization is not new, but what is new is the pace of its growth. Fifty years ago, the world traded around a billion dollars a day; today, the same one-billion-dollar-trade is happening every 90 minutes. Globalization is multi-dimensional and can be broken down into numerous complex processes that have dynamism of their own, resulting in both varied and often interrelated and unpredictable effects. Hence, it has given rise to concerns in both developed and developing countries. Many developed countries fear competition from low-wage labour abundant countries, while local firms in developing countries find it difficult to compete with foreign firms with better technology, stronger capital base, and superior productivity, especially against Multi National Corporations (MNCs) based in and supported by powerful states.

Although theoretically it has been proved that globalization and social progress are positively correlated, the answer to the question of whether globalization is good for all is not a straight forward "yes". Different countries reap differing degrees of benefits from globalization. The extent of the benefit is primarily determined by each country's capacity to deal with unforeseen outcomes.

Developed countries with good governance capacity are well suited to protect and safeguard their consumers from the negative externalities of globalization. On the other hand, countries with weak governance capacity, such as Bangladesh, remain vulnerable to unanticipated effects. While developing countries of the world are competing to attract foreign investments, the rate of success varies widely. For example, although Bangladesh offers one of the most liberal foreign investment regimes in the world, its success in attracting foreign direct investment (FDI) remains low. Analysis of these results reveals that Bangladesh's lack of success is not because of policy failures; rather it is a reflection of structural weaknesses, which deter foreign entrepreneurs from investing in Bangladesh.

A. Administrative Capacity of the State in Promoting Trade and Investment

Bangladesh is governed by a parliamentary democracy, where general elections are constitutionally required at least once in every five years. There are 300 elected members in the Parliament called the Jatiyo Sangsad. Political regimes in Bangladesh have often been marked by overwhelming short-lived popularity, followed by mostly violent change of government. Between 1975 and 1990, Bangladesh experienced poor management and governance both at the hands of military governments and legitimate civilian governments. This slowed down the democratization process, and made attracting FDI difficult.

² This is a summarized version of a paper presented by Abul Barkat, Mozammel Hoque and Zahid Hassan Chowdhury

There has been some improvement since then with the establishment in 1990 of parliamentary democracy. However, some problems including mistrust of political parties and representatives, misuse of office, partisanism and inefficiency in the bureaucracy remain to be addressed.

Improving the human resource management systems is one way of combating the negative perception of government and bureaucracy in Bangladesh. Another way is through the implementation of the First Perspective Plan (1995-2010).

Previously, there have been several five-year and bi-annual plans. At present, the planning process is mostly short-term and top-down, but there has been some progress toward a more participatory approach, aided by donor support. One good example is the policy formulation for small and micro enterprises carried out by the Bangladesh Planning Commission in 1999 under the project, "Formation of National Action Plan for Non-Formal Employment Generation in Bangladesh".

The institutions charged with promoting trade and investment in Bangladesh include the Ministries of Commerce and Finance, the Board of Investment, utility services (public and private), the judiciary, and the Bureau of Anti-Corruption. The Board of Investment was specifically established to facilitate investment, and provides one-stop services to potential investors.

Staff capacity in many of these institutions is somewhat limited, and human resource training is considered bureaucratic and not well able to respond to the changing requirements of the global work and market place. Emphasis on international economic relations has been a relatively recent phenomenon. Government agencies are still grappling with up-skilling staff to deal with the new challenges and ways of working presented by the global marketplace.

Lack of proper negotiating skills for example can pave the way for the foreign investors to dictate terms according to their advantage. However, Bangladesh is gaining some expertise in this respect. A low level of negotiating skill has given rise to terms of trade with participating countries or investors which is unfavorable for Bangladesh and gives rise to perplexities in the balance of payments in the country.

Bangladesh still has a long way to go, because there is a lack of concerted efforts to use information technology (IT) as a means to improve efficiency or the government officials and the quality of their work. Some organizations such as the Board of Investment (BOI), the Export Promotion Bureau, Ministry of Finance and Bangladesh Bank make use of IT in the sense that they have their own Web sites, but that is all. The government has decided to fund a "Support to ICT Taskforce Program" aimed at improving the efficiency as well as the transparency and accountability of the government.

Other problems include low salary levels which can demotivate officials, and the limited participation of the business community in trade and investment negotiations.

It is noteworthy that in regard to FDI, Bangladesh offers better facilities and incentives for investment than many other neighbouring South Asia countries. But despite this, its neighbours continue to be the main recipients of FDI. Some of the deterrents to FDI in Bangladesh include lack of stability, frequent shifts in policy, the high cost of doing business, poor infrastructure, and a lack of sufficient accountability and transparency mechanisms.

B. Corruption Laws and Enforcement Mechanisms

While Bangladesh offers a very encouraging investment regime, there is a concern held by many investors that the risk of investment in Bangladesh is higher than its competitors. The risks include a lack of stability, frequent shift in policy, high narrow market size, and things discourage prospective investors. Rigid bureaucracy and official hierarchy prevent decision-making at lower levels, and are significant factors which add to the cost of doing business in Bangladesh.

These risks create a high opportunity cost of investment, discouraging FDI and portfolio investment. Several attempts have been made to redress this situation, the most important of which is the Prevention of Corruption Act (1947, Act No. II of 1947). The Prevention of Corruption Act however has largely been ineffective in combating corruption. Another law, the Criminal Law Amendment Act 1958, was enacted with the objective to hold speedy trials of public servants. This Act requires sanction by the Government who may withhold or refuse sanction at its discretion.

Bangladesh has not developed any legislation specifically against cross-border corruption but the prevailing anti-corruption enactment covers the citizens of Bangladesh as well as the cross-border citizens. In addition, Bangladesh has an anti-money laundering act. It also uses the prevailing anti-corruption enactment to covers cross-border citizens.

The main enforcement agency in Bangladesh is the Bureau of Anti-Corruption (BAC). The Bureau falls under the jurisdiction of the Prime Minister's Office. This arrangement unfortunately leaves it open to charges of politicization. Due to this, the Government has pledged to replace the Bureau with an independent anti-corruption commission.

Article 77 of the Bangladesh Constitution provides for establishment of an Ombudsman who will be an independent high level public official to receive complaints against government agencies, officials etc. and to keep watch and control over persons under his/her jurisdiction. Ombudsman Act No. XV of 1980 has been enacted but as yet an appointment has not been made.

C. The Legal and Judicial Framework to Support Property Rights Laws

The legal system of present day Bangladesh emanates from a “mixed” system that has a structure, certain legal principles and specific concepts modelled on both Indo-Mughal and English Law.

Bangladesh became an independent and sovereign state on 16 December 1971. In order to ensure continuity in all legal spheres in independent Bangladesh, the Laws Continuance Order 1971, effective from 26 March 1971, legalized and made effective all existing laws inherited from Pakistan subject to the Proclamation of Independence 1971. Thereafter the judiciary of the country was set into motion with the appointment of the Judges of the High Court of the country on 11 January, 1972 by a Presidential Order No. 5 of 1972.

The 1972 Constitution of Bangladesh has set up at the apex of the Judiciary, the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. It is the sole Supreme Court of the country. The Chief Justice of the Supreme Court, who is appointed to the Appellate Division, is constitutionally known as the Chief Justice of Bangladesh.

In recent years, there have been some noteworthy developments in the legal system of Bangladesh. These are the Ombudsman Act 1980 (Act XV of 1980), the Administrative Tribunals Act 1980 (Act VII of 1981), the Income Tax Ordinance 1984 (Ordinance XXV of 1984), the Land Reforms Ordinance 1984 (Ordinance X of 1984), the Family Courts Ordinance 1985 (Ordinance XVIII of 1985), and the Companies Act 1994.

The Law Reform Ordinance 1978 was promulgated amending the Civil and Criminal Procedural Laws, related to Court Fees and the Law of Arbitration based on recommendations of a Law Committee set up in 1976. A permanent Law Commission has been established to suggest suitable changes to existing laws as necessary, so that the changed laws can meet the demands of the present time.

Rules pertaining to trade and investment are not transparent and so bureaucrats, businesses, professionals, trade unions and political parties with vested interests practice this lack of transparency. Regulation of trade and investment by the government has been falling since the early 1990s.

Bangladesh allows private ownership and investment in all sectors like arms, production of nuclear energy, air transportation and so on. The mechanism to protect and enforce property rights, however, is not transparent and is a serious concern to investors, aside from being cumbersome and time consuming.

Efforts to privatize the economy have been monitored with great interest by various international bodies as a barometer of Bangladesh's attitude towards the private sector. The Privatisation Board states in written reports that it has sold off 30 companies since it was created in 1993, primarily in the jute, textiles, sugar, and food sectors. Despite this, progress has been slow, and from July 2001 to June 2002, no single company was privatized, although partial shares of 11 companies were sold. Further, there is some concern that even following privatization, some companies are still experiencing strong government involvement.

In terms of intellectual property, Bangladesh is a signatory to the Uruguay Round agreements and a member of the World Intellectual Property Organization (WIPO) in Geneva. It has also acceded to the Paris Convention on Intellectual Property. In signing these agreements, Bangladesh is obliged to bring its laws and enforcement efforts into TRIPS (Trade Related Intellectual Property Rights) compliance by 1 January, 2006. Copyright conformity with the World Trade Organisation's TRIPS was established by way of legislation in November, 2000. However, laws to enforce the new copyright legislation have not yet been drafted.

D. Key Recommendations

In an era of globalization, and interdependence of economies, the following areas should be considered and strengthened in order to increase the capacity of the State in promoting trade and investment in Bangladesh:

1. Political will, commitment and stability:
 - (a) Institutionalizing democratic norms and values;
 - (b) Ensuring rule of law;
 - (c) Initiating electoral reform;
 - (d) Improving law and order;
 - (e) Initiating reforms to strengthen local governments; and
 - (f) Mapping local resources.

It is evident that the political will of leaders plays an important role in the strengthening of the state.

2. Good governance to minimize the cost of doing business in Bangladesh:
 - (a) Streamlining of bureaucracy;
 - (b) Strengthening anti-corruption policies and agencies;
 - (c) Strengthening the Board of Investment to promote areas of comparative advantage by sector;
 - (d) Promotion of economic diplomacy;
 - (e) Introducing e-governance for increased transparency;
 - (f) Promoting a participatory approach to governance.

It has oft been noted that it is not policy failure but structural weaknesses of the State and its bureaucracy that is responsible for failure to attract FDI in Bangladesh. This structural weakness acts as an extra "tax", and thus dissuades investors from investing in Bangladesh.

3. Enabling infrastructure:
 - (a) Improving service delivery of utilities, including electricity and gas;
 - (b) Increasing efficacy of ports; and
 - (c) Development of information technology systems.

Bangladesh cannot attract FDI without adequate infrastructural support. It is, however, important to note that although expansion of public sector amenities is vital, it is as important to ensure quality and prompt service delivery of existing services.

4. Development of capital market:
 - (a) Proper use of remittances; and
 - (b) Transparency in stock exchange activities.

5. Image building:

Chinese and Indian experiences suggest that in general expatriate investors pioneer FDI in a country. To encourage increased foreign investment, the Government of Bangladesh should promote, along with the aforementioned activities, a strong and reliable image of Bangladesh to global investors.

Political will, commitment and stability are the keys to capacity building in Bangladesh, along with good governance, conducive business structure, development of the capital market and better image building. Building a better business environment should be the first step towards capacity building to restore local investor confidence in Bangladesh and to allow it to take advantage of globalization.

In the discussion that followed this presentation, it was noted that while Bangladesh had made a lot of advancements in human development; the Government had not yet made adequate progress in increasing transparency and accountability in public service and governance. The Chair said the presentation demonstrated that Bangladesh had achieved consistent growth but it was hampered by weak governance. It was noted that it appeared that economic performance was increasing at a much faster pace than political reform.

IV. ADMINISTRATIVE CAPACITY, CORRUPTION REGULATION, AND JUDICIAL INDEPENDENCE IN INDIA³

As economies globalize, the effectiveness with which nations can benefit from this depends crucially on the capacity of governments to manage resources efficiently as well as to formulate, implement and enforce sound policies. The benefits from this in turn

³ This is a summarized version of a paper presented by Dr. Errol D'Souza.

depend on the quality of the institutions that govern economic and social interaction as the delivery of services is mediated through institutions. This paper accordingly inquires into the organizational capacity, responsiveness, and motivation of the state administration with reference to India.

This inquiry is guided by the premise that the benefits of integration into the world economy are hindered when organizational and technical capacity in the state administration is weak. Besides administrative capacity, the broader environment that includes the degree to which dysfunctional behavior and the subversion of institutions affects the conduct of ordinary business life is another aspect of the governance of institutions that is inquired into.

Finally, the judiciary provides security against corrupt practices and expropriation and, as an enforcement institution, its success depends largely on the extent of its independence as well as the training and recruitment of the individuals who are its agency. Thus, this paper concludes by inquiring into how independent the judiciary is and the adequacy of judges' training and tenure that affects their ability to dispense justice. The mechanism of public legal assistance so as to reduce exclusion from justice in India is also described.

A. Administration Capacity

The administration system in India has evolved from the time of British rule and has five distinguishing features:

1. The district as the basic unit of administration.
2. Centralization of decision making as the principle in policy.
3. A single dominating civil service with the Indian Administrative Service occupying the top position among other allied and subordinate services.
4. A system of elaborate rules and regulations as a means of maintaining order over the administration that comprises people from diverse social and training backgrounds and who are dispersed far from administrative centres.
5. A split system of functioning ostensibly to separate questions of policy from those of administration.

With the advent of globalization the Government of India through its Department of Administrative Reforms organized a national debate on how to make administration responsive, accountable and effective. An Action Plan was discussed and concretized in a Conference convened by the Prime Minister of all the Chief Ministers of the states. This Action Plan dealt with (1) how to make government accountable and citizen friendly; (2) transparency and the right to information; and (3) improving the performance and integrity of public services. An outcome of this has been that a number of Citizen's Charters have been instituted by central departments and state governments. Fixed time limits have been specified for handling grievances and publicizing the names of officers handling grievances and a system of computerized monitoring has been installed in many departments. With a view to simplifying laws and procedures, a Commission on Review of Administrative Laws was set up in 1998. The follow-up action on this has been impressive, with implementation of the recommendations of the Commission being coordinated by the Department of Administrative Reforms and Public Grievances and the Legislative Department. Further, the Department of Legal Affairs has set up the International Centre for Alternate Disputes Resolution as a private registered society that trains arbitrators, conciliators, and mediators, and provides model contract clauses to build arbitration into business relationships.

However, despite these positive changes, an AT Kearney survey found that bureaucracy and red tape remain the main concern of investors in India. Clearly this perception is a major obstacle to India benefiting from the increased globalization of the economy. To respond to this challenge to change perceptions systems need to be developed for evaluation and benchmarking; the application of technology; and knowledge management.

There is an urgent need for change in the following dimensions: 1) from an administrative culture of conformity with procedures to a culture of performance; 2) from a culture providing sub-service to a culture of responsibility; 3) from a budgeted cost culture to a culture of cost awareness; 4) from a continuity and stability culture to a culture of innovation and progressive development.

The following criteria point to the enabling actions required in this regard: (1) Strong and sustained support of political leaders is an essential condition for the success of reform; (2) The administration of government needs to declare a formal policy of serving the citizen through benchmarking with other administrative departments elsewhere, staff appraisals, and regular reviews; (3) Training that is integrally linked to career development and with some autonomy for staff to select their own training schedules as well as to assess whether training meets their needs is an important requirement currently; (4) Altering government behavior from command and control systems to a service orientation aimed at the facilitation rather than distrust of business requires administrators to relinquish powers, reduce cumbersome procedures and to apply discretion in a principled rather than ad hoc manner; (5) People satisfaction should be stressed i.e. how administrators themselves feel about their organization including the work environment, management style, career planning and job security.

B. Corruption and Enforcement Mechanisms

India is a signatory to the ADB-OECD Anti-Corruption Initiative for Asia-Pacific which requires it to address three pillars of anti-corruption activity: civil service, reduction of bribery, and the closer involvement of civil society.

The anti-corruption institutions of the central government are:

- | Prevention of Corruption Act, 1988;
- | Central Bureau of Investigation;
- | Central Vigilance Commission;
- | Chief Vigilance Officers in ministries and organizations; and
- | Civil service conduct rules.

The Central Vigilance Commission (CVC) was set up in 1964 as the apex organization for maintaining probity in public life. The Commission has powers to exercise superintendence over the vigilance administration of ministries of central government, the public sector and so on. Each ministry and public sector organization has a Chief Vigilance Officer (CVO) who is appointed after clearance from the CVC. All cases of improper conduct in the organization are referred to the CVO who monitors and takes action, reporting irregularities to the CVC. Conduct rules are quite strict in monitoring the higher civil services. A Whistleblowers Act has also been recommended by the Law Commission of India, but has not yet been enacted.

Punishments for corruption are possible through prosecution under the Prevention of Corruption Act, 1988, or through departmental actions. The CVC has also recommended that the Corrupt Public Servants (Forfeiture of property) Act drafted by the Law Commission be implemented so that confiscation is in addition to conviction and imprisonment under the Act.

Empowering the public through transparency in administration is another method of enforcement of anti-corruption. The objective of the Freedom of Information Bill, 2000, is to promote transparency in government activities. However, there are some problems with the bill, including lack of penalty clauses for not providing information.

E-governance is another tool of an information-led anti-corruption strategy. The Bhoomi (land) project of online delivery of land records in the state of Karnataka is a good example. The online delivery ensures that records are not open to manipulation by recording online requests to alter land records upon sale or inheritance of land. Such e-governance schemes can never be fully comprehensive in a developing economy due to weak technological infrastructure, but they can assist in limiting opportunities for arbitrary action.

Another form of public accountability that has been successfully pioneered by an Indian NGO is the use of jan sunwais (public hearings). These hearings comprise a public audit of development expenditures by village residents to make officials accountable.

A major challenge, however, remains that of managing and making transparent political party funding. In Thailand the State has addressed the issue by creating an enabling law whereby political parties are required to disclose their financial accounts to the public. This too may be an option for India.

C. The Judiciary and the Coverage of Justice

India's legal system is based on English common law. District Courts exist at the first tier level. High Courts that stand as the head of a state's judicial administration constitute the second tier. The Supreme Court is the highest tier court in India. The Department of Justice with the Ministry of Law, Justice and Company Affairs administers services within the Supreme Courts, High Courts and other courts and develops the infrastructure for facilities and administers training for judges.

In terms of appointments to the courts, up until 1993, the power of appointment was vested in the Executive, who had the power to arbitrarily transfer judges for one court to another. It also had the power to grant an extension of appointments for short periods and with no confirmations, including the supersession of senior most judges. Such powers raised questions about the desirability of the Executive in the process. The system now allows for the appointment of judges to the Supreme Court by recommendation of the Chief Justice and his four senior-most colleagues. They make a recommendation to the President, who by warrant makes the appointment. As opinion rendered by the judiciary is binding on the Executive, the judiciary is still independent to a substantial extent in India.

With regard to complaints of misbehaviour and incapacity against judges in the Supreme and High Courts, there is a Judges Inquiry Act. However, complaints are examined by a committee which is constituted on an ad hoc basis from case to case. The Convention, if charges are proved, range from recommending a warning to a change in the allotment of work to the removal of the judge from office.

There are several specific issues that are related to the judiciary in India, and should be addressed. There are over ten million cases pending in various courts in India and some have been in the courts for decades; still undecided. There are many reasons for delays in the system, including:

- | Lack of judges;
- | Non-filling of posts in time, often due to either interference or indifference;
- | Frequent requests for adjournments on insubstantial grounds;
- | Inappropriate behaviour in court by some lawyers;
- | Delay in delivery of judgments;
- | Admission of cases which could have been disposed or dismissed;
- | Transfer of judges to courts in states in which they do not have suitable prior knowledge;
- | Deficiencies in investigation and presentation of evidence in court;
- | Poor infrastructure in courts;
- | Lack of proper training institutions for the judicial fraternity; and
- | Complicated disciplinary procedures, making it difficult to penalize errant judges, even in obvious cases of misdemeanor.

D. Recommendations

An effective judicial system can be ensured by keeping the judiciary free from interference, influence and pressures from extraneous sources. The mechanics for selection of judges and their appointments should be primarily the function of a Judicial Commission which should consist predominantly of judicial officers.

The pay and promotion prospects must be such as to attract talented young men and women to judicial services and ensure that the judges are above want and temptation.

Vacancies of judges must be filled on top priority and action to be initiated well in time for the filling up of vacancies that will occur due to retirement of a sitting judge. Appointment of judges should be based strictly on merit, character and integrity of the individuals. Retirement age of judges should be raised to 70 years and on retirement the judges should not take up any other official assignment.

Time limits must be laid down and strictly adhered to for clearance of cases in various courts. In the example of the Philippines and Nepal, stipulation of one year in the case of lower courts and two years for the High Courts and the Supreme Court for disposal of cases works effectively. Long and winding arguments should be severely discouraged; instead written briefs should be insisted upon to save the time of courts.

The cost of filing and fighting a case is beyond the means of ordinary people let alone the poor who are unable to take recourse to judicial remedies even in genuine cases. Lawyers must take up more cases on pro-bono basis as a part of their commitment towards society. Judges must abide by a code of conduct and self discipline and possess unimpeachable integrity. Also, there is a need for the lawyers to abide by a code of conduct with the interest of the plaintiff upper most in their minds and in conformity with the highest judicial standards.

The higher courts must exercise their supervisory powers and carry out rigorous inspections to ensure that lower courts and their judicial officers are prompt in the disposal of cases.

Procedure for initiating and finalizing disciplinary action requires to be suitably amended to avoid politicizing issues and to prevent extraneous factors from interfering with the finalizing of the cases.

Amelioration of existing conditions in the lower courts where the infrastructure is abysmally poor should be taken up on top priority.

Scientific management principles should be adopted in documentation procedures and computerization must take place down to the lowest courts.

Chief justices must have vigilance officers drawn from judicial cadre to deal with corruption cases involving the judiciary.

The appointment of a Judicial Ombudsman should be made in every state to look into the problems of plaintiffs who have problems with the procedures.

The biggest litigator in the country is the Government of India. Government Officials should be encouraged not to proceed for litigation unless absolutely necessary.

E. Conclusions

It has long been recognized that the State plays a major role in defining and enforcing the rules governing access to markets. In order to deepen market access, governments often enact legal and regulatory reforms. But these are not enough without the development and training of the civil service, the development of the judicial and legislative functions, and other such organizational reforms. The paper focused on the service orientation of key institutions - the civil service and the judicial system. The appointment of judges, the adequacy of their training, their tenure, and finally, the coverage of justice in terms of public support for legal services for those not in a position to access the courts was considered. These issues are important for the sustainability of reform, and the benefits accruing from global integration, as these will be mediated through the service delivery effectiveness of these institutions.

V. NATIONAL CASE STUDY ON STATE CAPACITY AND GLOBALIZATION IN MONGOLIA⁴

Mongolia is more open and has closer ties with the rest of the world than ever before. The impact of globalization is increasing in all spheres of political, economic, and social life in Mongolia. In 1990 the country traded only with countries of COMECON, by 2002 it had expanded its trading partners to include 88 countries, and to a total of 1,159.9 million USD. Between 1990 and 2002, around 2,400 companies in 70 countries invested about 800 million USD in Mongolia.

Despite the rapid opening up of trade, there still remain some challenges for Mongolia in improving the competitive capacity of its national industries, and in holding its position in international markets with niche products and marketing. Moreover, Mongolia must, like many countries, address serious issues such as poverty, corruption, and environmental and natural disasters. For example, the Living Standards Measurement Survey conducted in 1998 showed that 36 percent of the population lives below the poverty line. These challenges require Mongolia to adapt and to discover its special national characteristics that will enable it to progress in the era of globalization rather than just simply discuss it.

⁴ This is a summarized version of a paper presented by Mr. Batkhuu

The State is the key actor in the development process. However, State capacity in Mongolia is not yet as strong as it could be. The capable State plays a major role in addressing problems such as poverty, economic collapse, corruption, bribery, and impacts of natural and ecological hazards and disasters.

Strengthening State capacity that promotes foreign investment and foreign trade is one appropriate way to encourage economic growth.

The purpose of this study is to focus on country-level experiences and practices related to State capacity and globalization. The specific sections of State capacity addressed are those that contribute to the promotion of trade and investment. The first section covers administrative capacity of the State in promoting trade and investment issues. The second section considers transparency and accountability in trade and investment activities. The last section covers the legal and judicial framework.

A. Administrative Capacity of the State in Promoting investment and Trade

State capacity is the ability to mobilize social and economic power through participation and cooperation to achieve a wide variety of social and economic goals. Administrative capacity is one of the essential components of state capacity. Administrative capacity involves producing outputs, while state capacity is a measure of ability to achieve outcomes.⁵

Administrative capacity is the efficient management of resources and knowledge in various administrative processes required for delivering the outputs of government, such as foreign trade and foreign investment service. Strategic planning, leadership, performance, evaluation and monitoring are issues of administrative capacity.

B. Leadership and Strategic Planning

Good leadership enables progress and change by uniting public and administrative support behind the goal of national development. It requires the ability to look beyond the period of transition, to a time of national economic renaissance and stability, and ultimately a self-sustaining Mongolian economy.

Visible and effective leadership is essential in the current challenging times for trade and foreign investment in Mongolia. Leadership is one of most important components of public management, and is a concept that closely relates to strategic planning and performance.

In the distribution of responsibilities in the trade and investment sector, the Minister for Trade and Industry is a member of government, responsible for policy making and strategic planning in trading and foreign investment. The Foreign Trade and Foreign Investment Agency is responsible for policy implementation. The National Auditing Office and Public Service Council oversee the effectiveness of activities and monitor implementation of laws and other related regulations and decisions. At the local level, administrative organizations are authorized to develop local policy and action plans.

The Government carries out its mandate for managing the affairs of the nation through indirect measures involving strategic planning and policy guidance, rather than through direct measures of command and control of policy implementation. The Government is responsible for defining priorities and developing plans of action to reach these priorities. As such, the Government of Mongolia has formulated a Government Action Program to guide national development for the next four years.

⁵ Painter, M. (2001). State capacity, Institutional Reform and Changing Asian Governance, p. 2.

Priorities in trading and investment listed in the Government Action Program include:

- | To improve Mongolia's competitiveness and quality of goods and services to meet world standards, to increase exports, to develop a trade networking system for imports and goods produced by national companies, and to reach consumers in remote areas.
- | To support foreign trade and foreign investment.
- | To meet obligations under Mongolia's agreement with the WTO.
- | To apply modern, advanced methodologies and technologies to production and manufacturing, and to further pursue reform and restructuring in the trade and investment sector.
- | To rehabilitate national industry.
- | To increase employment by promoting small and medium enterprises.

2. Performance Standards of Management Development

The outcomes of government activities have direct impact on the state budget. Accordingly, its ineffectiveness or high expenditure can cause cutbacks in other social services. Thus, new public management has to take into account multiple objectives in formulating its policies and goals, the most important of which must be the fair distribution of state resources. But the development of performance indicators for government, and evaluation and monitoring are most difficult.

The output and performance of the Ministry of Industry and Trade and Foreign Investment and the Foreign Trade Agency can be measured to a degree. They can be evaluated based on the number of contracts and agreements made between international organizations and countries, as well as by the provision of a legal and economically enabling environment for foreign investment and trade.

Efficiency of performance of foreign trade and investment policy indicates its outcome. Accountability and rewarding mechanisms are essential factors to increase efficiency of performance. The accountability framework consists of the following:

- | Clear definition of tasks and responsibilities of public organizations responsible for trading and foreign investment.
- | Clear objectives and goals.
- | Comparison of proposed and actual outputs.
- | Sufficient power to achieve goals.
- | Rewarding mechanism to support performance.

Another indicator of performance is the impact on society and the economy. It includes the total amount of foreign investment, total amount of export and imports and loss and gain in foreign trading.

3. Development of Human Resources

The Government of Mongolia aims to develop multilateral and bilateral collaboration between countries to provide a favorable environment for foreign trade and investment. Thus, there is a need for further development of skills, knowledge and experiences to keep pace with policy.

Mongolia has worked actively to develop multilateral partnerships with the UNDP, the World Bank, the World Trade Organization (WTO) and other donor countries.

One such example of these efforts was the joint Mongolia-WTO project to develop human resource capacity at national level, entitled, "International Trade and World Trade Organization." The project was implemented with the assistance of GTZ . Under this project trainings and seminars are conducted to raise awareness of WTO activities, such as regulating the sale of intellectual property and developing integrated information systems.

There have also been many activities conducted to develop bilateral cooperation with the People's Republic of China, the Russian Federation, the United States, Canada, the Republic of Korea and Germany through joint meetings, exchange visits and joint projects.

Further, the Ministry of Industry and Trade and other relevant agencies have conducted activities aimed at enhancing human resource preparation and comprehension levels. Short-term foreign language courses and professional training courses in Mongolia and abroad have been made available to civil servants, with government assistance.

4. Public Service Professionalism

Effective implementation of proposed goals and objectives of Government depends on the knowledge, capacity and experiences of public servants. Thus, the existence of an enabling environment in the public service is crucial for success. A framework for selection of skilled personnel, provision of a sustainable environment and development of capacity in public services are reforming the civil service. This concept of reform is embedded in the Public Service Law and Finance and Management Law.

5. Information Technology and Governance

Globalization and reform in public services is difficult to imagine without the aide of information technology. In Mongolia, reform in public administrative information systems has grown rapidly since 1995. Information technology provides many advantages and opportunities to public administrative organizations. Through improving quality, speed, accessibility, responsibility and transparency for citizens and partner organizations, transparency and accountability are increasing.

6. Investment Councils

The Foreign Investment and Foreign Trade Agency of Mongolia (FIFTA) is the government agency responsible for the promotion and facilitation of foreign direct investment and foreign trade in the country. Predecessor organizations of FIFTA were the Foreign Investment Department of the Ministry of Trade and Industry (1990-1996), and the Board of Foreign Investment (1996-1998). FIFTA was formed in 1998 to oversee trade and foreign direct investment issues. FIFTA's main functions are as follows:

- | Provide investment matchmaking services to both foreign and Mongolian investors seeking cooperation in the areas of technology, management, and marketing.
- | Host foreign investor missions and organize Mongolian business missions overseas as well as international investors' conferences and seminars. In addition, FIFTA carries out investment and promotion activities in order to promote Mongolia as a business or investment opportunity.
- | First liaison point for investors seeking to establish businesses in Mongolia.

FIFTAs One Stop service centre provides information related to investment opportunities and incorporation procedures. The main objectives of the centre are to present effective and centralized service from the executive governing bodies to foreign investors, to improve registration and monitoring activities and to make them more open and less bureaucratic.

Also, it supports stability agreements which guarantee that foreign investors will be accorded the same conditions as those offered to local investors engaged in a similar business. The cabinet member responsible for taxation policy may then sign a stability agreement with the investor, which provides a legal guarantee for a specified period. The duration of the Stability Agreement (10 or 15 years) is determined by the size of the investment.

C. Transparency and Accountability in Trade and Investment

The State Great Khural (Parliament) of Mongolia adopted the Anti-corruption Law in April 1996. The Anti-corruption Law covers:

- | State officials holding political and special positions as defined in the Law on State Service;
- | Chairmen and Secretaries of the Heads of Citizens' Representative Conferences;
- | State officials holding governing and administrative positions at economic entities of state property or involving state property;
- | State officials responsible for giving permission, rights, privileges, arranging loans and assistance as well as making registrations;
- | Persons holding temporary or permanent positions to carry out special duties of the state executive organization or certain duties of sub-sectors under the set legislative procedure;
- | State officials holding governing positions of state civil service.

Under the law, state officials must submit their income report, but it is uncertain where, whom and in what way it should be done. Enforcement of anti-corruption laws and regulations are generally devolved to the Police Department, prosecuting organizations and the courts. However, enforcement is hindered in part because the authority and obligations of enforcement agencies is not clearly set forth. Therefore, in order to intensify actions against corruption there is a need to form a legal framework for state service. To this end, the "National Program on Anti-Corruption" listed the following activities for implementation by 2010:

- | To create a favorable condition for transparent and fair competition in hiring of civil servants;
- | To reduce bureaucracy at all levels of state organization;
- | To increase salaries of civil servants and, thus, improve living standards;
- | To conclude a treaty with each civil servant to fight corruption;
- | To upgrade accountability mechanisms such as the submission of income reports by government employees; and
- | To appoint persons to high-risk positions for a duration of not more than two years.

D. Legal and Judicial Framework

The process of opening up its economy and improving its legal framework to meet international standards began in Mongolia in the early 1990s. A series of amendments were made to the 1960 Constitution, including, most importantly, the recognition of the right of citizens to own private property. This was a major step forward, dramatically

changing the principles on which the country's trade, industry and economy had hitherto been managed. Previous to the reforms foreign and domestic trade as well as investment was the sole responsibility of the State. Under the amendments, the Law on Property was adopted in 1991, allowing the ownership of private property for the first time, and the Law on Economic Entity was also adopted in the same year, allowing for the first time establishment of private companies or economic entities.

Mongolia adopted its new Constitution in 1992, which declared the new basic regulations for developing all forms of property equally and freely, removing the Government's singular control over foreign and domestic trade.

The Civil Law that served Mongolia since 1963 was renewed and adopted in 1994 in conformity with the content and principles of the new Constitution and thus it performed a regulating role in the transitional period. Further amendments were made in 2002 and came into force on September 1, 2002.

The Civil Law is based on the principles of equality, sovereignty, inviolability of property, freedom of the treaty, non-intervention in private business, carrying out lawful activities by citizens and economic entities, resumption of violated rights, and protections by the courts. Besides the Civil Law, the following laws provide regulations for specific sectors: Law on Oil (1991), Law on Foreign Investment (1993, 2002), Law on Chamber of Trade and Industry (1995), Law on Foreign Trade Arbitration (1995), Law on Currency Regulation (1994), Law on Mining (1997), Law on Friendship (1999), Law on Company (1999), Law on Prohibition of Unfair Competition (2000), Law on Labor, Law on Customs, Law on Customs Tariff, Law on Bankruptcy, Law on Bond Market (2002), Law on Insurance, Law on Banking, Law on Non-Banking Finance Organization, Law on Taxation Package, and Law on Economic Zones, amongst others.

The Law on Economic Zones is particularly interesting. It was recently approved by Parliament, and will allow for an economic zone to be established in the city of Altanbulag on the Russian-Mongolian border. This legislation envisions a virtually tax-free business environment and minimum bureaucratic obstacles for foreign and domestic companies. The Government of Mongolia also intends to establish similar Free Economic Zones in Zamin Uud and Tsagaan Nuur.

In the questions that followed, the workshop noted that Mongolia's situation was quite different from the South Asian economies that were presented earlier. The paper highlighted that Mongolia was an economy in transition, with the system itself undergoing restructuring and reform. In response to the question of whether Mongolia was in a period of economic transition or democratic transition, Mr. Batkhoo replied that he believed that the country had some way to go before democratic reform matched the success achieved by economic reform.

VI. GLOBALIZATION AND STATE CAPACITY IN THE PHILIPPINES⁶

The determining factor behind the state of fiscal affairs in the Philippines is the effectiveness of the State to cope with the demands of globalization. An effective State allows the efficient provision of goods and service and possesses rules and institutions that allow markets to function. The State is central to economic and social development.

The present study found that in the Philippines the determining factor behind the state of fiscal affairs is the effectiveness of the State to cope with the demands of globalization.

⁶ This is a summarized version of a paper presented by Philippine Institute for Development Studies.

Even though the Philippine State has characteristics of a country with strong capability, the study revealed that there were inconsistencies between the State's role and capacity. The study has utilized information from analytical books and papers as well as data from the World Bank's World Development Reports.

The objective of the study was to document and analyze the Philippine experiences and practices related to State capacity and globalization. The study covered three aspects of State capacity that contribute to the promotion of trade and investments: 1) administrative capacity; 2) systems of transparency and accountability; and 3) legal and judicial frameworks.

The study also provided information on the overall structure and mechanism of access to justice for the poor.

Materials from secondary sources were used to analyze the Philippines' State capacity and the challenges that it faced in responding to globalization.

A. Issues

The Philippines Government performs the basic, intermediate and activist functions of the State, even though there are other providers of basic services. This means that there is provision for deregulation in the basic service market.

Although the Government has started regulating the markets, it is yet to activate poverty alleviation programs, which fall under the "basic functions" of the State.

The Philippines Government has implemented asset redistribution through the Comprehensive Agrarian Reform Program and land grants to informal settlers in urban areas, an indication that the Philippines is performing an activist function, a characteristic of countries with strong state capability.

The Department of Justice and the Office of the Ombudsman are two agencies that interpret and implement the rule of law in the Philippines, but both need to do much to improve their transparency, capacity and public image.

In order to promote investment, the Government of the Philippines has set up three major institutions to review, approve and implement projects: the Investment Coordination Committee (ICC), the Legislative Executive Development Advisory Council, and the Development Budget Coordination Committee. The ICC is the institute which oversees the major capital investments of the Government. Although the ICC review and approval process theoretically takes two and a half months, usually it takes longer due to factors which are beyond the mandate of the ICC Secretariat.

The Legislative Executive Development Advisory Council (LEDAC) oversees the coordination of the executive and legislative branches of the Government. But the process of coordination sometimes becomes dysfunctional due to the divergent priorities of the two branches. The consequence of the failure of LEDAC to coordinate between the executive and legislative branches may be the nonpassage of legislation that facilitates socioeconomic plans or the inclusion of congressional or politically motivated programs and projects that do not contribute to socioeconomic development.

In the Philippines, the Civil Service Commission provides various agencies and institutions with quality, competent and motivated personnel with necessary intellectual and social capital.

In terms of usage of information technology (IT), the Philippines Government has made real progress in establishing the use of IT in government operations. The National

Computer Centre (NCC) has been established with the task to promote and direct the use of information and communication technologies (ICT) in government. With an aim to establish e-governance, the Government enacted the E-Commerce Act, requiring government agencies and their affiliates to have a functional website where people can have business transaction, had have access to information and government services online.

There are a number of agencies and institutions that promote transparency and accountability in trade and investment activities. Among these are: National Economic and Development Authority, the Philippines Economic Zone Authority, and the Department of Trade and Industry. The Department of Justice and the Office of Ombudsman are the agencies that interpret and implement the rule of law in the Philippines.

The creation of consultative forums, such as the LEDAC and joint technical working groups and committees in various levels of the government bureaucracy is a positive development towards building transparency and consensus among key agencies and institutes.

B. Conclusion and Recommendation

The Philippines is performing some functions that characterize a State with strong capability, but a closer analysis indicates that the Government is taking on functions that it is not yet capable of, given the fact that the economically poor are not adequately protected and provided for, while the law and order situation is slowly deteriorating.

The Philippines Government should be focused on better monitoring of official action to ensure greater accountability and transparency. The system under which institutes like the Investment Coordination Committee operate can be improved and needs to be more flexible to accommodate priority projects and programs for immediate approval and implementation.

VII. ASSESSMENT OF VIETNAM'S STATE MANAGEMENT CAPACITY IN INTERNATIONAL ECONOMIC INTEGRATIONS⁷

From the late 1980s to date, globalization has developed vigorously into a dominate trend worldwide, exerting a profound and comprehensive impact on the socioeconomic and political lives of all countries and on all international relations. This trend has created a strong impetus for countries to pursue economic integration into regional and global economies. Against this background, in full awareness of the inevitability of international economic integration, almost all countries have participated in this process at varying levels and in varying forms, and thus have achieved varying results. These results depend on many factors, among which the most decisive is the state's capacity to manage the international economic integration process. A government capable of managing well international economic integration can maximize benefits (i.e. make full use of opportunities) and minimize challenges and risks brought about by the globalization and international economic integration process.

In parallel with the reform process, Vietnam has gradually carried out international economic integration, and has achieved positive results while encountering some challenges. In the years to come, Vietnam will continue to intensify its international economic integration in both depth and scale. This process has resulted in considerable impact on Vietnam's socioeconomic development, and has prompted the need to adjust the role of

⁷ This is a summarized version of a paper presented by Pham Quoc Tru.

the State and its management capacity. In addition, it creates conditions for the improvement of the state management capacity of the economy as well as other areas of society.

The present paper aims to analyze and give a brief assessment of Vietnams current state management capacity to enable international economic integration, and to provide recommendations to further enhance this capacity.

A. Overview of Vietnam's International Economic Integration Process

Vietnam has embarked on real international economic integration since the 1980s, when it initiated the reform process with a series of measures to gradually liberalize economic activities (gradually shifting from a centrally planned economy to a market economy, reforming wages and monetary regimes, restricting the double pricing system and state foreign trade monopoly, intensifying foreign direct investment, developing a non-State economic sector, and reforming the State economic sector, and banking and finance and so on), opening its markets and enabling participation in regional and global organizations and institutions. The breakthrough in Vietnam's participation in the global economy was its accession to the ASEAN Free Trade Area (AFTA) in 1996. Vietnam is also working towards accession to the World Trade Organization and has implemented a number of preparatory steps.

Vietnam has also established bilateral relations with more than 150 countries. In addition to its multilateral and bilateral economic linkages, Vietnam in past years has concurrently participated in such sub-regional partnerships as the Greater Mekong Sub-region (GMS), West-East Corridor (WEC) and the development triangle with partners including the People's Democratic Republic of Lao and Cambodia. Vietnam's international economic integration is a process that takes place at unilateral, bilateral and multilateral levels, and links sub-regional, regional and inter-regional, and global interests in almost all areas, namely, goods, services, investment intellectual property and so on.

B. Economic and Social Impacts of Globalization and International Economic Integration on Vietnam

The implications of greater integration into the world market are many and linked to Vietnam's State management capacity. Globalization and international economic integration have rendered several important positive impacts both in terms of economic and social aspects. They are as follows:

- | A speed up in the restructuring and reform of the national economy and its increased efficiency and competitiveness has contributed to a reduction in inefficient State investments;
- | Vietnam's trade and economic laws and regulations have become more consistent with regional and international economic institutions of which Vietnam is a member;
- | Vietnam's export market and trading partners have increased, helping to maintain Vietnams strong growth in trade;
- | Vietnam's attraction to overseas investors for a capital and technology investment has increased through improved investment and business environments;
- | The capacity of local and state enterprises and staff has been enhanced; and
- | A base from which to pursue further reform of state industries and investments has been created.
- | Despite these positive impacts, challenges are still present, including
- | Lack of uniform and common understanding from central to local levels.

- Guidance and coordination remains inconsistent, with no master integration plan;
- Preparation for integration lacking in pace, and infrastructure has not yet been developed; and
- Lack of analysis on economic integration among policymakers, researchers and business.

Besides the above mentioned challenges, there are many other challenges such as increased competition from overseas goods and services. This is a serious challenge to Vietnam's economy which presently relies largely on agriculture. While a limited number of Vietnamese produced products are internationally competitive, many are not yet at that stage. Further, the business environment in Vietnam, despite recent improvements, still has some way to go in reducing the cost of business and investment, where it is still higher than many other countries in the region, hindering its competitiveness.

Other challenges include a danger of increasing division and conflict among civil groups; Vietnam's economic and political independence may be threatened; traditional cultural values and national identity may be eroded; and an increase in transnational crimes and social problems such as prostitution, epidemic transmission such as HIV or SARS, illegal drug use and trafficking.

C. State Management Capacity of Vietnam for International Economic Integration

1. Overview

The State power structures in Viet Nam are comprised of three components:

- The Legislative body, composed of the National Assembly;
- The Executive body, including government and local authorities; and
- The Juridical body; including the courts.

The three bodies are interdependent, based on the Communist Party's philosophy that power should be divided and coordinated among different bodies, but united under the leadership of the Party.

International economic integration is closely linked to the whole administrative management of Vietnam. At the central level, the administrative management performance on international economic integration is under the control of ministries and ministerial agencies; and at the local level, it is mostly under the control of provincial or municipal administrations.

All ministries and ministerial agencies have a focal unit taking major responsibility for the implementation and coordination of international economic integration activities among and within ministerial agencies, as well as the cooperation with other ministries or agencies and localities in the process of bilateral and multilateral trade agreements as well as its trading commitment arrangements. However, the focal role in managing each specific field is allocated to different ministries or agencies, depending on their functions and responsibilities. For example, the Ministry of Finance is the focal point for building commitments and undertaking negotiations on tariffs and customs procedures.

Besides the State agencies that are directly involved in the management of international economic integration in Vietnam, the role of other non-State agencies should be noted. They are the Party's agencies, (the Politburo, the Board of Secretaries, the Central Committee and other bodies of the Party) and their role is to provide leadership and

guidance, and at the highest level, to assist in the implementation of government policy.

2. Assessment of Vietnams State Management Capacity in International Economic Cooperation

Evaluating State management capacity requires examination and assessment of the key constituent elements of State management capacity (organizational structures, institutional systems, officers and civil servants, and resources allocated), the realization of economic integration activities, and most particularly, the efficiency and effectiveness of State management in each sector.

Current organizational structures are too cumbersome, with too many administrative levels from central government to grassroots levels. Further, there is no national body invested with sufficient power to oversee management of Vietnams international economic integration. There is no clear division of tasks. There currently exist three different state bodies performing the same task of acting as a focal point for the Government (National Committee for International Economic Cooperation, Ministry of Trade and the Department of International Economic Organizations of the Government's Office) creating confusion and uncertainty of role.

In addition, in many ministries, organization structures are inadequate and there is an unclear division of task and function which complicates the process. Lastly, there is a serious lack of cooperation and coordination between ministries and between ministries and provinces, with information sharing needing to be improved.

In terms of State institutions, the National Assembly has made much progress, legislatively, on international economic integration. Moreover, other state management bodies have actively contributed to the amendment and completion of the regulatory system to achieve conformity with international rules and requirements. There is still much to be done, however, as Vietnam still has not completed the transition from a centralized planning economy to market economy.

The third factor is the quality of civil servants. Due to training and the provision of basic skills and knowledge, this is higher than it was in the past; however, there is still a shortage of knowledge, professional skills and foreign language skills.

Other impediments include lack of transparency and accountability amongst civil servants, limited professional capacity, and a lack of responsibility.

The final factor affecting Vietnam's state management of international economic integration is resource allocation. To summarize the challenges in this area, Vietnam is a poor country with a GDP per capita of 400 USD per annum. Particularly, there is a shortage of financial resources for much needed activities such as hiring foreign consultancy companies to help the process of law and policy making, training officials and cadres; conducting research on aspects of international economic integration that will provide the foundation for policies and strategies; and for disseminating information and knowledge on international economic integration to the community to improve understanding and participation in the process of integration.

Insufficient resources for economic integration activities is one of the most important factors impeding Vietnam's state management capacity in international economic integration.

From the above overview, it can be seen that Vietnam's state management in international economic integration needs to continue to focus on improvements to its organization

structures, its institutions and human resources and its financial resource allocation if it is to see gains from its efforts to open its economy to the world.

Despite these difficulties in organizational structuring and so on, some achievements have been made, particularly in trade, finance and investment. These achievements stem from economic reform carried out by the Government, including trade and investment liberalization. These reforms have made Vietnam's economic regime more open, and have resulted in the gradual lifting of barriers to trade, investment and finance, and have created incentives for vigorous growth in international investment and trade, thus contributing to maintaining Vietnam's relatively high growth rate over the last decade.

D. Recommendations

1. Continuing Accelerated Administrative Reform

To improve the capacity, efficiency and effectiveness of State management to meet the requirements of industrialization and modernization, the Vietnamese Government has formulated the 2001-2010 Administrative Reform Program whose major components include institutional reform, reforming the administrative apparatus, improving the quality of officers and civil servants, and undertaking public financial reform.

During the first three years of implementation, many targets have been met, including amending the 1992 Constitution and State organizational laws, and reviewing organizational structures and reducing administrative staff.

On the basis of the results achieved in the first stage, it is evident the pace of reform needs to be increased if the efficiency and quality of State management in general, and in international economic integration in particular is to improve significantly. Vietnam should continue to strengthen its comprehensive administrative reform, linking it with the continued economic reforms, and the gradual renewal of respective political and social institutions in conformance with the development level of the economy and the international economic integration process.

2. Building and Restructuring the Legal System

Vietnam should further promote the formulation and perfection of its legal system in trade and other related areas with the aim of guaranteeing stability and transparency. Vietnam should also focus on strengthening its compliance monitoring and dispute settlement mechanisms towards effectively implementing its international economic integration commitments.

Further, Vietnam's early accession to the WTO should be regarded as an important goal, requiring determined support for the Government's guidelines and assured coordination of implementation efforts by ministries and agencies.

3. Building a Comprehensive Strategy for the Whole Integration Process

A master integration strategy should be completed swiftly, identifying the overall roadmap of commitments in each area, and in each international economic organization/institution.

4. Improving Coordination and Cooperation

It is necessary to have a strong mechanism which exercises uniform guidance and State management of international economic integration. The coordination and cooperation mechanisms between ministries and agencies could also be enhanced, ensuring consistent and close coordination. There is an equally urgent requirement to further develop the division of tasks between ministries, agencies and departments/units within each ministry/agency.

5. Training of Personnel

Development of human resources, especially individuals directly involved in the process of integration such as negotiators, officials, policymakers, lawyers, judges, parliamentary members and so on should be emphasised.

6. Building Information Exchange Mechanisms

Building and strengthening information systems which guarantee prompt, sufficient and cost-effective information sharing among government bodies and agencies, as well as research agencies, enterprises, associations and civil society should be prioritized. To realize this goal, special attention should be given to promoting the use of new information technologies for state administrative management and for building a strong e-government.

7. More Resources Reserved for Integration Work

Reserving increased financial resources for international economic integration is another important need. Attention should be given to training, the restructuring of the legal system, and the formulation and implementation of policies.

8. Technical Assistance

Enhanced international technical assistance to increase state administrative management capacity is equally important, especially in the context of Vietnam's less developed economy. Vietnam requires assistance in improving its institutional system and human resources development, especially for those civil servants directly involved in international economic integration, as well as those responsible for the enforcement of State policies, laws and international commitments.

D. Conclusions

Since the beginning of its reform and international economic integration process, Vietnam has reaped important socioeconomic achievements. After over a decade of reform and gradual opening of the economy, Vietnam has moved from a centrally planned economy, which was largely separated from the rest of the world, to an economy which is now among one of the most open in the world if we regard the ratio between trade turnover and GDP.

Vietnam has been concurrently participating in many economic linkages at bilateral, multilateral and regional levels. In the future, Vietnam's international economic integration process will develop both in depth and scale. The process will expose Vietnam to a score of opportunities and challenges. Therefore Vietnam's management capacity remains a crucial issue. To meet these demands Vietnam must continue to focus efforts on improving state management capacity both in terms of organizational structures, institutions, personnel and resources.

VIII. MILLENNIUM DEVELOPMENT GOALS, PUBLIC POLICY AND GOVERNANCE CHALLENGES

Following the country presentations, the UN-DESA representative, Mr. Adil Khan, lead the workshop in an analysis of governance challenges and some of the innovations and tools available to assist human development. The comprehensive presentation focused specifically on aid flow and targeting of the poor and how both were linked to poverty reduction. The presentation began by focusing on development trends in various

countries, their arrangements and the experiences so far. In the 1970s it was realized that investment in human capital - health, education and so on - was essential for economic sector growth. What would be the scenario beyond 2001 was not clear, although underlying all trends was the issue of reform.

The presentation suggested that in terms of targeting of the poor, both geographically and sectorally, aid needed to be better targeted to reach the poor. Geographically aid was moving away from the Least Developed Countries (LDCs) to other parts of the world, for example conflict zones such as Iraq and Afghanistan. Sectorally only 11 percent was given to the social sector as opposed to the mandated 20 percent. Aid, it was put forward, was not going to the right groups, in particular, women and minorities. Another difficulty was that the strategic framework for programming, delivery and monitoring was donor-driven and at recipient level, bureaucratically driven. Further, both direct foreign investment and aid flow were increasing in relative terms by not in absolute terms.

In terms of public policy, the presentation proposed that the main challenge was to achieve the right kind of growth. Growth, it said was good, but not all growth was poor friendly. The presentation advocated that growth should be steered in a manner that would reduce poverty. Demands were increasing, but resources were less. One way it was suggested to address this challenge was through reform of tax systems, which in many countries were weak, inefficient, or not suitably transparent. The paper noted that in many projects there was considerable wastage of resources, and there should be exploration of internal reform rather than external. There was also a need, the presentation proposed, to increase governance but not government, making it more citizen-based in terms of decision making. UN-DESA advocated "engaged governance", that involves civil society and NGOs in the State's decision-making, and Mr. Khan said in this aspect, the United Nations and governments can collectively play a very important role in maintaining a focus on pro-poor financing.

In making the presentation, Mr. Khan asked how it might be possible to do more with less. It was suggested it was not yet time to look for other sources for funding; rather it was still possible that money could be raised internally through increased efficiency. Research by the Asian Development Bank revealed while many countries in Asia have increased disbursement of funds, sustainability and effectiveness of programmes is falling. The inference being that investors are therefore incurring losses - in allocation of investment and resources - and could get more out of current aid allocations by improving the success of investments. Further, the presentation stated that 60 to 70 percent of aid given by bilaterals goes back to the source.

In conclusion, it was proposed that there was a need for more resources, but the question was asked, how should these resources be targeted?

IX. MILLENIUM DEVELOPMENT GOALS AND GOVERNANCE IN SRI LANKA

The presentation by Mr. Rahabadda commenced with a brief summary of Sri Lanka's political and economic history. Sri Lanka was described as a culturally and economically diverse country. Three different colonial powers had ruled it in the last 450 years until it gained independence in 1948. Since that time there have been ten governments in five decades. From 1948 to 1977, there was State control of the economy, with positive social indicators such as life expectancy, literacy and so on, which were compatible with

developed countries. Growth was at three percent, with a per capita expenditure of 300 USD. In the second period, since 1977, the economy has been integrated with the world economy. Sri Lanka has now experienced two decades of globalization.

The first period saw a high level of human development, with almost 50 percent of government expenditure on social welfare. However, during that period the country also experienced very low annual growth rates. The presentation suggested the high rate of social achievement had come at the cost of growth.

In the second period, which saw open economic and trade policies, there was a reduction in social welfare expenditure, but an average growth rate of five percent, and the country's per capita income increased from 300 to 900 USD, yet poverty was still high.

However, there was some hope about the future scenario. Medium term macro-economic policies forwarded by the Government aimed to create a five per cent growth rate in the medium term and ten per cent in the long term. To combat poverty, a high growth rate is necessary.

The presentation suggested that greater benefits may have been experienced earlier had the country opened its economy earlier. The focus now needed to be on regaining these missed opportunities, rather than being concerned only with reducing income disparities and poverty. Prior to 1977, the international situation was quite favorable to opening up the economy. Other Asian economies, such as Thailand, the Republic of Korea and Taiwan, Province of Chinese, opened up before 1977, preparing themselves for outward-looking export-oriented growth. However, after 1977 the presentation put forward that conditions were less favourable.

The presentation warned that unless there was increased government revenue through an increased rate of growth, it would be difficult to continue the current high levels of social welfare expenditure. To be able to continue its social welfare expenditure, Mr. Rahabade said Sri Lanka had started borrowing funds which had resulted in increased indebtedness. It was suggested that most of the State budget was now allocated to loan repayments.

A two-pronged approach to addressing Sri Lanka's indebtedness was proposed - a high rate of growth through private sector-led growth, and enlisting civil society to public sector programs. However, there were risks to this approach. It was possible that opposition political parties may challenge such fast track reform policies; other possible obstacles included a 1.4 billion USD pledge which was now in doubt as a result of the stalled peace process; the need for public sector reform and development of negotiating skills; and the need to change the approach of the public sector to debt management.

X. HUMAN DEVELOPMENT REPORTS AS A TOOL FOR SOCIAL DEVELOPMENT

India has produced 22 Human Development Reports (HDRs), all of which are "owned". The question posed by the presentation by Ms. Kathel was what was the independent value of the HDRs?

A HDR must be seen as a serious document, but there are challenges to its credibility, its reliability and its independence. The two main challenges according to the presentation are quality and credibility. The credibility of the Reports are questioned because they are not independently produced, but instead fall under the responsibility of the government of the day. Ms. Kathel warned that such an arrangement could allow HDRs to become a bandwagon for government policy, with the proliferation of Reports and the development of what she termed the HDR "industry". The presentation posed the question, based on this evaluation of HDRs, how do we go forward?

It was suggested that there was a need to ensure quality and to invest in the process. As every country must now also produce a Millennium Development Goal (MDG) Report in addition to a HDR how this report might fit with the HDR needed to be considered. The presentation suggested that currently MDGs are not being reported on by government who were largely reporting only on monitorable targets. Another difficulty with the HDR was that it did not cover trade and globalization in its reporting. This was considered an important omission, as it was important to ensure there was understanding of, and data on, government policies on livelihood and how these impacted on rural communities.

The Chair requested clarification on the linkage between investment in the social sector and economic growth. Ms. Kathel responded that economic growth was a necessary condition, but not a sufficient condition. She continued that there was a difference between investment in the social sector (human capital) and the economic sector. Investment in the social sector was a long-term issue, and it was not just economic variables that lead to economic growth - human capital and social variables are important for economic growth.

In terms of East Asian growth, an efficiency factor arose when human capital was introduced into the equation. While an integrated social sector planning model has been developed, what was important was that the social sector was explicitly introduced into the model, as opposed to more traditional revenue driven models. The presentation stated that based on this, the Human Development Index (HDI) was developed.

A controlled experiment carried out by UNDP India was described in which a model to observe the impact of diverting resources from public economic sector investment to social sector investment was developed. The modeled result was non-linear (u-shaped) showing the economy going down for four years, before hitting the bottom and then starting to rise again. It took seven to eight years to rise. The model showed the seven- to eight-year period as unchanging regardless of how aggressive the policies for growth. While no conclusions were drawn from the outcome, the workshop was asked to consider why such an outcome may have occurred.

The presentation concluded by returning to the theme of HDRs and said that the Report should be seen as a platform for accountability. The issue of the Report's credibility could be addressed by ensuring quality and independence and by investing in the process. Credibility, it was suggested, also depended upon quality of follow-up. This included widespread dissemination of the Report, and encouragement of print and TV media to focus on critical messages within the Report. Follow-up, it was proposed, was the best way to sustain interest in the State HDR message.

XI. AN OVERVIEW OF LEAST DEVELOPED COUNTRIES

A. Afghanistan

In Afghanistan security is linked to development. Afghanistan, it was reported, was a landlocked country, the least of the Least Developed Countries (LDC) and a failed state. Because of these factors and its experience of 24 years of warfare, there has not been any substantial government structures developed or put in place.

However, in the presentation given by Mr. Raglan, it was suggested that security under the Taliban was superficially better than now and that there was very little crime in the country. It was further suggested that the Taliban had managed to appear to have reduced opium production, but this was not verifiable. Under the Taliban there was more physical security, but increased insecurity in terms of decreasing social capital. For example, there was little trust in the family and community, creating a situation where no one felt secure.

The presentation raised the question of flow of foreign aid - what was the status, were developed countries delivering on their promises? The presentation put forward that during the period of rule by the Taliban, the United Nations played the role of surrogate government. However, the interim administration said that to build credibility it needed to be seen as the one delivering services. It therefore requested, according to the presentation, that the United Nations hand over administration to it. This was considered possible, but had to be undertaken cautiously so as not to create too high an expectation of new administration. As a result, there was a gradual handing over of responsibility; however it was at a pace considered too slow by the interim administration. The result was conflict, with lack of donor confidence in the Government, due to the lack of accountability systems. The outcome was limited by these factors, and especially by donors' reluctance to direct their funding to the Government, despite the handover of responsibility. As a result, the presentation stated that there was very slow delivery by the Government, with the United Nations and NGOs able to move quicker because funds have been entrusted to them.

The other subject discussed in the presentation was that of national reconciliation. There was a commitment given by the international community to support national reconciliation, but it had been cautious and the delivery of funds much slower than was required. At the Tokyo Summit, the World Bank, the Asian Development Bank and the United Nations estimated Afghanistan needed five to six billion USD for the first few years, but it has now been realized that that estimate was too low. The presentation said the challenge was now to convince the international community they needed to provide even more money to the Government of Afghanistan.

The presentation compared the aid funding per capita in Afghanistan with that of the Balkans following the war there, and reported that the amount of aid was about one quarter of that which went to the Balkans, making the point that contrary to popular perception, very little aid comparatively is going into Afghanistan.

Another challenge to the country's recovery discussed by the presentation was the top-down approach to development programming. It was offered that there was only limited local community participation or involvement in the decision-making and planning processes. A contributing factor according to the presentation was the historical lack of community participation in Afghanistan. There was however now some support from the international community to encourage such an approach. The presentation drew the workshop's attention to a national solidarity program to help initiate community development participation as an example of this. However, it emphasized that the degree of social disintegration is unimaginable and still much more needed to be done.

Afghanistan, according to Mr. Ragland, was faced with a situation where the international assistance community was very cautious, and as a result there was very little aid in terms of requirements coming into the country. Many donors were waiting to see demonstrable improvements in the country's administration and whether the shift to democracy was sustainable and national reconciliation was possible. There was a reluctance to provide aid and investment if there was a possibility it may be lost through conflict. However, the presentation warned that without investment and funding conflict was inevitable. In concluding, Mr. Ragland said that donors, NGOs, civil society and government must be encouraged to work together and have faith that Afghanistan can be changed from a failed state to a viable state.

B. Bhutan

Mr. Sonam Phuntsho Wangdi, gave a presentation on the status of Bhutan. Bhutan was described as a small country in Himalayas, with a mountainous and challenging terrain. The presentation claimed that its population was about 700,000 and national GDP was just over 500 million USD. According to the presentation, Bhutan was in self-imposed isolation until the early sixties. It was now into its ninth development plan (five-year cycles). The last decade had seen rapid socioeconomic development, and the presentation commended the leadership of the country's constitutional monarch.

The presentation by Mr. Wangdi continued with a discussion of Bhutan's concept of Gross National Happiness. GNH emphasized the importance of other dimensions of development, for example, environment, governance, culture and identity. Development for Bhutan was said to be focused on maximizing happiness throughout the development process, ensuring that economic as well as other needs of the people were able to be met by the State.

The poverty level in Bhutan was hard to estimate, as a large percentage was not monitored, however, Mr. Wangdi said roughly five percent were below the poverty line. The presentation described the pillars of Bhutan national development as GNH, economic development, good governance, environment, culture and identity. To this end, Bhutan was in the process of developing formal indicators for the qualitative realm that go beyond quantity.

More generally, Bhutan's policies and strategies were said to be cautious. Bhutan had an open economy, with trade at about 65 percent of GDP. However, in terms of multilateral trade in the process of accession to the WTO, Bhutan had not been immune to the changes in the region. Unilateral liberalization has had to be taken, for example, harmonizing tariffs, opening up to foreign direct investment (FDI) and so on. Bhutan has been very active in bilateral and regional trade. The vast majority, 95 percent, of its trade was with India, and Bhutan maintained a free trade agreement with India. In terms of imports, 82 percent were also from India. Further, 99 percent of Bhutan's exports were to trading partners in the region, while 80 percent of its imports were from countries from within region. It was noted that in terms of export and products, Bhutan had a very narrow base, and the same was true of its market, which was largely India.

Referring to growth, it was stated that the main growth sector was the hydro sector, which was responsible for 50 percent of national revenue and 11 percent of GDP, making it the backbone of growth. In addition, Bhutan also received grant aid (ODA). About 50 percent of the budget, according to the presentation, was financed by grant aid. This was potentially a problem as donor resources shifted to Iraq and Afghanistan.

On governance, the presentation said many efforts had been made towards democratization, with Bhutan's government described as very clean and efficient. The challenge was now to build capacity and manpower, for which it was suggested technical assistance from the international community was needed. However, Bhutan's close links with India, one of the main regional powers, provided some protection, and helped Bhutan absorb many shocks.

C. Cambodia

Mr. Theng Pagnathun made a presentation on Cambodia's National Poverty Reduction Strategy (2003-2005).

The National Poverty Reduction Strategy's (NPRS) main goals were outlined as: promoting income earning opportunities; expanding job opportunities; improving

capabilities; supporting institutional strengthening and improved governance; reducing vulnerability; promoting gender equality and promoting public resource acquirement and management.

To evaluate the progress of the Strategy, figures and indicators reflecting progress in reaching the Strategy's key objectives were provided.

For the objective of promoting income earning opportunities the growth rate was on target, and for the year 2000 exceeded by 0.7 percent the target rate of between six and seven percent. However, the poverty headcount index revealed there was still some effort needed to ensure the target of 31 percent was reached by 2005. Most recent figures available from 1999 showed the index at 36 percent.

Efforts under the Strategy to improve livelihoods of those on the land and more generally to expand job opportunities for Cambodians had not yet reached their target. Up to 15 percent of rural families were still landless. Away from the rural sector, indicators showed that industry was booming, growing in real terms by 29 percent in 2000. However, the service sector was lagging behind somewhat, below its target of 8 percent growth in real terms by 2005.

The results for the objective of expanding capabilities were mixed. For education, no recent figures were available on primary school completion, with most figures from 1998 revealing that just under a third of all 12-year-olds completed primary school. More recent figures for enrollements however show a 100 percent enrolment rate, suggesting the figures for completion of primary level education will increase in years to come. The literacy rate in Cambodia for 15 to 24 year-olds, male and female was 76 percent, with the Government setting a target of 90 percent literacy by 2007. The infant mortality rate (2000) was 95, with the target rate, 90. The maternal mortality rate was 437 (1998) with a target set of 372. Twenty-one percent of women of reproductive age were malnourished, and 45 per cent (2000) of children under the age of five suffered from protein energy malnutrition. HIV/AIDS prevalence (15-49) was 2.6 percent (2002). No recent figures were available regarding access to sanitation and clean drinking water, although figures from 1999 indicated that much still needs to be done, particularly in rural areas.

Cambodia also remains vulnerable to natural disaster with 40 million USD worth of damage to crops and housing reported in 2002. In response, the government was replanting seedlings to reduce vulnerability.

Moving to income, according to the presentation, the average monthly salary for a public servant was 20 USD (2001). In addition, it was a government objective to reduce the size of the public/civil service and the armed forces. In terms of political representation, women held 9.3 percent of seats in the National Parliament, and there were plans to formulate and approve anti-corruption legislation.

The northeast of the country was the most poverty-stricken with figures from 1998 revealing many areas in the region with greater than 75 percent poor. It was important Mr. Theng said to ensure that the National Poverty Reduction Strategy (NPRS) reached these areas. The Strategy had being implemented by distributing it at commune level, undertaking intervention in the poorest provinces, distributing a Reducing Poverty leaflet with the 20 strategic actions at community level and producing mobile shows, television and radio spots and posters to increase awareness among the public of the Strategy.

Cambodia had recently joined the WTO, and as a result the Government had revised investment laws to attract increased FDI to Cambodia. In addition, Mr. Theng said he felt the NPRS also demonstrated the government's commitment to strengthening human resource development to help Cambodia globalize.

The presentation concluded with details of the next step in the implementation of the Strategy which included preparation of a progress report, upgrading of the current strategy, and linking the Strategy to the Millennium Development Goals.

D. Nepal

Mr. Balananda Poudel reported on Nepal, beginning with a description of the country's landscape, of which 87 percent was covered by mountains, making the terrain extremely difficult. The country was described as a melting pot of Chinese and Indian culture, and as such was influenced by Indian policy.

In the recent period of liberalization and globalization, Nepal had attempted to reduce its fiscal deficit, and prioritize expenditure, with allocations based on human resource development. The Government had also tried to increase domestic resources by, for example broadening the tax base. The Government had also liberalized interest rates, and private and government banks were free to fix interest rates. It had also allowed the opening up of current accounts.

The limiting factor however, was the pegging of the Nepali currency to the Indian currency. Despite this, privatization was reported to be underway and progressing slowly, but well.

The Government was reported to be endeavouring to reform the financial sector, as non-performing assets of two of the country's biggest banks were very high. This was described as being a difficult task, and in a critical situation right now. The civil service was also preparing a roadmap for reform, which was still in the developmental stages. In addition, decentralization was being prepared for, with plans to devolve authority to the district level. The civil service of Nepal was described as broad-based.

An issue, and a continuous one noted in the presentation, was that of capacity building. It was reported however, that efforts were being made to encourage greater social inclusion. The Government has prepared a poverty index and strategy paper, and is working to develop a baseline report, after which it will continue to monitor on the issue.

The presentation on Nepal concluded with a brief discussion of the Maoist political movement. The Maoists were said to have emerged first in remote areas of the country; areas where the human development index (HDI) was poor. The movement is now spreading to other parts of the country. Mr. Poudel suggested that there may be some correlation between these two factors, and that more research was needed.

E. Samoa

Ms. Laugalau F. Eteuati Shon followed with an overview of Samoa. Samoa had a population of just 172,000. It was a very small island nation; however its economic growth was exemplary amongst the Pacific islands. It had an annual growth rate of 3.5 percent. It had enough foreign reserves to buy commodities for six months, and its HDI was good. This, according to the presentation, was attributable to leadership with a vision; leadership which believed in economic performance; and a culture which was integrated into socioeconomic development.

Samoa's development was described as internally-driven and externally-facilitated. Much of the development in Samoa had been facilitated by ODA from bilateral and multilateral partners. There were still however many constraints on economic development. These included its small island economy; its small and dispersed population; its small land mass; its vulnerability to external factors and natural disasters; its small domestic market; and the backbone of its economy, agriculture, has a significant subsistence component.

There had been privatization as well as corporatization of state-owned enterprises such as electricity, water, television and radio. One example of good practice was the disbandment of the Ministry of Public Works. Ministry workers were given a choice of redundancy or setting

up business units. The workers chose to set up business units, which have now become part of the private sector. The Ministry of Public Works has now been realigned and combined with the Ministry of Transport.

Ms. Shon said that in 1996, Samoa changed from an input budget to output budget based on performance. The 1996 Statement of Economic Strategies has eight strategic outcomes, including a stable macroeconomic framework, and strengthening of social structures, including the role of NGOs, religious groups, and youth. It was at this point in 1996, it was proposed by the presentation, that the Government became the enabler, and an engine for creating private sector growth. Integration of the private sector as well as the community was undertaken through consultation and discussion.

In the beginning the Government had largely short-term strategies for economic growth, now they were said to be moving towards medium-term strategies and goals. Samoa was based on principles of good governance, including accountability and transparency. Ministries are required to develop corporate plans as well as charters of service. In the past the Government had concentrated on infrastructure development, more recently, however, it has increasingly concentrated on social and human resource development and increasing budget allocation to education and health.

Further, civil society has been integrated into the decision-making process at a high level. This has been facilitated through consultation on the Statement of Economic Strategies of Government, based on partnership with private sector and civil society. Increasingly capacity building has been focused on the promotion and development of the capacity of NGOs and village communities, not only the civil service. The presentation concluded with details of a village-based development project. The project was conducted in collaboration with the United States Peace Corps, working in capacity building in the areas of project proposal writing and design and management. The aim of the project was to develop within local communities the capacity to identify and write their own projects. This in turn enabled them to apply directly to donors for funding, and to directly participate in the developing of their own economy, and their own socioeconomic development.

XII. AN OVERVIEW OF LANDLOCKED COUNTRIES

A. Armenia

Mr. Samson Davoyan began the overview of landlocked countries (LLC) with a presentation on Armenia. Armenia was one of three Caucasian republics undergoing economic transformation. It covered 30,000 sq. km., with a population of three million.

Its distinguishing features included three times more diaspora living abroad than the population living in Armenia. Also, it was a very homogeneous country, with 97 percent of the population ethnically Armenia.

Economic challenges have resulted from efforts to transform the economy in 1994. The result was the loss of considerable GDP. The majority, 70 percent of GDP, now belongs to the private sector, with the public debt of the Government at 45 percent of GDP. The per capita income is 800 USD.

Despite this, the economy was now said to be very open, and the budget deficit was three per cent. Inflation was also three percent or below and the unemployment rate was nine percent. However, if hidden unemployment was taken into account, the rate, according to the presentation, was closer to 20 percent.

The economy was described as very open and well integrated into the global economy. It has been a WTO member since 2002, and registered ten percent growth during the past four years.

Armenia's HDI was higher than its neighbours, but it does have some complex socio-economic problems including:

- | It has one of the worst forms of income distribution in the region;
- | The percentage of the population living below the poverty line is 50 percent;

- | A major reason for unequal distribution of income is the high black market/shadow economy, which makes up roughly 40 to 50 percent of the economy;
- | The tax rate was currently 17 percent, which was considered to be low given the size of economy and incentive structure; and
- | The major challenge to government was now to create a level playing field for property ownership and for them to take part in the development process.

The presentation noted that globalization was supposed to create a level playing field, but stated that the evolving global governance structures were being influence by bigger trading nations, with bigger economic footage, disadvantaging smaller nations.

B. Kirgizstan

A presentation on Kirgizstan was made by Mr. Acylbek Jumabaev. Mr. Jumabaev stated that Kirgizstan was formerly part of the ex-USSR, and located in central Asia. It was a small country with a population of five million and an area of 200,000 sq. km.

Kirgizstan was situated on the Asian Silk Road, and had a rich history. Ethnically the country was 65 percent Kirgi, with the rest made up of other ethnic groups. It was a mixed culture and religion. Almost all of Kirgizstan, 90 percent, was mountainous, with the land having hydro-electricity potential, but gold was currently the major export.

The topic of globalization was addressed, with the presentation advocating a need to adapt globalization to each country. Developing countries should focus donor assistance to LLCs on environment and drug trafficking issues and indicators. Indicators were described as most important in helping to promote global stability in the future.

Great efforts had been made according to the presentation to ensure transparency and accountability in government however it said there was still some way to go. The Government had proclaimed 2004 as the year of good governance and mobilization. The Government has also developed a framework for poverty reduction, with 360 million USD over three years approved for allocation, a great component of which was grants.

The factors considered important for the development of Kirgizstan were summarized as follows:

- | It straddled all three major religions, Christianity, Islam and Buddhism;
- | It was situated on the road for drug trafficking from central Asia to Europe;
- | It had many water resources;
- | Located in central Asia, it was a very attractive region due to the large resources from oil and drugs;
- | There were areas of the country contaminated by nuclear waste deposited by the former Soviet military system; and
- | There were some border disputes which could become a destabilizing factor.

In addition to these factors, Kirgizstan was situated in the corner where the interests of big powers meet each other (Russia, China and USA), with both American and Russian bases located in Kirgizstan, which was a unique situation.

PART TWO
Organization of the Meeting

I. OPENING STATEMENT

The meeting was opened on the 17th of December with a statement by the Executive Secretary of UN-ESCAP read by the principal officer.

Mr. Kim Hak-Su
Under-Secretary-General of the United Nations and
Executive Secretary, UN-ESCAP

(delivered by Mr. Siva Thampi, Principal Officer and
Officer-in-Charge of the Secretariat)

Distinguished participants
Colleagues from the Department of Economic and Social Affairs,
Ladies and Gentlemen,

It gives me great pleasure to welcome you to this Follow-up of the World Summit for Social Development: Governance Challenges and Innovations for Human Development. At the outset, allow me to express my appreciation to the Department of Economic and Social Affairs for proposing to organize this very important Regional Workshop jointly with UN-ESCAP.

The Copenhagen Declaration and Program of Action adopted by the World Summit for Social Development in 1995 remains the key global mandate for social development and specifies the ultimate objectives of economic development. One hundred and seventeen heads of State or Government committed their countries to a number of fundamental objectives, including to eradicate absolute poverty, to support full employment as a basic policy goal, to promote social integration based on the enhancement and protection of all human rights, to achieve equality and equity between men and women and to attain universal and equitable access to education and primary health care. While other global mandates for economic and social development have also been adopted, none is more comprehensive in spelling out the ultimate goals of development: economic well-being with social inclusion and equity.

UN-ESCAP assists its members and associate members to implement the commitments set out in the Copenhagen Declaration and Program of Action, and we regularly assess progress in the achievement of those goals. Last year the theme topic of the annual session of the Commission was "Sustainable social development in a period of rapid globalization: Challenges, opportunities and policy options". In a study prepared for the session, the UN-ESCAP secretariat emphasized that disparities in income had increased within and between countries during the recent period of rapid globalization. The study notes that challenges to social inclusion had resulted from changing labour market conditions, regional disparities, population ageing, social conflicts, disability and the HIV/AIDS epidemic. The Asian financial crisis that began in 1997 demonstrated that social protection systems were inadequate in scope and coverage in many countries in the region.

Our conclusions were not all pessimistic, however. Countries in Asia and the Pacific had greatly reduced poverty levels over the past two or three decades. Investment in human capital is essential for sustained economic growth. Countries in the region had laid that

foundation for such growth by greatly increasing primary and secondary school enrollment rates, by lowering infant and child mortality, by reducing high levels of fertility and by increasing life expectancy.

We have observed that the economies that participated most actively in global economic processes have expanded overall employment the most significantly. The greatest gains in employment have been achieved by women but they are also the most vulnerable to job losses during economic downturns.

Distinguished participants,

The nation state has ceded some control over the national economy to global institutions, transnational corporations and international capital flows. Nonetheless, the fundamental decisions regarding education, health, employment, social security and social inclusion remain the responsibility of the State. The State must shape the framework and determine the appropriate interaction among national and local government, the private sector, non-governmental organizations and other civil society organizations. It is only the State that has the interest and ability to forge the social contract upon which economic and social development rest.

You have the opportunity over the next three days to review these and other issues concerning globalization and governance. We expect that the discussions will be stimulating and that you will be able to provide valuable guidance to the secretariat in shaping its ideas and program of work.

I wish your deliberations every success.

Thank you for your attention.

II. MEETING AGENDA

The workshop adopted the following agenda:

1. Opening of the session.
2. Globalization and the State: Concepts, issues and challenges:
 - (a) A conceptual understanding of globalization and the State and an overview of regional experiences;
 - (b) Country presentations.
3. Governance challenges, innovations, tools etc. for human development:
 - (a) Millennium Development Goals, public policy and governance challenges;
 - (b) Millennium Development Goals and governance in Sri Lanka;
 - (c) Human Development Reports as a tool for social development;
 - (d) An overview of least developed countries;
 - (e) An overview of land-locked countries;
 - (f) Group discussions.
4. Plan of actions and closing.

III. LIST OF PARTICIPANTS

ARMENIA

Mr. Samson Davoyan, Director, Institute of Management and Economic Reform, Government of Armenia, Yerevan

BANGLADESH

Mr. Debapriya Bhattacharya, Executive Director, Centre for Policy Dialogue, Dhaka

Mr. Abul Barkat, Professor, Department of Economics, University of Dhaka, and Chief Advisor (Hon.), Human Development Research Centre, Dhaka

BHUTAN

Mr. Sonam Phuntsho Wangdi, Deputy Secretary, Policy and Planning Division, Ministry of Trade and Industry, Bhutan

CAMBODIA

Mr. Theng Pagnathun, Deputy Director, Directorate of Planning, Ministry of Planning, Phnom Penh

INDIA

Mr. Errol D'Souza, Professor and Chair, Economics Area, Indian Institute of Management, Ahmedabad

KAZAKHSTAN

Mr. Erzhan Utembayev, Deputy Head, President's Administration of Kazakhstan, Astana

KIRGIZSTAN

Ms. Almaz Isanoc, Economist, Economic Policy Development, Office of the President, Bishkek

Mr. Acylbek Jumabaev, Deputy Department Head, President Administration, Bishkek

MONGOLIA

Mr. B. Batkhuu, Senior Consultant, Centre for Social Development, Ulaanbaatar

NEPAL

Mr. Balananda Poudel

PAKISTAN

Mr. Siraj Mazhar, Research Fellow, Consumer Rights Commission of Pakistan (CRCP), Islamabad

PHILIPPINES

Mr. Wilfred Sebastian Manuela

SAMOA

Ms. Laugalau F. Eteuati Shon, Chief Executive Officer, Ministry of Women, Community and Social Development, Apia

SRI LANKA

Mr. Sam Rahubadde, Government of Sri Lanka, Colombo

TIMOR LESTE

Mr. Albano Salem, Director of Employment and Skill Development, and Secretary of State for Labour and Solidarity, Dili

Mr. Magpo Perreira, Director of Veterans Affairs, and Secretary of State for Labour and Solidarity, Dili

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VANUATU

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VIETNAM

Dr. Pham Quoc Tru, Department for Multilateral Economic Cooperation, Ministry of Foreign Affairs, Hanoi

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Ms. Meenakshi Kathel, Research Associate (Gender) Human Development Resource Centre, New Delhi

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Ms. Eva Jespersen, Regional Advisor, Social Policy and Economic Analysis, East Asia and the Pacific Regional Office, Bangkok

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Ms. Amalin Sundaravej, National Programme Officer, Bangkok

FOOD AND AGRICULTURE ORGANIZATION (FAO)

Mr. Wim Polman, Rural Development Officer, Bangkok

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UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (UNESCAP)

Mr. S. Thampi, Principal Officer and Officer-in-Charge of the Secretariat

Ms. Thelma Kay, Chief, Emerging Social Issues Division

Mr. Jerrold W. Huguet, Chief, Population and Social Integration Section, Emerging Social Issues Division

Mr. Aynul Hasan, Coordinator, Least Developed Countries Coordination Unit, Office of the Executive Secretary

Mr. Syed Nuruzzaman, Economic Affairs Officer, Least Developed Countries Coordination Unit, Office of the Executive Secretary

Mr. Christian De Sutters, Officer-in-Charge, a.i., Administrative Services Division and Chief, Conference Services Section

Mr. David Lazarus, Chief, United Nations Information Services