MEKONG UPDATE & DIALOGUE

VOLUME 9, NUMBER 1, JANUARY - MARCH 2006 ISSN 1441-8355

The Australian Mekong Resource Centre was established at the University of Sydney in 1997 to promote research, discussion and debate on development and environment issues in the Mekong Region. The AMRC is a focal point for information, dialogue and activities in support of an equitable and sustainable development path for the Mekong Region.

The ***Mekong Update & Dialogue*** provides:
- lead article on the key topic of the issue
- responses to the lead article
- news of current developments in the region
- news from the AMRC
- information on Mekong-related conferences and events in Australia and the Mekong Region

Contact Details
Australian Mekong Resource Centre
c/- Division of Geography
School of Geosciences (F09)
University of Sydney
NSW 2006 Australia
Tel: +61-2-9351 7796
Fax: +61-2-9351 8627
mekong@mail.usyd.edu.au
www.mekong.es.usyd.edu.au

Dear Reader,

Due to pressure of work and deadlines there has been a change in the sequence of the Mekong Update & Dialogue newsletter. The last issue for 2005 (ie MU&D8.4) has been omitted. We are sorry if this has caused any confusion.

Editor.

EDITORIAL - Free trade

The Mekong is a river basin, a region and a metaphor. The metaphoric value of the Mekong lies in the riverine sense of linkage and flows. The Mekong as a development region is defined largely by developing physical, economic and other linkages by breaking down old barriers and instigating flows of goods and financial capital. Freeing up trade looms large in this agenda.

Beyond the internal linkage is the notion of the Mekong as a world region with the potential to become more firmly connected with globalised production and consumption. Here, the free trade agenda is between Mekong countries and bigger players, notably the United States, China and other centres such as Australia, Japan, India and Europe. There is also the global free trade agenda constituted by the World Trade Organisation (WTO), which China and Cambodia have joined quite recently, of which Thailand is a longstanding member (and whose national Suphachai Panitchpakdi was Secretary General), and to which Vietnam and Lao PDR are seeking accession.

Free trade is an area in which discussion often generates more heat than light. As a principle going to the roots of classical economics, comparative advantage as the basis for wealth of nations is seen by free trade protagonists as a fundament of developmental well being. On the other hand, WTO has become one of the lightning conductors for activists on globalisation, and free trade has become implicated in the process.

It is clear from the articles in this edition of Mekong Update and Dialogue that freeing up trade in a region such as the Mekong is highly contingent. It is contingent in the sense of creating unequal benefits between and within countries. It is contingent in the sense of being an outcome of shifting geopolitics rather than a uniform neo-liberal applied dogma. It is contingent in the sense of being driven by sometimes more and often less democratic engagement of the national constituencies in whose name agreements are drawn up and signed. And it is contingent in the sense of involving myriad levels of trade, from the very local cross-border and cross-river transactions that thumb their noses at bureaucratic restriction, to the global movements of capital and conditionalities imposing on sovereignty that are inherent in trade negotiations between unequal partners.

As in many other areas of Mekong development and interaction, it is all too easy to throw out the baby with the bathwater. Reducing trade barriers and cross-border movements are not the problem per se. Getting equity and democracy into such negotiations is another thing, particularly when the geopolitical prerogatives are superimposed on economic interests in today's "competitive liberalisation".

FEATURE

An investor's paradise: trade in the Mekong Region

by Shalmali Guttal

The Mekong region is buzzing with trade and investment activities, and there are many takers for its abundant and diverse natural wealth and growing work-force.

A Plethora of Commitments

Trade in the Mekong region is pursued through a variety of official and non-official means. At the non-official end of the spectrum is border trade across the thousands of kilometers of international boundaries in the region. Carried out largely by small merchants and itinerant traders, such trade includes goods as diverse as vegetables, fruit, fish and fish products, livestock, rice, fertilizers and pesticides, processed foodstuffs, gemstones, timber, forest products, animals and animal parts. Much of this trade is unregulated and some is illegal, but it serves as an important source of livelihood for those living along the borders. Border trade — especially in the Golden Triangle area — also includes narcotics and sex work, although this is rarely registered in official economic reports about the region.

At the official end of the spectrum are bilateral trade and investment agreements, and regional cooperation agreements through the ASEAN (Association of Southeast Asian Nations), the Greater Mekong Sub-region Economic Cooperation Programme (GMS), and the more recent Ayeyawadi-Chao Phraya-Mekong Economic Strategy (ACMECS) framework. This is where the big money is.

Vietnam signed a bilateral trade agreement (BTA) with the US a few years ago, and Thailand is currently negotiating BTAs with the US and Australia respectively. Indian companies are also poised to jump into the regional trade fray. Joining hands with the Asian Development Bank (ADB), the Confederation of Indian Industry (CII) established a Mekong Development Forum in November 2005, which seeks to expand India's share of trade being conducted in the GMS. According to CII, the volume of trade in FY 2003-2004 alone was estimated at US $ 195.4 billion. Of particular interest to India are trade and investment opportunities in the transport, energy, infrastructure and tourism sectors.[1]

Also of importance to countries in the Mekong region are the current negotiations for more trade liberalization commitments within the World Trade Organisation (WTO). The region boasts two of the newest entrants to the WTO, albeit with vastly differing economic strengths: The Peoples' Republic of China (China) and Cambodia. Thailand is already a long-standing WTO member, while Vietnam and the Lao PDR are negotiating their entry into the WTO. Despite its growing strength as a global trade power, China has thus far played a relatively low-key role within the WTO, it's most visible action being hosting the sixth Ministerial Conference in December, 2005. Cambodia, as a Least Developed Country (LDC) is not required to make further commitments for at least another five years. However, both Cambodia and China had already made significant liberalization commitments when they became WTO members. Although the majority of the Mekong region countries are not presently in a position to alter the current course of WTO negotiations, they will certainly be expected to operate by the rules and commitments written into a new WTO trade deal. LDCs (which include Cambodia) and countries in the process of accession (Lao PDR and Vietnam) are constrained from passing or implementing national regulations that contradict their abilities to meet WTO commitments in the future.

Possibly the most sustained and high profile impetus for free trade and investment in the Mekong region has come from the ADB through the GMS. Initiated in 1992, the GMS is an ambitious master plan to create a "frontier" of rapid economic growth through regional economic cooperation. The GMS aims to transform the rich human and natural endowments of the Mekong region into a region-wide free trade and investment area, fuelled and led by private sector growth. Majority of the capital investment through the GMS programme has been in the areas of transportation infrastructure (road, railways, air and waterways), power/electricity, and trade and investment facilitation. Efforts towards regional economic cooperation had already begun as early as the 1950s among the Lao PDR, Thailand, Cambodia and Vietnam, but were suspended because of revolutionary wars in the region. By establishing the GMS in 1992, the ADB seized the opportunity to fill a post Cold War capital vacuum in Lao PDR, Vietnam and Cambodia and also secured its own place and influence in the region's economy. Since 1992, more than 100 projects in transportation, energy, telecommunications, trade and investment, tourism, environment, human resources and agriculture have been launched through the GMS, although investment capital for most of these projects is still to be secured.

On July 4-5, 2005, the Heads of States of the GMS countries met in Kunming at the second GMS Summit and declared that, "The GMS is committed to creating a conducive and competitive environment for trade, investment and private sector development. To strengthen market fundamentals, we will promote financial efficiency, a sound policy and institutional, legal and regulatory framework, and undertake further facilitation and harmonization of trade and investment regimes."[2] The Kunming Declaration emphasized the importance of a "GMS Strategic Framework for Action on Trade Facilitation and Investment (SFA-TFI) that commits to time-bound, specific measures to reduce trade and business transaction costs in the sub-region," and endorsed the importance of the private sector as the "engine of growth" in the Mekong region. Also emphasized were the importance of transport links across the region, rules and operating agreements for regional power trade, and cross border infrastructure: "A well-built, seamless, multi-modal infrastructure is essential to the facilitation of trade, movement of people and the provision of basic services throughout the whole region. We therefore commit ourselves to fully 'connecting GMS'."[3]

Prior to the Kunming GMS Summit, the ADB reported a financial shortfall of around US$ 10 billion for sub-regional infrastructure construction over the next 10 years.[4] In October, 2005, the ADB approved a Technical Assistance (TA) grant of US $ 2.5 million to boost project development, monitoring and evaluation in the GMS and private sector involvement in GMS projects through public-private partnerships.

Staking Their Claims

Although only one of China's provinces—Yunnan—is officially in the GMS, China has played a leading role in speeding up investments in the Mekong region, especially in transportation and energy infrastructure. China is arguably becoming the most dominant driver of trade and investment in the Mekong region, as well as one of the most sought after markets for exports of the region's raw materials and processed products. China has signed a number of agreements with other GMS countries to further Chinese collaboration in areas as transportation, animal epidemics prevention, information superhighway construction, power trade, tourism and environmental protection. According to an official Chinese daily newspaper, "Ever since the inception of the GMS Programme, China has been both a beneficiary of, and a contributor to it and has made large investments in infrastructure construction within the region."[5]

Over the past 10 odd years, Chinese leaders have frequently invoked the Mekong River as both symbol and reflection of the deep ties that bind the people of the region. In 2004, China set up a special fund totaling $20 million within the ADB for poverty alleviation in the Mekong region. Since 2002, China has cut or completely exempted tariffs for 600 products from the Lao PDR, Cambodia and Myanmar. After its accession into the WTO, China promised to "fast-track" the WTO accession processes of Cambodia and the Lao PDR. In the Kunming GMS Summit, Chinese Premier Wen pledged that China would unilaterally expand the range of products eligible for preferential tariffs from the Lao PDR, Cambodia and Myanmar (starting from January 1, 2006) to boost intra-regional trade co-operation.[6]

Physical infrastructure is crucial to facilitating trade and investment, and China is pouring massive amounts of money towards transportation and energy facilities. China has funded the "North-South Corridor," a highway that links Kunming to Bangkok via the Lao PDR, which is scheduled to be fully operational by 2007. For China, one of the most important trade routes is the 4,425 km long Mekong River itself and altering the Mekong's geography in order to make it navigable has been a subject of much regional controversy over the past decade. On March 6, 2006, the Joint Coordination Committee of Navigation on Lancang-Mekong[7] River met in Champassak, Lao PDR, to discuss commercial navigation on the Lancang-Mekong as a way to boost trade activities among the upper Mekong countries. A Lancang-Mekong navigation channel is being developed through inter-governmental cooperation among China, the Lao PDR, Myanmar, Thailand and Vietnam, and with massive financial support from the ADB and bilateral donors. It is estimated that a total of US $ 36.11 million of capital assistance will be committed to Lancang-Mekong navigation development and management by the ADB, governments of the Netherlands, Sweden and Britain, and other international organizations.[8]

While an intra-ASEAN free trade agreement (AFTA) has been stalled for some years now, China has given trade with the ASEAN a new push through its 'ASEAN+3' trade framework. At a summit meeting in Vientiane, Lao PDR in November 2004, China, Japan, South Korea, and the 10 ASEAN member states agreed on an arrangement by which each ASEAN member can negotiate a bilateral free trade agreement with China. The framework allows duty free entry of an ASEAN partner country's goods into China for a period of about three years—also known as "early harvest"—after which, China gains reciprocal duty free access for Chinese goods into the partner country's markets. The "early harvest" offer is not simply an act of goodwill; it would provide China much needed raw materials, agricultural commodities and minerals, and also pave the way for tariff free access of China's value added products to ASEAN markets.

China's growing influence is in direct competition with the Mekong region's traditional economic "hub," Thailand. With its well developed export capacity and long standing relationship with the world's large capitalist powers, Thailand has been the most voracious consumer of the region's natural resources, as well as the region's favoured destination for capital, labour, goods and services, and tourism. Since its recovery from the 1996-98 economic crisis, Thailand has aggressively promoted itself as a champion of Asian self-sufficiency with Thai businesses leading the charge. A 2005 joint report by the United Nations (UN) and the Thai Foreign Ministry states that Thailand gives more aid to the world's poorest nations than most rich countries do, if measured as a percentage of its income. Thailand imports more from LDCs (3.1 % of its total imports) than any of the members of the Organisation for Economic Co-operation and Development (OECD).[9] Three of its regional neighbors—Myanmar, the Lao PDR and Cambodia—are LDCs, and Thailand could well be the largest importer of agricultural products and electricity from the Lao PDR.

Thailand is clearly the leader in the ACMECS framework, which brings together Myanmar, the Lao PDR, Thailand, Cambodia and Vietnam. Named after the three major river systems that run through these countries, the ACMECS aims to increase cooperation in five main areas: trade and investment facilitation; agricultural and industrial cooperation; regional transport linkages; tourism, and; human resource development. Building on existing regional and bilateral cooperation agreements, ACMECS seeks to transform the border areas of its five members into special economic zones of high growth. With the fertile lands and hydropower potential that the river basins offer, key areas of investment are agriculture and energy.

China's growing influence in the Mekong region is also viewed with concern by Japan, which has attempted to maintain a large economic and political presence in the region. Japan is the largest bilateral donor in Cambodia, Lao PDR, Myanmar and Vietnam (CLMV). On its own, as well as in collaboration with the ADB, Japan has funded several infrastructure projects that transcend national borders in the Mekong region. Most high-profile among these is the "East-West Corridor," a super highway—including a bridge over the Mekong River—that links Muktahan in northeastern Thailand, Savannakhet in southern Lao PDR and the port of Da Nang in central Vietnam. Scheduled for completion next year, the highway is expected to be extended to Mawlamyine in southern Myanmar at a future date. A second "East-West Corridor" is also in the works to link Bangkok, Phnom Penh and Ho Chi Minh City, scheduled for completion in 2006-2007.

In September 2005, Japan inaugurated an economic ministerial meeting of the CLMV countries in Vientiane (Lao PDR) in which, the ministers agreed on a new Japanese assistance package for the development of the Mekong region, including building a production and distribution network across the region and facilitating intra-regional trade through the use of IC tags (a digital medium that uses radio frequency identification). Japan also committed to supporting capacity-building for economic planning and building human resources for the management of electricity/power networks. The Japanese government claims that it will hold events in Tokyo in 2006 to promote imports from the Mekong region and encourage more Japanese investment in the region.[10]

Agreements vs. People

Official trade is being simultaneously negotiated on multiple fronts by the countries in the Mekong region, but with unequal and uneven institutional infrastructure and capacity among them. The smaller economies—Cambodia, Lao PDR and Vietnam—are at a disadvantage and have to rely on external financing and policy "advice" in shaping their trade and investment agreements. GMS projects are developed almost entirely by ADB hired private consultants and firms. Cambodia's accession to the WTO was led by the World Bank through the Integrated Framework for Trade Related Technical Assistance to LDCs (IF), and negotiated among a small elite group of decision makers. Most senior level staff in line ministries in Cambodia as well as National Assembly Members are still unfamiliar with the WTO, let alone conversant about the terms of the accession agreement. In the Lao PDR, the situation is not much different, and senior officials in key sectors are overwhelmed by the demands of the WTO accession process. Vietnam has the institutional capacity to negotiate but not the required infrastructure and has wisely slowed down its WTO accession process. However, all three countries rely on loans from the World Bank, IMF and ADB for financing their social and physical infrastructures, which come with rigid policy conditionalities that are antagonistic to building strong and self-reliant domestic economies.

At a workshop on LDCs and trade in Phnom Penh in September, 2005, a farmer asked how Cambodia was able to export rice when the farmers in the country are themselves hungry. His question — which was not answered — points to a serious and fundamental concern that is being sidelined in the rush towards cementing trade deals: who are the ultimate beneficiaries of free trade and investment agreements in the Mekong region?

The Kunming Declaration commits to strengthening the GMS Business Forum and to involving industry and businesses in the planning and implementation of GMS programmes to render these "relevant and responsive to their needs."[11] But there is no parallel commitment from GMS leaders towards strengthening people's participation in making decisions about their environments, labour and resources. During the second ACMECS Summit in Bangkok on November 3, Bounnhang Vorachit, the Prime Minister of the Lao PDR, proposed that contract farming be promoted as a primary form of agricultural cooperation among the ACMECS members.[12] But contract farming and tree plantations are already on the rise in the Lao PDR, Cambodia and Vietnam and while agribusinesses and middlemen are reaping their profits from these ventures, local farming communities are left with increased debt burdens and decreased food and livelihood sources.

Clearly, private sector led, export oriented trade and investment is the economic model that governments in the region have adopted. However, past experience indicates that this model is not likely to bring benefits to majority of the people of the region. According to Aileen Kwa, a researcher with Focus on the Global South, "An example of how the export model does *not* work is Thailand." Real farm income in Thailand has not increased since 1977, whilst spending on agricultural inputs has increased over the same period. Small farmers are getting increasingly indebted and many farming families have lost their land due to heavy debts that they are unable to service simply because their incomes have fallen so low. Out of 5.7 million farming families, 4.7 million do not have enough land to sustain themselves. Forty percent of rural Thailand lives below the poverty line and the Food and Agriculture Organisation (FAO) has found that undernourishment in rural communities is on the rise. Cambodia has already had a taste of the risks of free trade when the end of the quotas regime led to the closure of numerous garment factories, thus putting thousands of workers out of jobs.

For Cambodia, the Lao PDR and Vietnam, the ostensible promise of duty-free and quota free access to the markets of rich countries through current WTO negotiations is being touted by donors and policy makers as opportunities for these countries to "trade themselves out of poverty." However, a deepening agrarian crisis and distress migration from rural to urban areas indicate that exporting primary commodities and natural resources, and selling top-soil to agribusiness companies will further entrench rather than alleviate poverty. Garment factories in these countries are filled with young, mostly female workers, many of who work long hours so that their families can hold on to the small family plots which are usually their main source of livelihood. And while a factory worker may make more money than a peasant farmer, work conditions and compensations are not necessarily adequate. Over the past three months, workers in foreign owned footwear factories in southern Vietnam have been striking in protest against low pay, forced overtime and bad working conditions. Factory owners complain that in order to compete in international markets, they have to keep production costs low. In a letter to Vietnam's Prime Minister, Alain Cany, Chairman of the European Chamber of Commerce in Vietnam, asked the Government to exert more control over the strikers and expressed regret that companies had not been consulted over an increase in minimum wage. According to Cany, one of Vietnam's attractions for foreign investors has been that the "work force is not prone to industrial action."[13]

Perhaps the most critical question regarding free trade and investment in the Mekong region is how it will affect local economies, employment, livelihoods, the environment, food security and access to essential services for the region's peoples, majority of who are engaged in subsistence production and rely heavily on their immediate environment for survival. None of the official trade and investment agreements have been developed through the participation of local and national communities, nor are they subject to national democratic oversight. But these issues seem unimportant to the region's governments as they forge their way into yet more trade and investment agreements.

1 http://www.hindu.com/thehindu/holnus/006200511061010.htm

2 http://www.adb.org/Media/Articles/2005/7879_Greater_Mekong_Subregion_declaration/default.asp?RegistrationID=guest

3 Ibid.

4 For more information on the GMS, see the ADB website: *www.adb.org*

5 Hu Xuan /China Daily, July 7, 2005, page 4.

6 Ibid.

7 The Mekong River is known as the Lancang in China.

8 Xiao Yu-hui, Kunming Daily. 7 March 2006. http://news.yninfo.com/yunnan/jingji/2006/3/1141712581_18/

9 AFP, 14 September, 2005; see also the Thai Foreign Ministry website: http://www.mfa.go.th/web/35.php?id=14021

10 *China, Japan tug-of-war over Indochina***.** Hisane Masaki, October 5, 2005. http://www.atimes.com/atimes/Japan/GJ05Dh03.html

11 http://www.adb.org/Media/Articles/2005/7879_Greater_Mekong_Subregion_declaration/default.asp?RegistrationID=guest

12 *River Countries Strengthen Cooperation.* Vientiane Times, November 4, 2005. Issue 215.

13 *Strikers in Vietnam get little help from Europe.* Thomas Fuller, International Herald Tribune, March 1, 2006.

Shalmali Guttal is a senior associate at Focus on the Global South, based in Bangkok.

RESPONSE TO FEATURE

Comment to "An investor's paradise: trade in the Mekong Region"

by Peter Riggs

Ms. Guttal has done an excellent job laying out how the various ways in which goods, services, and people move in the Mekong Region impact on the environment, social settings, and geopolitics. I appreciate her important analysis of the role of organizations like the Asian Development Bank, and the negotiating settings where many of the rules governing trade and investment are actually set. This response will focus on the geopolitical importance of regional negotiations and on the content and context for a particular bilateral negotiation: that between the United States and Thailand.

The strategy of negotiating simultaneously within the WTO as well as in regional and bilateral contexts has a name: "competitive liberalization." It's more than a name, actually; it's practically a doctrine, one first articulated by the Office of the United States Trade Representative (USTR) but subsequently picked up by other great-power nations.

In the early 1990s, when it appeared that the 100+ nations engaged in the protracted negotiations of the WTO Uruguay Round would never reach a conclusion, the United States struck out on another path, one which was designed to apply competitive pressure to the WTO. The United States concluded a free trade agreement with its neighbor countries to the north and south. This North American Free Trade Agreement (NAFTA) established a larger (and geographically contiguous) economic bloc.

Provisions of NAFTA go beyond the provisions eventually encoded into the WTO Uruguay Round agreement in several areas—most noticeably in investment, and in agricultural market access. Thus the notion of "competitive liberalization."

But the successful conclusion of NAFTA may have had unintended consequences. In the short term, the lesson that USTR hoped to project—that negotiators at the WTO had to buckle down and get the job done—translated into the successful conclusion of the Uruguay Round of negotiations. Its longer-run impact however was to send a message about economic spheres of influence. The deeper North American economic integration suggested by NAFTA gave greater impetus to the European Union's eastward expansion, and to the formation of the MERCOSUR bloc of South American countries in 1991.

In East Asia, the impact was to put some pressure on ASEAN, as well as on the APEC process—neither of which proved to be up to the task of advancing a concrete agenda for economic integration. Into this partial great-power vacuum came China. Ms. Guttal notes as how China's growing influence is directly competing with Thailand, the traditional economic hub of Southeast Asia. To those who observed the process, it was remarkable to note how much diplomatic talent and capital China shifted to its Asian near-neighbors in the late 1990s and first part of this decade.

If the European Union was going to carve out a sphere of influence from the Atlantic to the Urals, and the United States was going to continue projecting economic power southward in its own hemisphere, than it would be natural for China to attempt to form a "third" hemisphere-wide bloc—negotiating with and making some accommodations to the power and influence of Thailand and India, to be sure, but nonetheless, moving resolutely toward a hemisphere-wide economic bloc dominated by and directed from Beijing. China's "southern strategy," as Ms. Guttal correctly notes, was essentially codified at the second GMS Summit, held in Kunming.

The "competitive liberalization" doctrine hastened the creation of hemispheric blocs, and it will be instructive in years to come to compare the social models thereby created. Asia's greater multipolarity—with Japan, China, and India, plus the ASEAN region as a dynamic entity in itself—suggest a new integration model. With some of its less-developed neighbors, China may try to cast a broader net of prosperity more closely resembling the integrationist approach of the EU, as it sought to bring the Baltic states and southeast Europe more firmly into its orbit. While this is unlikely to extend to formal transfer of resources to less-developed states, as in the EU model, China nonetheless presents compelling ideas about development for its near neighbors. But there is fear as well. China views its near-neighbor trading partners as sources of raw materials, as new markets for agricultural exports which have uncertain impacts on poverty. China may also mirror the United States in its sphere of influence by seeking to create a set of investment rules that provide easy penetration (as well as exit) for capital.

With this in mind, more immediate concern is the continued march of the "competitive liberalization" doctrine and what this means for the linchpin state of the Mekong region, Thailand. The United States and Thailand are now negotiating a bilateral trade agreement that in its particulars may go well beyond the commitments that Thailand has made at the WTO.

Two areas of these negotiations bear particular scrutiny. One is investment. The other is in intellectual property protections, including the so-called "TRIPS-Plus" agenda.

TRIPS is one of the global agreements concluded under the framework of the WTO. It has modest provisions to protect the policy space of developing countries to develop or import lower-cost prescription and generic drugs. But even that policy space is being continuously attacked by United States pharmaceutical companies. (These companies, banded together as PhRMA, the Pharmaceutical Research and Manufacturers of America, spent $6.2 million lobbying the U.S. federal government last year. Attention to trade agreements is an increasingly important part of that lobbying effort.) The "TRIPS-Plus" agenda seeks to further shrink the domestic policy space of developing countries with respect to the provision of medicines for their populations. It is also a quintessential example of the "competitive liberalization" strategy: push through bilaterals what can't be achieved at the WTO.

Space precludes a detailed discussion of the various provisions that comprise the "TRIPS Plus" agenda. Suffice it to say, however, that the United States simply will not conclude an agreement with Thailand unless provisions of the agreement go well beyond the commitments which Thailand has already made in the multilateral, WTO context—provisions which in and of themselves were sufficiently controversial amongst Thai health advocates.

With respect to investment, it's worth noting that the "project" of establishing a multilateral agreement on investment foundered at the WTO in the late 1990s. Negotiations and expansive chapters on investments in bilateral and regional agreements have therefore become a significant as part of the "competitive liberalization" approach to trade negotiations. The North American Free Trade Agreement included a specific chapter on investment which, while based on earlier bilateral investment treaty models, was nonetheless a leap forward in terms of the rights given to investors operating abroad.

Specifically, NAFTA's Chapter 11 gives foreign investors the right to *directly* bring a claim against a nation state for perceived failure to treat the investor's rights according to some ill-defined "minimum standard," as well as the ability to argue that new regulations, even those introduced for a particular social or environmental purpose, constitute an "expropriation" of that investment.

The United States is pushing very hard for the inclusion of this "Investor-State" dispute resolution mechanism—and by implication, for an extremely broad interpretation of investor rights—as part of a US-Thailand agreement. In other bilateral agreements that the United States has signed, the definition of what constitutes an investment goes well beyond the commitment of capital for construction or development projects. It has expanded to include portfolio investment and natural resource royalty contracts. It may even be extended to bond markets—a source of considerable concern to the Bank of Thailand, among others.

Is there any precedent for the United States *not* including an investor-state chapter in a bilateral free trade agreement? Actually, yes—the US-Australia agreement does not include this mechanism. The argument made in the US-Australia negotiations was that each party trusted the domestic legal arbitration standards of the other country sufficiently so that resort to international investor dispute resolution was not necessary.

The US insistence on investor-state provisions as part of the US-Thailand agreement can be interpreted as a *de facto* admission that US investors don't trust Thai courts and legal institutions, and that it seeks to get around the possibility of domestic court review of investor disputes. In the 19th century, this doctrine went by another name—"extraterritoriality"—and it was associated with the humiliation of unequal treaties—a model which doesn't obtain today, surely.

At present, the "competitive liberalization" doctrine holds sway with Mekong-region governments, since, as Ms. Guttal noted, they continue to hammer out trade and investment agreements in a variety of multilateral and bilateral settings. Thailand is leading this trend regionally. Similarly, Vietnam is lining up to join the WTO while also negotiating Permanent Normal Trading Relations status with the United States.

"Competitive liberalization" has already raised the bar for new WTO members. When Cambodia joined this multilateral organization, the Cambodian Minister of Commerce and chief WTO negotiator H.E. Cham Prasidh lamented the depth of concessions and commitments that Cambodia had to make in order to join this organization. These commitments, he said, go "far beyond what is commensurate with the level of development of an least developed country like Cambodia." Implicit in Mr. Prasidh's remarks is the perception that these new WTO commitments have constrained Cambodia's domestic policy space.

The question remains: can the Mekong states—particularly the less-developed countries— take sufficient enough advantage of the opportunities afforded by WTO rules and regional integration approaches to see substantial benefit from these models of development? How can they best negotiate their own terms of integration? In what negotiating settings might smaller countries best leverage the goals of sustainable development and democratic practice? Is there a possibility that the "competition" of these overlapping negotiating fora could be turned toward other ends—that is, toward a positive harmonization of social, cultural, and economic rights and concern for basic livelihoods? Maybe. It would take a dramatically new model of regional integration, and new approaches in Asia—drawing, perhaps, on the competition between India and China and Thailand, which has both diplomatic and economic components.

Peter Riggs is the director of the Forum on Democracy & Trade, a US-based nonprofit organisation.

NEWS FROM THE REGION

Dams Update

Hoa Bin hydropower dam dries up

During mid-2005 the Hoa Bin hydropower dam in northern Vietnam cut its electricity output due to low water levels in its reservoir. The region had been experiencing prolonged drought conditions. Hoa Bin, located some 80 kilometres south-west of Hanoi, is Vietnam's largest hydropower plant and was built with funds from the former Soviet Union. Power shortages have caused serious blackouts in Hanoi and other towns. Electricity of Vietnam, a state monopoly, has stated it intends to reduce dependence on hydropower from 36% to 24% over the next 15 years.

-- 2005 "Vietnam's largest hydro power plant may shut down due to drought", Associated Press, 25 April 2005

Huyen Nguyen 2005 "The notorious Hoa Binh Reservoir effect", email 6 May 2005

Son La dam construction starts

Construction of the massive Son La hydropower dam in the northern Muong La district of Vietnam commenced in early December. Son La will have a capacity of 2,400MW and is the biggest hydropower project in Vietnam. It is due for completion in 2015.

Relocation of displaced people has been a major concern. In 2000 the Vietnam National Assembly rejected the original plan to move some 120,000 people. Instead, the number was scaled-down. However, most of those displaced are being relocated in the Central Highlands where conflict with ethnic minority groups has occurred.

-- 2005 "Son La power project on track", Vietnam News, 22 August 2005

-- 2005 "Vietnam breaks ground on controversial hydropower dam", Deutsche Presse-Agentur, 2 December 2005

Yali Falls water release floods downstream communities

Ethnic minority peoples living along the Se San River in Ratanikiri Province, Laos, downstream of the controversial Yali Falls hydropower dam, experienced heavy flooding in August. The flooding, which killed one person, severely injured three and inundated fields, was due to water release from the dam. Although Vietnam did give prior notice to authorities in Cambodia, there was insufficient time to warn many local communities living along the river. Efforts to persuade Vietnam to modify the dam's operating regime and requests for compensation for affected villagers, have failed so far. Moreover, further dam construction in the Se San basin is planned.

-- 2005 "A Heavy Water Release from Vietnam's Yali Falls Dam Floods Communities in Northeastern Cambodia", Press Release, Sesan Protection Network, 1 September 2005

Salween dam

A memorandum of understanding (MOU) has been signed between the Thai state-run electricity company (EGAT) and the Burmese military junta (SPDC) to build a 1,200MW hydropower dam - Hat Gyi dam - on the Salween River separating Thailand and Burma. China is also interested in participating in the construction. The dam will take five or six years to build and is the first of a series of five dams planned for the Salween River. Thailand is a big user of electricity and with these dams will be able to buy cheap electricity from Burma. However serious environmental and human rights concerns have been raised about the proposed dam which lies in the Karen state. EarthRights International fears that the dam would bring about forced relocation of local communities, forced labor and greater militarization of the region.

-- 2005 "Thailand and Burma to sign hydroelectric dam pact", Bangkok Post, 7 December 2005

Marwaan Macan-Markar 2005 "Thailand goes against the flow in Myanmar", Inter Press Service Bangkok

UPCOMING EVENTS

The Eleventh Biennial Global Conference of the International Association for the Study of Common Property (IASCP): "Survival of the Commons - Mounting Challenges & New Realities"

19-23 June, 2006, Bali, Indonesia

Contact: IASCP2006 Conference Committee
Email: Iascp06@indiana.edu
Website: http://www.iascp.org

Conference: Angkor - Landscape, City and Temple

18-23 July, 2006, University of Sydney, Australia

Website: http://conferences.arts.usyd.edu.au/index.php?cf=9

International Conference. The Greening of Agro-Industries and Networks in Asia: Challenges and Opportunities

27-28 October, 2006, Bangkok, Thailand

Contact: Dr. Somporn Kamolsiripichaiporn, National Research Center for Environmental and Hazardous Waste Management (NRC-EHWM), Chulalongkorn University, Pathumwan, Bangkok 10330, Thailand
Tel: 2218 3952
Fax: 2219 2251
Email: somporn.k@chula.ac.th
http://www.nrc-ehwm.chula.ac.th/AGITSconference/

Vietnam Update 2006. Dilemmas in Difference: New Approaches to Ethnic Minorities in Vietnam

23-24 November, 2006, Australian National University, Canberra

Contact: Li Tana, Division of Pacific and Asian History, RSPAS, Australian National University
Email: tana.li@anu.edu.au

DevNet: The Aotearoa New Zealand International Development Studies Network Conference 2006. Southern Perspectives on Development: Dialogue or Division?

30 November - 2 December, 2006, Dunedin, New Zealand

Contact: Dr Andrew McGregor, Department of Geography / Te Ihowhenua, University of Otago / Te Whare Wananga o Otago, PO Box 56, Dunedin, New Zealand / AOTEAROA
Email: devnet2006@geography.otago.ac.nz
http://www.devnet.org.nz/

The events listed above are changed with each issue of Mekong Update & Dialogue. For a complete list of upcoming events please go to our website at www.mekong.es.usyd.edu.au. For submission of new events please contact the AMRC Administrator at mekong@mail.usyd.edu.au

Free Trade

Route 9. The East West Corridor in Laos, a flagship GMS project promoting regional trade integration. (Source: Jonathan Cornford)

Vietnamese goods for sale in a market stall in the Lao town of Sepon, which lies on the East West Corridor. Lao goods in the market are almost entirely restricted to local fresh produce. (Source: Jonathan Cornford)

Chinese goods for sale in a market stall in the Lao town of Sepon. (Source: Jonathan Cornford)

Thai goods for sale in a market stall in the Lao town of Sepon. (Source: Jonathan Cornford)

Australian Mekong Resource Centre
C/-Division of Geography
School of Geosciences
University of Sydney NSW 2006
Australia