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**Southern Agenda on Trade and
Environment Phase II Regional
Consultation - South / Southeast Asia**

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Background Paper**

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Table of Contents

Acronyms.....	i
Abstract.....	1
1 Introduction	2
2 Southern Unity: Post-Cancun Background	3
3 Trade-Environment Linkages under the WTO	3
4 Negotiating Principles for the South	4
4.1 Persisting with Sustainable Development	4
4.2 Dealing with Multinational Corporations and Market Realities	5
4.3 Searching for a Common Denominator: Special and Differential Treatment	6
4.4 Regional Approaches.....	7
5. The WTO Agreements and their North-South Context.....	8
5.1 Agreement on Agriculture (AoA)	8
5.2 Agreements on TBT and SPS	9
5.3 General Agreement on Trade in Services (GATS)	9
5.4 Trade Related Intellectual Property Rights (TRIPS)	10
6. South and South-East Asian Concerns.....	10
7. Agreement on Agriculture (AoA).....	12
7.1 Precepts and Practice	12
7.2 South and South-East Asian Perspectives	13
7.3 The Way Forward	13
8. The Trade-Environment Axis	14
8.1 Trade's Impact on the Environment.....	15
8.2 Multilateral Environmental Agreements (MEAs)	16
8.3 Effects of Regulations and Voluntary Standards on Trade	16
8.4 Market Access	19
8.5 Conclusions and Recommendations	20

Table of Contents

9.	General Agreement on Trade in Services (GATS).....	20
9.1	North-South Positions	20
9.2	Environmental Services	21
9.3	The South/South East Asian Context	21
9.4	Conclusions and Recommendations	23
10.	Intellectual Property Rights.....	24
10.1	Background on development concerns	24
10.2	Impacts on the Environment	25
10.3	Transfer of Technology	26
10.4	Agriculture.....	26
10.5	Medicines	27
10.6	WIPO.....	27
10.7	Geographical Indications.....	27
10.8	South/South East (S/SE) Asian Concerns.....	28
10.9	Conclusions and Recommendations	29
11.	Conclusion	30
12.	References.....	30
	Annex 1	31
	Annex 2:.....	32
	Annex 3:.....	33

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Acronyms

ACP	African, Caribbean and Pacific Countries
AoA	Agreement on Agriculture
DSU	Dispute Settlement Understanding
EU	European Union
FDI	Foreign Direct Investment
G-20	Group of 20
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICTSD	International Centre for Trade and Sustainable Development
IISD	International Institute for Sustainable Development
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ISO	International Organization for Standardization
LDCs	Least Developed Countries
MFN	Most Favoured Nation
MNC	Multi National Corporation
NAMA	Non Agricultural Market Access
OECD	Organization for Economic Cooperation and Development
PPM	Process and Production Methods
RING	Regional and International Networking Group on Sustainable Development
R&D	Research and Development
S/SE	South/South East Asia
SAP	Structural Adjustment Program
SDT	Special and Differential Treatment
SME	Small and Medium Enterprises
SP	Special Product
SPS	Sanitary and Phytosanitary Standards
SSP	Special Safeguard Provisions
TBT	Technical Barriers to Trade
TRIPs	Trade Related aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UR	Uruguay Round
WIPO	World Intellectual Property Rights Organization
WTO	World Trade Organization

Southern Agenda on Trade and Environment Phase II Regional Consultation - South / Southeast Asia Background Paper

Shaheen Rafi Khan, Shahrukh Rafi Khan, Faisal Haq Shaheen, Abid Suleri, Sajid Kazmi, Fahd Ali, Syed Qasim Ali Shah and Moeed Yusuf

Abstract

The momentum of WTO negotiations stalled post the Cancun ministerial. Bolstered by China's joining their ranks, the increasing assertiveness of the South ground the Northern juggernaut to a halt. As a consequence of the deadlock, the US continued to push its alternative track trade policy, that is to engage in bilateral and regional trade agreements. However, while current US and EU trade policies may be cause for concern, an element of posturing is built into its recent moves. The message quite clearly is that the Doha Round needs to be put back on track and that multilateralism in trade negotiations suits both the North and the South.

Doha fundamentally changed the rules of the game on trade and environment. The issue is no longer whether trade and environment are linked. This is now a given. The challenge is how best to address environmental problems within a rules-based multilateral trading system. The challenge for the South in this changed scenario is to craft a Southern agenda which can counterbalance – as well as benefit from – asymmetries related to affluence, bargaining power, science, technology and institutional capacity. Among others the paper identifies two negotiating premises for the South:

- *Persisting with sustainable development*
- *Re-assessing special and differential treatment*
- *Recognizing market realities*
- *Developing regional links*

Clearly, the South needs to persist with its stance that the environment can not be divorced from its broader context of sustainable development. In the exclusive focus on inter-generational justice, the environmental movement has left out intra-generational justice that sustainable development reintroduced. To attain sustainable development, or more specifically to eradicate poverty, a goal endorsed by the preamble to the WTO treaty, poor countries need resources. Trade must serve this end via the agency of measures within the WTO, such as SDT and market access, and also by ensuring that trade is not immiserizing.

The South also needs to understand in assuming its negotiating positions that the North more often than not negotiates on behalf of multinational corporations (MNCs). Understanding that they are negotiating with “the profit motive” should inject a dose of realism into the positions adopted. Also, the South has little room for maneuver when it comes to dealing with the private sector. Increasingly, businesses in the North are being required by their boards/shareholders to do businesses with firms that meet certain ‘voluntary’ environmental and quality standards. The only option Southern exporters have is to conform or lose markets.

The paper will relate these negotiating premises in four areas of concern to South/South East Asia within the WTO negotiating framework. These are:

- *The Agreement on Agriculture (AoA)*
- *Trade and Environment (T&E)*
- *General Agreement on Trade in Services (GATS)*
- *Trade in Intellectual Property Rights (TRIPS)*

1 Introduction

This paper addresses trade environment links within a broader context of sustainable development. Specifically, the paper emphasizes that linking trade with the environment reflects a primarily Northern agenda. For the trade-environment relationship to have resonance in the South, it is important that the environment be linked with poverty and economic efficiency.

Three central questions have guided the paper, namely:

- *What are the most important concerns and most pressing priorities for the South in general, and the region (South/South East Asia) in particular, in terms of the current trade and environment agenda in the WTO, especially with regard to the Doha Mandate?*
- *What innovative options can be envisaged that would meet the South's and the region's trade and sustainable development concerns in the immediate and ongoing trade and environment negotiations?*
- *What would be the form and contents of a trade and sustainable development agenda that the South can own and advance as its own in the long run?*

Four perceptions dominate the discussions concerning trade-environment linkages in South/South East Asia. First, the trade-environment linkages formally recognized at Doha are the reality that Southern countries have to live and work with. Second, the environment tends to be viewed exclusively as an element within the Northern agenda. For the South, the environment cannot be divorced from its broader sustainable development context, which subsumes both intra-generational, as well as inter-generational justice. Third, the Global South is amorphous. Negotiating priorities and approaches should, therefore, reflect regional perspectives, interests and differences. Fourth, the South should accept and deal with the reality of multinational corporations and, in general, the reality of the 'free' market. Elements of each are present in the key areas of concern to South/South East Asia and which fall within the WTO ambit, such as TRIPS, GATS, the Agreement on Agriculture (AoA) and international environmental standards.

The first half of the paper (sections 2-4) looks at key priorities in the North-South trade-environment relationship. In section 2, it stresses the need for identifying converging interests across both North and South, which can reduce the threats to multilateralism. In section 3, the paper addresses the reality of formal trade-environment links under the Doha mandate, as well as the flexibility that this mandate provides in view of Northern and Southern power asymmetries. Section 4 outlines key negotiating principles for the South. Section 5 gives a brief overview of the WTO Agreements and their North-South context.

The second half of the paper (Section 6) examines the prioritized areas of trade-environment concern in greater depth and from a regional (South/South East Asian) perspective.

2 Southern Unity: Post-Cancun Background

The September 2003 WTO Cancun Ministerial Conference marked a watershed in the relative power of developing countries at the WTO. Bolstered by China's joining their ranks, the increasing assertiveness of the South ground the Northern juggernaut to a halt. The 1999 Seattle Ministerial had already demonstrated that the South had woken up after the Uruguay Round (UR), during which most Southern governments were caught dozing, and realized that trade rules, as established in the Uruguay Round, and the Northern agenda setting post-UR were not consistent with their sustainable development agendas.

As a consequence of the deadlock at Cancun, the US continued to push its alternative track trade policy to engage more fully in bilateral and regional trade agreements. The EU's negotiations with regional groups like the Mercosur suggest that it too might decide to aggressively pursue an alternative track. However, this does not necessarily augur well for developing countries, as in bilateral and even regional agreements, Southern countries or groupings are more likely to be overwhelmed by more developed trading partners. Thus, the survival of multilateralism is clearly in the Southern interest.

While current EU and US trade policies may be cause for some concern, there is an element of posturing built into their recent moves. The WTO continues to be of great importance to both the EU and the US, since much of what was agreed to in the UR that is in their interest, such as the implementation of Trade Related Intellectual Property Rights (TRIPS), needs the agency of the WTO and its dispute settlement body. Thus, the US met resistance in the negotiations for the FTAA (Free Trade Area of the Americas) as it did at Cancun, due in large part to the strong representation of many Group of 20 (G-20) agriculture-exporting developing countries. This was followed by a flurry of US activity in early 2004, including sending letters to all the WTO country capitals and the US Trade Representative making a tour of many Southern nations perceived to be influential in trade negotiations. The message quite clearly was that the Doha Round needed to be put back on track. The EU has made similar statements. This supports our thesis that multilateralism in trade negotiations suits both the North and the South. In our view there are likely to be setbacks to multilateralism but that, given this convergence of interests, it will eventually prevail.

Ultimately, the possibility of an alternative track for the economic giants does also demonstrate that there are limits to Southern intransigence in trying to mould trade rules to suit their sustainable development agendas. While multilateralism remains on track, both the North and the South have to take additional steps to ensure it does not get derailed. And an encouraging message is that while both poles will continue to defend their respective economic, social and environmental interests, there exist common grounds where, potentially, these interests converge – an overused but appropriate term is win-win. The challenge is to identify them and craft the right approaches for mutual gain.

3 Trade-Environment Linkages under the WTO

The WTO and its predecessor organization, GATT, has contributed to the global trade system through the provision of a framework of rules within which member countries conduct trade and other commercial relations among themselves. This has contributed to a measure of stability and predictability as contrasted to an alternative

scenario in which arrangements are dominated by unilateral policies and bilateral arrangements. (Khor, 2002)

It was in this spirit that Doha (2001) formally recognized the trade-environment linkage and brought it within the ambit of a rules-based framework. Doha fundamentally changed the rules of the game on trade and environment. The issue is no longer whether trade and environment are linked. This is now a given. The challenge is how best to address environmental problems within a rules-based multilateral trading system – a system which ensures that environmental regulations and restrictions stop short of becoming non-tariff barriers which limit market access. The formal articulation of these links has subsumed arguments by the environmental and trade community questioning the rationale for such links. Similarly, the South can no longer revert to the stance that trade-related environmental measures are protectionist, anti-development, or that existing GATT/WTO regulations already address environmental concerns. Consumer pressure, expressed through the market, provides an additional lever for the Northern position. Indeed, as in the case of voluntary environmental standards, the WTO governs compliance with such standards under voluntary codes of conduct.

The challenge for the South in this changed scenario is to craft a Southern agenda which can counterbalance – as well as benefit from – asymmetries related to affluence, bargaining power, science, technology and institutional capacity. Fortunately, there exists considerable leeway for negotiation:

The Doha mandate on trade and environment was left purposely vague because the issue is new to multilateral trade negotiations and its many implications and manifestations have not yet been fully explored. For this reason the mandate provides an opportunity for all parties to shape the agenda on future trade and environment issues. (ICTSD-IISD-RING; 2002)

4 Negotiating Principles for the South

4.1 Persisting with Sustainable Development

Clearly, the South needs to persist with its stance that the environment cannot be divorced from its broader context of sustainable development. The reasons for this are three-fold. First, the South is concerned justifiably – and it is supported in this by Northern NGOs – that linking trade and environment in a rules-based regime, while ignoring broader equity and poverty concerns in the South, would weaken the scope for negotiations. Thus, it makes little sense to talk of reducing or preempting non-tariff barriers when tariffs (for instance, on agricultural products) continue to remain high and development assistance continues to decline.

Second, poverty and the environment are linked inextricably. These links are evident across the areas falling within the WTO negotiating agenda. For instance, compliance with environmental standards has implications for distribution. Specifically, small and medium enterprises (SMEs) have limited coping capacity and risk becoming marginalized as environmental standards multiply. However, within this broad category, there are dynamic sectors and evidence points to their remarkable capacity to respond to limited institutional and technical support.¹ Similarly, biodiversity concerns, whether under TRIPS or related to market access -- as in the shrimp turtle case -- cannot be separated

1 See Nadvi and Kazmi, 2001

from their livelihood implications. Nor can agricultural subsidies targeted at environmentally friendly practices.²

Third, and illustrating the win-win premise, environmental compliance can lead to both environmental and economic benefits for the South. This has particular relevance for market access issues, where compliance is driven by Northern environmental concerns as articulated in environmental standards, whether of a regulatory or voluntary (market driven) nature. Economic benefits ensue from in-plant measures such as modernization, input and waste recycling, energy efficiency. However, while large firms have in-built advantages (financial and information based), which position them favorably towards realizing such benefits, SMEs, need special incentives (subsidies, technical support) to share in the gains.

The point is that the North needs to address trade-environmental linkages within the holistic framework of sustainable development to ensure more equitable treatment for the South. In particular, poverty-environment linkages in the South create asymmetries both in terms of impacts, as well as realization of economic benefits. There is a strong case for capacity building of poor and disempowered groups, who stand to lose within the framework of the formal environmental negotiations. They need to be adequately represented by the South in the negotiations (a challenge given the prevailing socio-political dynamics) and supported by the North through financial and technical assistance.

To sum up, one can pose the following question to understand the distinction between the interfaces of trade and the environment and trade and sustainable development. What is it that sustainable development incorporates that the environment does not? The answer lies in exploring what the environmental movement has contributed to an improvement in the conception of social justice i.e. the focus on inter-generational justice. However, in the exclusive focus on inter-generational justice, it left out intra-generational justice that sustainable development reintroduced. To attain sustainable development, or more specifically to eradicate poverty, a goal endorsed by the preamble to the WTO treaty, poor countries need resources. Trade must serve this end via the agency of measures within the WTO, such as SDT and market access, and also by ensuring that trade is not immiserizing.

4.2 *Dealing with Multinational Corporations and Market Realities*

The South also needs to understand in assuming its negotiating positions that the North more often than not negotiates on behalf of multinational corporations (MNCs). This is true in some of the WTO issues we will consider for demonstration of the approach used in this paper in section 6 (AoA, T&E, TRIPS and health, and GATS). Understanding that they are negotiating with “the profit motive” should inject a dose of realism into the positions adopted. Contrary to the uncritically accepted position, foreign direct investment (FDI) via the agency of MNCs, is not necessarily advantageous to Southern countries. Several studies have documented that resource outflow from the South often exceeds the resource inflow and other potential benefits from the FDI. Each investment has to be examined on a case-by-case basis and instead of competing and passing on all the advantage to the MNC, the South could use WTO negotiating platforms to press for maximum advantage.

2 Conversely, if the South cannot afford these subsidies, it could consider taxing large farmers for excessive chemical input use and, thereby, favor small farmers who can not afford/do not have access to these inputs.

In each agreement that the South is negotiating, it has important bargaining chips. Thus, just as it is important to know the underlying reality of who one is negotiating with, it is equally important to know the strengths and weaknesses of the negotiating hand the South is working with. In other words, it is important to carefully work out the costs and benefits of the negotiated positions. Sometimes these may be quite different for what intuitively appears to be the situation. Having said that, in many cases, the South may simply be in a situation of damage control because they already signed the dotted line in the UR agreement and in subsequent understandings. Thus, they are in a situation of trying to make the best of a bad situation with the leverage they still have in hand.

The South has little room for maneuver when it comes to dealing with the private sector. As Khan (2002) notes:

The South must distinguish between restrictions imposed by Northern governments and those imposed by Northern businesses. If Northern governments impose import restrictions because Southern countries are not doing enough about child labor or cleaning up production technologies, this constitutes a non-tariff barrier. However, this is not the big danger that faces Southern exporters. Increasingly, businesses in the North are being required by their boards/shareholders to do businesses with firms that meet certain ‘voluntary’ environmental and quality standards. This is a very important distinction. The only option Southern exporters have is to conform or lose markets.

The case for adopting a proactive stand on environmental compliance is effectively summarized in Box 1 below by Najam (2002) as follows:

Box 1

Why the South should worry about trade and environment?	What the South should do?
<ul style="list-style-type: none"> • Environment might be used to ‘trump’ WTO rules • Environment standards can be used as trade barriers and as a guise for protectionist policies • Environmental concerns can distract from the South’s more pressing and legitimate development priorities • Developing countries will lose the chance to influence the emerging shape of the trade and environment debate 	<ul style="list-style-type: none"> • LDCs can still remain vigilant on their concerns while pursuing a proactive agenda • Irrespective of WTO rules, Southern export producers will have to respond to environmental concerns because of consumer demands • What is good for the South’s environment has to be good for the South.

4.3 Searching for a Common Denominator: Special and Differential Treatment

The South never was and certainly is not now one homogeneous grouping with identical interests. Differences in levels of economic development, location, and resource endowments among other factors generate different interests. Thus, with regard to the Agreement on Agriculture (AoA), Southern countries are part of four often overlapping groupings with differing agendas including the G-20 (Group of 20), SP (Special Product Group), the Cairns Group, and the LDC (least developed country) Group. This adds to the existing complexity of attaining a common position to pursue “a Southern agenda” for sustainable development. Further, Southern unity when achieved is often fragile. While an effective coalition, called the Group of 20 plus, managed to aggressively and

effectively push a Southern agenda on agriculture at Cancun, the US persuaded Columbia, Costa Rica, and Peru to leave the G-20 reducing it to 17 members.

Donors and independent groups in the North are encouraging Southern countries to understand and articulate their agendas in the context of multilateral negotiations. This contribution to awareness - raising is certainly needed and welcome, but it will also challenge Southern unity as individual countries speak from a more informed position. Yet Southern unity is critical for the South as a block to be able to shape trade rules to further their sustainable development agendas. Given the heterogeneity in the South earlier mentioned, this requires an agreement among Southern countries on broad negotiating principles and mechanisms for reaching agreement among themselves.

For instance, the South has and continues to demand Special and Differential Treatment (SDT) in its negotiations on grounds that it has much lower income and more distance to travel in initiating sustainable development. This principle can indeed be applied to its approach to negotiations. However, just as the South is heterogeneous in resource endowments and level of development, individual Southern countries are perhaps even more heterogeneous internally. It would seem that if the South because of its lower income status invokes SDT, this really should be on behalf of the lowest income quintile in the South. If this principle were accepted, it would become much easier for the South to come together as a negotiating block to achieve poverty alleviation and sustainable development. For example, the position that the South assumes on the interface of trade and the environment needs to be driven by how environment depredations resulting from trade rules affect the well-being of the lowest income groups. Assuming such a negotiating principle would enable them to capture a high moral ground and a position of negotiating strength given the lip service universally accorded to poverty alleviation.

4.4 *Regional Approaches*³

The perception after Cancun was that energies and focus would shift for many states from the global regime of the WTO to trade liberalization at the regional and bilateral levels. Indeed, global governance could be seen as a diffuse and plastic system that needed to generate more diverse activities and approaches, not only at the international level, but also at the regional level and within individual states. Essentially, this can be seen as complementing the global trade liberalization agenda, in as much as links from the regional and bilateral levels can be drawn upwards to the global level and downwards to the national levels. In this context, an alternative architecture for strengthening T&E links can be envisioned. It would entail:

- *Trade and Environment Policy Review*: Policies of member states would be reviewed, especially environmental concerns that have a trade connection. This would be with a view to changing the policy of the state in order that environmental harm may be avoided and trade restrictions pre-empted. Thus T&E linkages could be made more consultative, collaborative and cooperative.
- *Bilateral and Regional Trade Agreements*: Bilateral and regional links should be oriented towards WTO consistent, or WTO plus arrangements that pass muster with GATT rules. This need not impede the progress of global trade talks – indeed they could feed into them. Currently, for instance, NAFTA, ASEAN and the Japan-Singapore partnership agreements have no explicit trade-environmental linkages built into them, even though the environmental

3 Drawn from Tay S, 2004

impacts of trade are clearly apparent. A study of such impacts would precede the formulation of environment-specific regulations and policies.

- *National level review and reconciliation:* National level studies of environmental impacts could be the building blocks for linkages at bilateral and regional levels. This could include: a) production/process level assessments, which would impart an ex-ante character to mitigation policies, rather than resorting to trade measures, which do not preclude environmental damage and; b) a national level review of environmental harms resulting from market opening and trade should logically be a matter of the state's national interest.

Building research capacity in developing countries is very important, as they are unable to shape their own positions because they lack such capacity. The South should look into building intra and inter-institutional linkages (increasing coordination between economic and trade agencies and their environmental counterparts at the national level) and building capacities where they counted, as in negotiation processes, national research and analysis and domestic dissemination and implementation.

5 The WTO Agreements and their North-South Context

This section describes briefly the WTO agreements and their north-south context in relation to the following areas:

- AoA
- Standards: TBT & SPS
- GATS
- TRIPS

5.1 Agreement on Agriculture (AoA)

Trade in Agriculture came under the WTO in 1994. Negotiations on agriculture have led to the Agreement on Agriculture (AoA) and with it three areas of commitment: market access, domestic support to producers, and export subsidies.

Overall the aim of negotiations on agriculture is to reform global agricultural trade towards market orientation. With regard to market access, non-tariff protection measures are to be replaced by tariffs, which, in turn, are to be reduced.

A clear North-South divide is visible in the AoA negotiations. The South contends that the North has monopolized agricultural trade by continuing to provide assistance to its farmers, at the same time pushing the South to open up its markets. The EU and US continue to provide direct income payments to farmers. In addition, the North is accused of shifting its subsidies from Amber box (highly distorting) to Green box (least distorting), to ensure greater trade protection. This has allowed its farmers to dump subsidized produce in developing country markets. Southern farmers (especially small and medium scale) are unable to compete with the cheaper imports and face unemployment and poverty. While the North has instituted reform measures, including decoupling subsidies from production, linking environmental and quality requirements with EU Common Agriculture Policy (CAP) benefits, redirecting subsidies to rural development schemes and putting a cap on subsidy payments to individual farmers (except on green box); the South tends to be skeptical about them to the extent of viewing them as cosmetic measures.

5.2 Agreements on TBT and SPS

The WTO Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Standards (SPS) were concluded during the Uruguay Round's multilateral trade negotiations in order to address the debate over using standards in international trade.

The Agreement on TBT seeks to ensure that countries do not use technical regulations and standards, such as packaging and labeling requirements and procedures to certify compliance with standards, as tools for trade protection. It provides a balance between the WTO's goal of trade facilitation and member countries' desire for autonomy in technical regulations. The Agreement seeks to achieve this objective by promoting: i) *Harmonization* - it supports the use of international standards. In addition, it asks countries to accept equivalence of standards of trading partners through official agreements, and ii) *Transparency* - the Agreement requires countries to notify other WTO Members of any new national TBT regulations and provide information about them. Enquiry points are to be set up in each Member country for this purpose.

The SPS agreement deals with the protection of public health. It seeks to ensure food safety and plant and animal health standards, while minimizing the use of these standards as tools for trade protection. It requires countries to take scientifically based measures to set regulations, again encouraging the use of international standards. Higher standards can be employed under the agreement but only if the need to protect animal and plant health or ensure food safety is based on scientific evidence. Whenever information is not available, countries can use stringent standards but only till further scientific information is available (precautionary principle).

Criticism on these agreements ranges from states decrying the erosion of sovereign domestic regulation to those who contend that the agreements do not go far enough in preventing protectionist barriers. On Genetically Modified Organisms (GMOs) and their impact on food security and the environment, the European Union sees eye to eye with many countries in the South. It has imposed a moratorium on approvals of new GMOs and requires mandatory labeling. On the whole, the South remains skeptical about standards. They see them as trade restrictive devices at worst; at best the North continues to be the "standard setter" while the South is forced to act as the "standard taker." Post-Doha, the WTO has initiated steps to enhance the South's standard setting and implementing capacity, grant special and differential treatment to the South, and establish technical equivalence to give the South more leeway in having their standards accepted. However, the South feels measures are more honored in intent than in application.

5.3 General Agreement on Trade in Services (GATS)

The GATS provided the first set of multilateral rules governing international trade in services. It came into effect in 1995. The underlying goal of GATS is to promote trade in services through progressive liberalization.⁴

GATS recognizes four modes of supply of services: i) *Cross Border Supply* - services flowing from one member's territory to another's (e.g. international telephone calls), ii) *Consumption Abroad* - a service the consumer obtains by physically moving to another country (e.g. tourism), iii) *Commercial Presence* - a service supplier establishes physical supplying presence in another member's territory (e.g. in-service

4 While the General Agreement on Trade and Tariffs (GATT) refers to trade loosely as any good or product that can be bought or sold, the GATS refers to services loosely as 'anything that has value but cannot be dropped on your foot'.

provision like telecommunications, utilities, banking), and iv) *Presence of Natural Persons* - a supplier from one country moves to another to supply the service (doctor, engineer etc.) In all, GATS' purview extends to 12 service sectors: business, communications, construction and engineering, distribution, education, environment, finance, health, tourism and travel, recreation, culture and sports, transport, and "other".

Obligations of member countries under GATS are broadly categorized in two groups: i) *General Obligations*: these apply to all members and service sectors and focus on Most Favored Nation (MFN) status and Transparency and; ii) *Specific Commitments*: these include issues of Market Access and National Treatment (i.e. not giving preferential treatment to domestic services) and are specific to countries.

By and large, the South remains skeptical about a GATS expansion agenda driven by Northern governments and corporations. Its view is that commitments to strengthen the South's domestic service capacity, improved access to distribution channels and information networks, and enhanced market access in areas of export interest to the South have not been fulfilled. On the contrary, the North continues to push for greater access in the South without reciprocation: developing countries have seen little response from developed countries to open up to supply of temporary services professionals (GATS Mode 4), one of the South's key areas of demand.

5.4 Trade Related Intellectual Property Rights (TRIPS)

In the WTO context, "Intellectual Property Rights" refer to inventions, innovative designs, or other creations. Before the TRIPS agreement, a need was felt to protect products/services of these inventors by giving them rights to negotiate payment in return for their use. The TRIPS agreement formalizes these rights by bringing them under international laws so they can be applied uniformly. The underlying aim of providing these rights is to encourage technical innovation and technology transfer. TRIPS covers copyrights, trademarks, geographical indications (i.e. the origin of a product/service), industrial designs, patents, integrated circuits layout designs, and trade secrets.

With regard to TRIPS, negotiations in the WTO focus on three main areas: i) TRIPS and public health, ii) TRIPS and geographical indications, and iii) TRIPS and biodiversity and traditional knowledge. North-South positions in relation to these three areas vary. Maximum convergence is seen on the issue of TRIPS and public health. On the question of TRIPS and geographical indications, significant differences exist, primarily between European countries and 'new-world' states. The issue of traditional knowledge is the most contentious, with wide divergences between many biodiversity-rich developing countries, on the one hand, and the US (and, to a lesser degree, Switzerland), on the other.

6 South and South-East Asian Concerns

The four issues identified above reflect key interest-areas for the South/South East Asian region. The table below illustrates the link between these areas of concern and the two negotiating principles, "persisting with sustainable development" and "dealing with MNCs and market realities." National/regional strategies for addressing these principles are also outlined. The following sections examine the prioritized areas of concern in greater depth and from a regional (South/South East Asian) perspective:

Table 1: Global Principles, National/Regional Strategies

	Global		Regional-National Interface	
	<i>Persisting with Sustainable Development</i>	<i>Recognizing MNCs and Market Realities</i>	<i>Regional Strategies</i>	<i>National Strategies</i>
AoA	Coming together as a unified bloc -- Special and differential treatment (S&DT) for the lowest income quintile. Require subsidy reform in Northern markets, with focus on products with comparative advantage from the South.	The South has to deal with the threat of multinational corporations such as Monsanto that are positioned to control the critical supply of inputs, including seeds and insecticides.	Ensure policy space kept for development-friendly subsidies. Push for rules that balance open agricultural markets with food security concerns including special product and special safeguard mechanism.	Undertake impact assessment to inform negotiating strategy. Include domestic civil society consultation.
T&E	Lobby for special and differential treatment based both on technical assistance needs and the potential impact of trade restrictions on poor and disempowered communities.	Standards takers not makers. The WTO should provide technical assistance to the South to improve its scientific and risk assessment capabilities	Establishing regional information centers/enquiry points for standards.	Building upon country comparative advantage in certification and accreditation.
TRIPS and Health	Creating space within TRIPS for cheap life saving drugs and protection of traditional knowledge.	Explore potential for public-private partnerships with drug development firms to ensure benefit-sharing.	Research and development (R&D) on using indigenous resources to cure indigenous diseases. Cost-effective marketing of southern drugs across the South.	Establish domestically-oriented IPR regime for plant variety protection.
GATS	A pitch to the WTO for preferential treatment where small firms within the public sector or services sector, risk increased competition with larger TNCs from abroad. Basic services provision for poor income groups. Explore comparative and competitive advantage in environmental services exports from the South.		Integrate sustainable development with market realities. Regional competition should retain a balance between improved efficiency and the retention of staff.	Ensure appropriate pre-negotiation analysis is undertaken to address effects of services liberalization and develop offensive and defensive negotiating strategy that includes safety measures for delivery of essential services.

7 Agreement on Agriculture (AoA)

7.1 Precepts and Practice

Trade in agriculture is not only an economic activity contributing to GDP; it also affects food security, health, livelihoods and the environment in many developing countries. Women, in particular, are impacted critically both in terms of health (pesticide exposure) and livelihoods (labor income). WTO-led reform of domestic agriculture policies will have effects on land use, with knock-on effects on forest cover, biodiversity and marine life (for instance via agricultural runoff). All these facets give the WTO's Agreement on Agriculture (AoA), which sets out rules governing trade in agriculture, a multi-dimensional character. In intent, the AoA aims at agricultural trade liberalization through enhanced market access and a reduction in domestic support and export subsidies. In practice, the agriculture sector is still subject to various exemptions from general WTO disciplines. Export subsidies are still allowed within the limits specified in countries' schedules of commitments. Special safeguard provisions are present in the area of market access.

On the environmental side, AoA Paragraph 2 outlines a number of exempted general agricultural services that can be provided by governments, including research and infrastructure associated with environmental programs. Paragraph 12 exempts agricultural payments if they are part of a clearly - defined government environmental or conservation program. Further, the AoA recognizes the environmental linkage in its preamble, which notes that "commitments under the reform program should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment." Mandated negotiations to review the AoA began in 2000, and have only recently begun to bear fruit, with a succession of proposals submitted to reform the AoA in the context of the Doha Round.⁵

Issues around which these proposals have developed are market access, tariff rate quotas, export and domestic subsidies and special/strategic products, anti-dumping, countervailing duties, higher tariff for food security crops and special and differential treatment (SDT). While there is some give and take in these proposals, Southern and Northern viewpoints did not converge enough for there to be agreement at Cancun. For instance, on SDT, the North was unable to agree to Southern demands such as:

- Existing level of *de minimis* support should be maintained for the developing countries
- Developing countries should be provided with lower reduction commitments as well as a longer implementation period
- Special Safeguard Measures (SSM) ensured for the developing countries on account of special products (SP)
- Developing countries should be allowed to provide export subsidies on transport and marketing

After the failed Cancun Ministerial, attempts continued to be made to seek consensus, but failure to do so has led to bilateral negotiations which have threatened Southern unity, evidenced by the US ability to induce Colombia, Costa Rica and Peru to break away from the G-20. However, the 33-country SP group was able to stand firm in its demand for SSMs. The present status is that the December 15 deadline to re-start negotiations in Geneva has passed with little evidence of an emerging consensus.

5 See JOB(03)/157, WT/MIN(03)/W/6, JOB(03)/150/Rev.1, and JOB(03)/150/Rev.2, available at: <http://docsonline.wto.org>. For definition of the terms relevant to the Agreement on Agriculture see Annex 1 Box 1.

7.2 South and South-East Asian Perspectives

It is facile to view South and South East Asia as two homogeneous regional alignments. Intra-regional disparities such as accession or non-accession to the WTO, levels of development, share of agriculture in GDP determine stances towards both the WTO and the North. Table 2 indicates the country variation in terms of GDP, per capita GDP and share of agriculture. Clearly, the variation is large and it follows that negotiations are issues rather than region-specific. Clearly, countries like Malaysia and Singapore, with high per capita GDP levels and comparatively low agriculture to GDP ratios, would have little incentive to get involved in intense negotiations with the North over agriculture.

Table 2: Agricultural value added in South-South East Asia

	Gross domestic product (GDP) (\$ million)	Per capita income (\$/person)	Agriculture value added (% of GDP)
Bangladesh	50,540	368.8	23
Cambodia	3,891	282.9	37
India	533,498	499.2	25
Indonesia	212,924	974.8	16
Laos	1,919	336	51
Malaysia	102,705	4093.3	9
Myanmar	9,605	180.4	57
Nepal	6,163	238.4	39
Pakistan	74,058	496.6	25
Philippines	79,540	981.7	15
Singapore	95,944	22675.9	0
Sri Lanka	17,644	874.9	19
Thailand	132,356	2061.5	10
Vietnam	36,960	457.7	24

Source: IMF, April 2003

For these reasons, country membership of groupings, such as the G-20 and SP and Cairns Group, referred to as “issue specific negotiation alliances” crosses regional boundaries. Table 3 presents these cross-regional, issue-specific alliances.

Table 3: South and South-East Asia: Country Grouping Synopsis

Cairns Group	G-20	SP Group	LDC	Developed
Indonesia	India	Indonesia	Bangladesh	Brunei
Malaysia	Indonesia	Pakistan	Bhutan*	Singapore
Philippines	Pakistan	Philippines	Cambodia [^]	
Thailand	Philippines	Sri Lanka	Laos*	
	Thailand		Maldives	
			Myanmar	
			Nepal [^]	

Source: Author's compilation

Note: * Bhutan and Laos are observers of WTO [^]Cambodia and Nepal have just acceded.

7.3 The Way Forward

Intra-regional heterogeneity makes it difficult to attain a common position with a view to pursuing “a Southern agenda” for sustainable development. Further, Southern unity when achieved is often fragile, as demonstrated

by the US success in splitting Colombia, Costa Rica and Peru away from the G-20. Also, donors and independent groups in the North are encouraging Southern countries to understand and articulate their agendas in the context of multilateral negotiations. This contribution to awareness-raising is certainly needed and welcome, but it will also challenge Southern unity as individual countries speak from a more informed position.

The need is to come up with approaches that can subsume these differences. For instance, earlier we referred to the possibility of agreement among Southern countries on broad negotiating principles, as in the case of SDT. Similarly, Southern countries can devise mechanisms for reaching agreement among themselves and which draw upon investigation, analysis and information dissemination.

Reducing Northern export subsidies is one area where South and South-East Asian developing countries should be more proactive and should take a well-informed position based on solid research. The civil society groups in this region should take a lead to assist their respective governments, as the next round of negotiations is an important opportunity to rectify the imbalances in AoA inherited from the Uruguay Round. The G-20 has to turn into a negotiating force rather than a mere initiative to block the EU and US. The expiry of the Peace Clause (Article 13 of the AoA) at the end of the nine-year implementation period “commencing in 1995” is a major incentive for developed countries to restart the negotiations. Increasing numbers of sustainable livelihoods in the region generated from reduced Northern agricultural subsidies could also help to address the link between poverty and environmental degradation.

A useful domestic policy option for countries in the region could entail taxing large farmers for overusing chemical inputs (e.g. the pesticide treadmill) and using the income generated to subsidize non-chemical agriculture. Regardless, negotiators from the region should aim to ensure that existing policy space for subsidization of environmentally-friendly farming practices is kept for developing countries, while keeping up pressure to reduce all Northern subsidies.

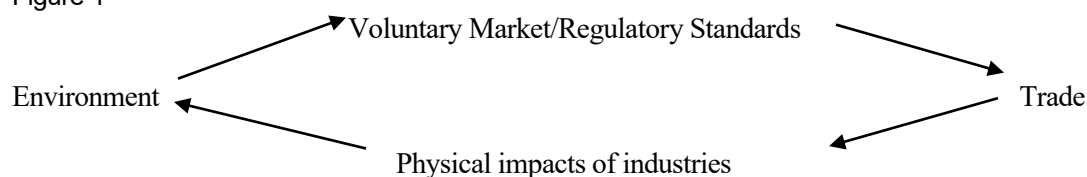
If the larger profits from food exports start to generate land concentration in the South, this would need to be offset by policy in the Southern countries concerned. In addition, policies would need to ensure that food production follows environmentally safe methods. The South has to deal with the threat of multinational corporations such as Monsanto that are positioned to control the critical supply of inputs, including seeds and insecticides. The risk is that such corporations might align with the larger farmers in the South to push for agricultural liberalization in the WTO and then subsequently become part of the drive for agricultural corporatization in the South to benefit from increased Southern exports by using environmentally destructive agricultural methods. A consequence would be the elimination of sustainable small farm production and sustainable agriculture i.e. to sustainable livelihoods and sustainable development. For the moment, the South can align on this issue with the EU, which has banned the imports of food that entails the use of genetically modified organisms (GMOs) based on the precautionary principle.⁶

8 The Trade-Environment Axis

The trade and environment relationship can be conceptualized as an axis, involving a number of direct and indirect flows between business processes and the natural world within which those entities interact. These two-way flows are defined by: a) voluntary market and regulatory standards, which have the potential to impact trade and; b) the physical impacts of trade on the environment.

6 The EU position may soon change pursuant to an ongoing WTO dispute with the US; Britain has already indicated a readiness to accept GMOs.

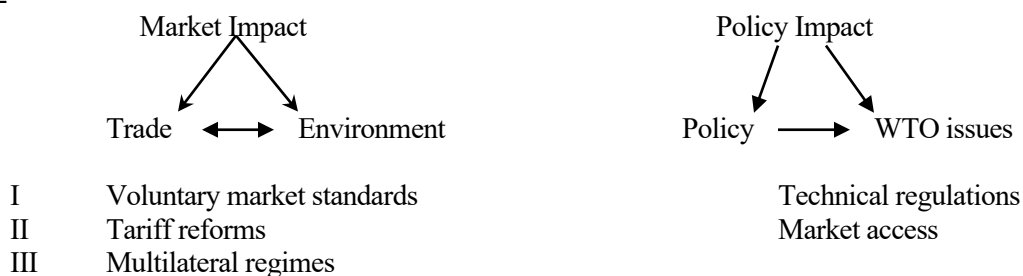
Figure 1



Source: Author's compilation

Impacts can be divided into those caused by the market and those influenced by country and sector policies interacting with multilateral trade forums, such as the WTO.⁷ These subsume the two-way flows. Thus, the Northern influences within the context of market impacts in the South can be segregated into: a) the effects of voluntary market standards on trade and the environment; b) the physical effects of trade on the environment and; c) the impact of trade liberalization through multilateral regimes. Similarly, impacts influenced by policy regimes linked to the WTO can be divided into: a) the effects of technical regulations on trade and the environment and; b) the impact of market access, whose generic questions and issues will link Northern tariff policies with those of sustainable livelihoods and firms with small environmental costs of production.

Figure 2



Source: Author's compilation

8.1 Trade's Impact on the Environment

The increase and liberalization of trade impacts the environment both directly and indirectly through a number of market, firm-based and environmental pathways. While determining the size and nature of the ecological footprint⁸ of trade in a given region is complex, the S/SE Asian situation is further complicated by a lack of sustained monitoring and quantitative analysis of trade and environment effects. Thus, one can only attempt an assessment largely based on qualitative data and general trends. One can divide the types of physical and economic impacts that trade has on the environment into: a) product, b) scale and c) structural effects.⁹ However, such effects do not come within the direct purview of the WTO. Basically, they are internal effects generated by external forces (namely

7 However, it is not difficult to foresee market transactions coming within the WTO's ambit. For instance, the WTO already urges its members to base their standards on international conventions (CODEX, IPPC AND ISO), where possible.

8 The development and application of "environmental footprint" as a measure of sustainability is particularly important as we strive to identify and define the impact of our actions upon our environment. It is a potentially powerful communication tool because it quantifies, in a simple, readily understandable way, what affect our every day activities are having on our environment – the environment we will hand on to our children and grandchildren.

9 IISD – Trade and Environment Handbook.

trade liberalization), and their adverse impacts on the environment and human development need to be addressed at the national level.

8.2 Multilateral Environmental Agreements (MEAs)

MEAs have generally led to commitments by countries to broaden environmental principles and to use government policy to realize these principles. They can best be described as elements of a global moral regime to be implemented through independent action by sovereign governments (Banuri et al; 2002). The core principles include prevention, precaution, participation, subsidiarity, responsibility and equity. A concern with the MEAs is that sustainable development tends to be overlooked in many cases where purely environmental concerns are being debated at the cost of an important aspect of Southern policy, namely poverty. As a result, a South/Southeast Asian perspective on MEA-WTO negotiations at the WTO could attempt to ensure that the broad array of concerns reflected by sustainable development -- including equity, SDT / common but differentiated responsibilities, and livelihoods -- is reflected in the talks. The onus is now on the South to lobby for special and differential treatment based both on its technical assistance needs and the potential impact of trade restrictions on poor and disempowered communities.

Countries in the region should also take note of the potential economic benefits of establishing MEAs. For instance, the negotiation of an equitable regional MEA around sea turtle conservation could have avoided a costly ban against shrimp exports from India, Pakistan, Thailand and Malaysia implemented by the US in 1996. The ban later led to a WTO dispute settlement decision (Shrimp-Turtle) that ruled only nominally in favor of the four Asian countries.

8.3 Effects of Regulations and Voluntary Standards on Trade

Northern advocates of international standards and regulations (IS&R) addressing environmental and social concerns feel that these instruments promote sustainable development and growth; if not in the short term then in the longer term. Inverting this argument, Southern countries claim such regulations and standards are trade-restricting devices, engineered by coalitions to protect domestic industries and block exports from the South. The reality is somewhere in between, in that environmental regulations can cut both ways: they can be trade restricting but they also offer new market niches and can lead to cleaner production practices in the exporting countries. In the final analysis, developing countries are left with little choice other than to comply with the increasingly stringent IS&R in order to maintain their export shares.

An anatomy of environmental regulations and standards is presented below in Box 2.

Box 2: Taxonomy of environmental regulations and voluntary standards

Demander of Measure	Scope of Measure	
	Product based	Production and process (PPM) based
Northern governments	Technical Regulation	Technical Regulation (controversial)
Commercial buyer	Product standard	Process standard (e.g. ISO 14001)
Importing firm	Sector voluntary code of conduct, eco label, etc.	Sector voluntary code of conduct, eco label, etc.

Source: IISD communication, 2001

In particular, voluntary standards, both product and process-related, are proliferating rapidly. Developing country exporters are awakening to the reality that prices are not the only criteria for marketing their products. With the impending phase-out of quotas under the Agreement on Textiles and Clothing and WTO-mandated tariff reductions, production and trade regimes in South/Southeast Asia will need to become both leaner and cleaner.

At the end of the day, it is not only expedient but also profitable for S/SE Asian exporters to comply with the increasingly complex demands of international clients -- both in the public and private sectors. "Profitable" in the sense used here is a composite term; it means retaining export market shares, accessing niche markets and generating in-plant efficiency through reduced energy combustion and recycling raw materials and wastes. While potential profitability provides a stimulus for compliance, especially for large domestic firms with links to the international market, it is no substitute for the overarching institutional requisites. This raises issues of capacity building in all their different dimensions, specifically the formulation and implementation of standards, information access, conformity assessment and accreditation. The WTO Agreements on Technical Barriers to Trade (TBT), and on the Application of Sanitary and Phytosanitary Measures (SPS) contain provisions for harmonizing international standards and facilitating technical assistance to developing countries to comply with them. Countries in the region must take full advantage of these provisions if they are to benefit from further liberalization.

Developing countries often advocate the need to become more proactive in the standards setting process. The argument is that international standards should reflect their cultural affinities and environmental tolerances. There is no quibble with this, but, it does track back to the issue of scientific and institutional capability. Absent such capability, developing countries will not be able to comply with international standards, much less engage with the TBT, SPS and other voluntary ISBs in setting – for lack of a better word – "South-sensitive standards."

Should there be a national or regional focus to capacity building? A priori, there is merit in regional capacity building approaches to enhance compliance with the TBT and SPS Agreements and bilateral requirements, in order to increase access for S/SE Asian exports, particularly as regional and global economies become more closely integrated. However, the backward linkages with national capacity building imperatives are also emphasized. This recognizes both the embryonic nature of the initiatives underway in the region and the political and logistical complexities associated with going regional. While there is undeniable merit in being forward looking, grounding this in the national context will make the regional constructions more realistic.

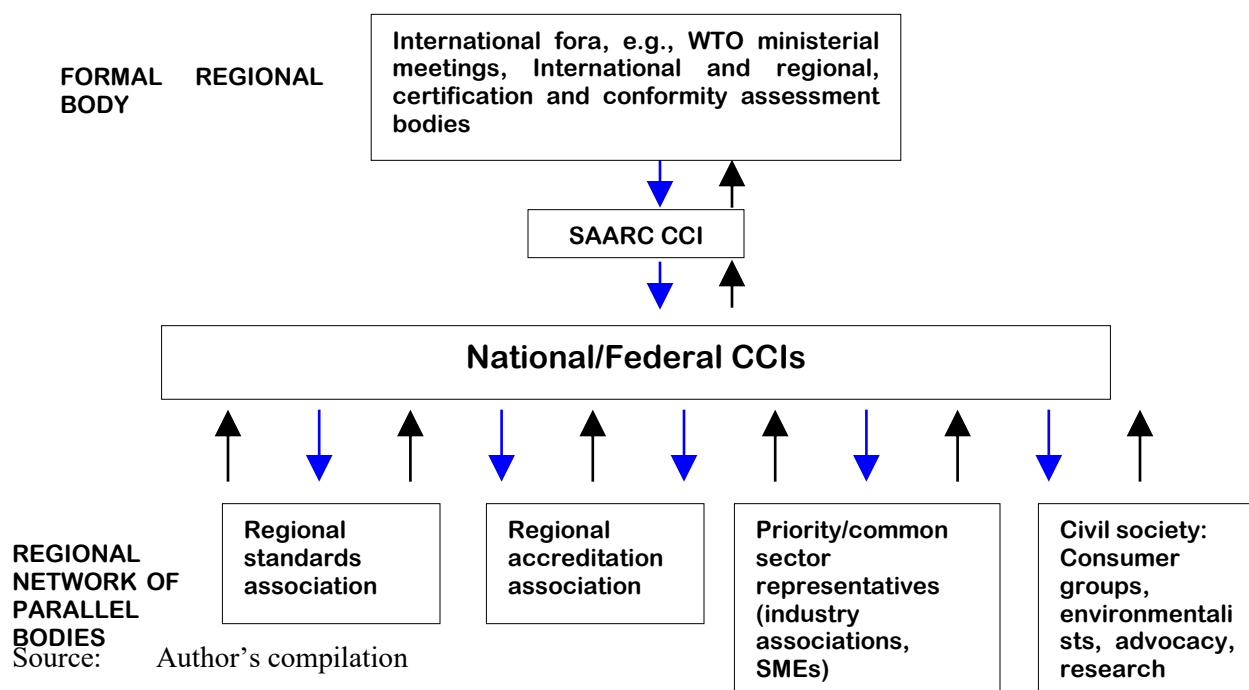
In South Asia, strong regional links are prevented by political tensions, which have created an atmosphere of mistrust between the member countries. Specifically, with regard to voluntary standards and technical regulations – referred to collectively as standards hereafter – the two constraining factors are: a) the small scale of intra regional trade, which limits the scope and need for harmonizing standards regionally and; b) more generically, a lack of awareness of social, environmental and quality issues in the SAARC countries. While exports are coming increasingly under a standards regime, a more embracing national culture has still to evolve. A contributing factor is the endemic poverty in the region. Consequently, it is not surprising that the region has limited competencies (financial, technical) when it comes to formulating, identifying, implementing and demonstrating compliance with standards, and international standards in particular.

However, this should not cloud the existing potential for regional cooperation, demonstrated by the similarity of sectors and economic characteristics across the region. For instance, textiles, leather, tea and fish are some of the common and important export items for India, Pakistan, Bangladesh and Sri Lanka. Also, the SAARC countries are roughly similar in terms of their macro indicators: GDP growth rates, per capita incomes, levels of poverty and export composition. While some countries such as India and Pakistan have a relatively stronger standards infrastructure, this can work to the advantage of the relatively ill equipped countries, especially when they have common interests and problems. Ultimately, both constraints and commonalities should be taken into account when suggesting frameworks for regional cooperation. Under the existing dispensation, regional cooperation should to be based on the two following premises:

1. The proposed regional structure should not displace national entities. This does not mean that a country like Nepal, which does not have an Accreditation Board, needs to set up one, especially when other countries in the region already cover its relevant standards/testing requirements. By the same token, it would be difficult to dismantle a national body that already exists, such as the Pakistan National Accreditation Council. Ultimately, comparative advantage, sector capabilities, existing national bodies, risk of duplication, diversity and breadth of activities are some of the criteria which should dictate whether a certain standardization activity should be nationally or regionally based. In the absence of a formal assessment, an impression is that accreditation and notification/enquiry points lend themselves more easily to regional cooperation than conformity assessment and standards setting. Thus, for instance the South American region has a relatively well-developed regional accreditation body. Also, South African Development Community (SADC) has a regional accreditation body that is becoming more useful with technical assistance investments.
2. The regional harmonization of standards should be undertaken in the context of international requirements, reflecting the present importance of extra-regional as opposed to intra-regional trade. However, there is a nuance to this. If the region finds that existing international standards are inappropriate to their common context, then the countries in the region could pool resources to develop a more appropriate regional-designed standard. They could also then exert combined political pressure to get the regionally appropriate standard recognized in export markets. In this case, harmonization is not a question of bringing different regional standards into a single standard, but rather of creating a regional standard in order to make it more appropriate. This is in keeping with the notion of subsidiarity. However, it does presume that the region has the capacity to formulate and negotiate regional standards.

A suggested framework for cooperation is a regional infrastructure linked to key national stakeholders. With regard to standards its main focus would be to leverage, facilitate and coordinate activities with a view to harmonizing these standards regionally and in compliance with international standards. Two distinct but related mandates are envisaged. The first and relatively less important one is to promote the harmonization of standards for goods traded exclusively within the region. More important, and reflecting the extra-regional thrust of trade, it should promote the harmonization of standards for goods and services traded globally and against the yardstick of international standards. Similarly, regional approaches to accreditation, conformity assessment and notification/enquiry points offer prospects of convenience, efficacy and credibility. Schematically, a framework for regional cooperation could be envisaged as follows:

Figure 3: A Regional Schematic



The prevailing political sensitivities and the inevitable bureaucratic delays weigh in favor of a regional architecture built around private sector bodies, namely the SAARC Chamber of Commerce and Industry, federal and provincial chambers of commerce and industry and industry associations. This is not to exclude the national government and autonomous bodies involved in standards work but to build their input into a construction that maximizes their effectiveness. By the same token, role transference is not enough, even the private sector has to garner the political will for this enormously challenging task.

8.4 Market Access

One of the key Northern efforts, specifically by the EU, to alleviate poverty and assist in the growth of trade especially within the least developed economies of the world has been the 'everything but arms' initiative. In this effort, trade related assistance and capacity building are promised to support enhanced market access for exports from the South of the non-military goods and services category. Furthermore, the EU has committed to eliminating all duties and quotas for such products originating from least developed countries.

Unfortunately, concrete measures to include developing nations in global trade have not progressed beyond technical assistance in resources in Geneva. Similarly, vague promises of special market access and trade assistance have not resulted in any significant market access gains or an increased presence by Southern firms and service providers in the global marketplace. If such technical assistance to the global South is to incorporate the goals of sustainable development, it will have to lead to preferential access to products that are both labor intensive and have a negligible environmental footprint as compared to capital-intensive competitors or substitutes in South Asia as well as in the EU. However, in order to minimize the discrimination against other goods (say capital intensive), such preferential treatment should be given within an overall context of across the board tariff reductions.

A key issue here is how well development levels within different nations affect how they are treated by the EU and in what way that will impact dynamics between nations within blocks. In other words, how can developing countries make a case for special and differential treatment (SDT). A commonly cited criteria is the country's development level. However, this opens itself to the concern that less developing countries and developing nations would see cut and dry lines drawn between them (which would contribute to animosity and a lack of unity). Further nuances on this are that developing countries be allowed to export based on a level of development that they possess within each sector. Such exports could be linked at the macro level to the Gini or Human Development Indices (HDI) that offer transparent means of stratifying nations based on their social well being. Probably, this would not eliminate a perception of discrimination either, nor would it address intra-country inequities. As indicated in section 4.3, the principle of the "lowest income quintile in the South" would make it much easier for the South to come together as a negotiating block to achieve poverty alleviation and sustainable development.

8.5 Conclusions and Recommendations

Intra-regional heterogeneity makes it difficult to attain a common position with a view to pursuing a Southern agenda for sustainable development. Further, Southern unity when achieved is often fragile. The need is to come up with approaches, which can subsume these differences. For instance, earlier we referred to the possibility of agreement among Southern countries on broad negotiating principles, as in the case of basing S&DT on the needs of the lowest income quintile in the South. Similarly, Southern countries can devise mechanisms for reaching agreement among themselves, which draw upon investigation, analysis and information dissemination.

Export subsidies are an area where South and South-East Asian developing countries should be more proactive and should take a well-informed position based on solid research. The civil society groups in this region should take a lead to assist their respective governments, as the next round of negotiations is an important opportunity to rectify the imbalances in the AoA inherited from the Uruguay Round. Other aspects, such as "green box" domestic support measures continue to be discriminatory, especially with regard to small farmers. A useful domestic policy option could entail taxing large farmers for overusing chemical inputs (e.g. the pesticide treadmill) and subsidizing non-chemical agriculture.

Again, if the larger profits from food exports start to generate land concentration in the South, this would need to be offset by policy in the Southern countries concerned. In addition, policies would need to ensure that food production follows environmentally safe methods. The South has to deal with the threat of multinational corporations such as Monsanto that are positioned to control the critical supply of inputs, including seeds and insecticides. For the moment, the South can align on this issue with the EU that has banned the imports of food that entails the use of GMOs based on the precautionary principle.

9 General Agreement on Trade in Services (GATS)

9.1 North-South Positions

WTO Members generally lobby for those areas of the GATS that are of most interest to their comparative advantage. For example, developed countries are more interested in establishing commercial presence of their services industries (under GATS 'Mode 3'), whereby foreign banks, construction firms and most of the 12 listed sectors may enter into developing economies. Developing countries, on the other hand, are most interested in Mode 4, which covers the granting of access of developing economy laborers into foreign markets. This benefits developing economies through the return of labor remittances to domestic economies

and the taxes that are accumulated on funds that make their way through legal channels. Despite the GATS general exception in paragraph (b) of Article XIV that nothing in the agreement will prevent the adoption or enforcement of measures necessary to protect human, animal or plant life or health,¹⁰ there has been considerable public concern around the potential for countries to be challenged over regulations governing environment-related services, such as water or hazardous waste management. Further concern exists around the effect of liberalization of services previously managed by governments in the public interest. Critics charge that MNC service providers will not be accountable and will act only in the interests of the bottom line.

By and large, the South remains skeptical about a GATS expansion agenda driven by Northern governments and corporations. Its view is that commitments to strengthen the South's domestic service capacity, improved access to distribution channels and information networks, and enhanced market access in areas of export interest to the South have not been fulfilled. On the contrary, the North continues to push for greater access in the South without reciprocation. Intra-South opinions however vary. Countries prefer liberalization of services where they have a comparative advantage but are conservative in their stance in other sectors. Varying positions are also witnessed in the North. The US remains the foremost proponent of liberalization of services, its biggest concern being "market access". It is at odds with the EU, which supports liberalization but wants to tie it with broader negotiations on new rule making in the investment sector, trade remedy, and competition policy. There are also differences within the North on whether to set a firm time-line to conclude GATS negotiations.

Similar to the GATT, the GATS is divided in a number of ways to outline modes of supply for liberalization. The breakdown of various modes allows in principle, options for developing countries to liberalize their various services regimes. The degree of development and alignment with national goals may therefore factor in to government decisions as to whether or not to liberalize any particular group of services.

9.2 Environmental Services

The Doha Ministerial Declaration launched talks on liberalizing trade in environmental goods and services. Some confusion remains on what specific services qualify for this liberalization; reductions would most likely proceed on a bilateral level as part of the request-offer process. Some WTO Members such as the EU have proposed "water for human use and wastewater" for inclusion within the definition of environmental services. This has raised concerns among many stakeholders and developing countries on access and control of what they see as a vital resource. If environmental services are taken up on a priority basis for liberalization, then any list must include services of export interest to developing countries (e.g: Mode 4-environmental consultants). Countries can use the flexibilities within GATS to appropriately schedule commitments and avoid unintended commitments (e.g for services with multiple end-uses, including environmental, such as engineering services.) Maintaining regulatory 'space' would be especially crucial for environmental 'infrastructure' services where 'universal access' may be important as well as the use of appropriate policy instruments such as subsidies.

9.3 The South/South East Asian Context

In 1998, world exports and imports of commercial services stood at US\$ 1,362 million and US\$ 1,349 million respectively. The total contribution of Asia was only 12%, while the share of industrial nations was 72%. The disparity is stark, particularly as the services sector in developing countries contributes a progressively larger

¹⁰ While the language of this article is similar to that contained in GATT Article XX(b), GATS does not contain language similar to the arguably broader-reaching Article XX(g), which denotes measures "relating to the conservation of exhaustible natural resources."

share of their GDPs. Table 4 presents comparative data over two decades. For many of these countries, the service sector contributes more than half of their GDPs.¹¹ It almost goes without saying that the contribution of the labor intensive informal sector services cannot be understated. The GATS provisions thus have important equity implications for this sector.

Table 4: Value Added by Major Sectors as Percentage of GDP

Country	Agriculture		Industry		Manufacturing		Services	
	1980	1998	1980	1998	1980	1998	1980	1998
Bangladesh	34	23	24	28	18	18	42	49
India	38	25	26	30	18	19	36	45
Nepal	62	40	12	22	4	10	26	38
Pakistan	30	25	25	25	16	17	46	50
Sri Lanka	28	22	30	26	18	17	43	52
Indonesia	24	16	42	43	13	26	34	41
Malaysia	22	12	38	48	21	34	40	40
Philippines	25	17	39	32	26	22	36	52
Thailand	23	11	29	40	22	29	48	49
Hong Kong	1	0	32	14	24	7	67	84
Korea, Rep	15	6	40	43	28	26	45	51
Singapore	1	0	38	35	29	24	61	65
China	30	18	49	49	41	37	21	33

Source: World Bank, 1999/2000

Given the importance of the service sector, opening it up to global competition is a policy-sensitive issue. Developing countries with the infrastructure to support education and ‘brain cultivation’ are believed to be in a unique position. They can take advantage of the Internet and e-commerce led knowledge economy to fuel their services sectors and advance past some of the intermediate stages of the development process. South and South East Asia have, to varying degrees, experienced benefits from the autonomous liberalization of trade in various services sectors.¹²

On the other hand, road blocks for South and South East Asia exist in that foreign direct investment¹³ has yet to show benefits in increased employment and/or technology transfer and ‘crowding in’ effects of sectoral concentration and diversification. Secondly, there are concerns regarding the ‘digital divide’ and whether it will lead to higher income inequality, undermining the stability of developing economies. Furthermore, given past experiences with ‘green’ and ‘gene’ revolutions, there are warranted reservations on the part of developing economies as to how much their sectors will benefit from the ‘information revolution’, a cornerstone of the services sector.

11 Annex 3 shows for our group of South and South East Asian countries the contribution of services to exports, the revealed comparative advantage in the service sector by sector disaggregation, estimates of trade in services by mode of supply, and the determinants of competitive advantage in the service sector.

12 Autonomous liberalization resulted from the forced liberalization of various sectors through WB/IMF Structural Adjustment Programs (SAP). On the market side, ingredients such as a diverse educated labor pool and software proficiency led to the information technology sector (India) being the most promoted beneficiary of the globalization of services.

13 According to the World Investment Reports from the turn of the century, there has been little correlation between increased FDI and Greenfield or new development. While cases differ from across nations within S/SE Asia, most FDI has been in the form of mergers and acquisitions by transnational entities and has not created or generated any richness or diversity in sectoral composition.

The region needs to look at which services sectors are or likely to be key to the development of their economies through increased employment and sustainable development and find ways and strategies to promote those regionally. Based on its economic structure, each nation has varying strengths in shipping, construction, finance, and airlines. The Korean experience was relied upon for the motorways in Pakistan, and the Chinese experience is assisting development in other parts of South Asia. A challenge is to integrate sustainable development with market realities. Regional competition should retain a balance between improved efficiency and the retention of staff. Otherwise, privatization will see control of operations, development and social vision migrate outside the region. Within the WTO, a pitch should be made for preferential treatment where a number of small firms within the public sector or services sector risk increased competition from larger MNCs from abroad.

Many South and South East Asian economies are experiencing historic and more recent after-effects from structural adjustment policies prescribed by the World Bank and the IMF. While the intent of these programs was to remove financial and economic bottlenecks hindering trade and financial flows within developing economies, they also served to weaken domestic sectors and the government infrastructure that had protected them in the past. The result has been vulnerability to external shocks, such as competition from MNCs. Key references have been made by development critics to the hindering of goals related to:

- Service extension to impoverished segments of society
 - Education, health and employment services
 - Targeted service provision
 - Subsidized pricing
- Liberalization of trade in environmental services
 - These services -- including sewage, hazardous waste management, refuse collection and treatment, and pest control services in connection with agriculture -- while potentially conferring an environmental benefit in their use, tend to favor Northern suppliers
- Domestic economic development
 - Protection of SMEs and sick firms that rely on government contracts
 - Circulation and maintenance of profits, contracts and funds within domestic economies
 - Subsidization of firm development and growth through government networks and support

9.4 Conclusions and Recommendations

Information and Analysis: In order for South and South East Asia to benefit from liberalization of trade in services, a number of issues and aspects will have to be determined regarding the following:

- Which firms and services sectors are of most importance to national development goals? Is there space to make use of liberalization commitments for environmental services in particular?
- Which services firms are linked most intricately with rural areas and segments of Asian society that would otherwise not benefit from service provision if that service were to be privatized? In other words, which firms are in a position to subsidize rural and impoverished sectors of society?
- Which sectors are linked with key supplier firms within the country that would be at greatest risk with the liberalization of services? On the flip side, which suppliers could be best linked by the entry of a specific services based firm? For example, asphalt, concrete and cement firms would benefit from the entry of efficient and effective engineering firms which could design and build infrastructure in roads and bridges, increasing the utilization and capacity of domestic suppliers.

Strategic Initiatives: Concluding the appropriate sectoral analysis of firms, the following recommendations would then be applicable:

- Strategy for South Asia and South East Asia
 - Aggressive domestic reform agenda to create an economic environment within each economy conducive for private sector efficiencies and effectiveness
 - Concerted effort towards a knowledge based economy
 - Promotion of regional liberalization of services as a vehicle for improving global competitiveness
 - Regional effort to make activities in developed countries more contestable in the area of services
 - Efforts to coordinate regional comparative advantages so as to interlink and allow the entry of South based firms that are more development oriented and sensitive to the economic and development needs of developing economies.
- Service providers are key to the development strategies of many Asian countries. Where there are weak firms and specific development goals that can only be addressed by a crown corporate, services sectors relevant to that need should be identified and protected.
- Where there is growth potential in removing bottlenecks for the increased success of infant service providers, those hurdles should be removed and opportunities captured.
- Streamlined investment in education and human resource capacity as well as technology gap filling should be prioritized by the government for those firms that are most key to services sector development.

10 Intellectual Property Rights

10.1 Background on development concerns

While growth strategies have long been associated with the capture of current market share, intellectual property rights (IPR) regimes capture *future* market share by treating ideas, designs and formulae as property. While proponents argue that the investments of the inventor and researcher need to be protected, many critics charge that global IPRs regimes -- for instance the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) -- can threaten development prospects of the world's poorer countries. The South Asia Network on Food, Ecology and Culture, for example, argues that the whole notion of patents or any type of intellectual property protection for life forms runs contrary to the traditional ways in which the properties of life forms are bred and nurtured in many parts of the world, including in Asia. Strict IPRs rules can reduce already scarce resources, technology and innovation flows that the economic and social sectors of the South are dependant on for development. They also tend to tip the balance in favor of large companies with the means to pursue costly research and development (R&D) and patent applications, and away from smallholder farmers and the poor. For instance, the enforcement of anti-piracy laws raises software prices for consumers, resulting in a lack of access by poorer students and software enthusiasts to opportunities to acquire and upgrade their skills.

Market liberalization in the North has resulted in a shift in funding from public budgets towards R&D efforts within the private sector's laboratories and research units.¹⁴ Critics fear that intellectual property and ideas that were once within the public domain and influenced by socially driven agendas are now being transferred into the ownership of firms whose overriding concern is profit. Thus the interests of R&D-intensive pharmaceutical firms can clash with the social concerns of developing countries, where lack of access to cheap, life saving medicine threatens lives and livelihoods. Developing country fears of intellectual property rights also pertain to the future of their domestic pharmaceutical and public health sectors. The key concern results from the increase in market concentration of private research organizations and powerful MNCs based primarily in the North.¹⁵

On the social side, the patenting of life-saving medicines extends periods of patent protection and reduces the ability of public health officials to marshal local capacities to produce cheaper medicines for local, sometimes immediate needs. The most well known example of this is that of HIV/AIDS, where patents are reducing the access to medication by millions of AIDS and HIV patients in Africa. Public health organizations and service providers in developing nations fear an increased dependence on costly patents and medications held by global pharmaceutical firms, which leases the health of nations to patent rulings and rights held by MNCs. However, this situation appears to be changing -- albeit slowly -- following an August 2003 decision by WTO Members to allow compulsory licensing and parallel imports of medicines for countries suffering from pandemics such as HIV/AIDS and tuberculosis.

10.2 Impacts on the Environment

Over 2/3 of the world's plant species come from developing nations, while 35,000 are estimated to have medicinal value. About 7,000 medical compounds used in western medicine are derived from plants, and the value of germplasm from developing nations to the pharmaceutical industry in the early 1990s was estimated to be valued at about \$US 32 billion per year. Only a fraction of this returns to developing nations in terms of payment for raw materials and royalties (Rafi, 1997).

Environmental linkages with IPRs emerge at the level of international regimes, where many WTO Members -- including India and Thailand -- favor inserting a provision in the TRIPS Agreement that would ensure that TRIPS and the UN Convention on Biodiversity (CBD) are implemented in a mutually supportive manner.

The CBD recognizes the sovereign rights of member countries over their biological and genetic resources, and seeks to ensure that where these are taken from the country of origin, there should be fair and equitable sharing of any subsequent benefits. It also seeks to protect, preserve and benefit countries through the equitable sharing of benefits deriving from indigenous and traditional knowledge systems. The TRIPS Agreement, on the other hand, recognizes IPRs to be private rights, and believes in rewarding inventions by IPRs, without referring to the sources of biological or genetic materials, or the sourcing of indigenous and traditional knowledge systems and the fair and equitable sharing of benefits with the country of origin. Article 27.3(b) of the TRIPS Agreement

14 In 2002, the global pharmaceutical industry generated over US\$400 billion in revenue and invested US\$ 40 billion in R&D: www.citizen.org/documents/rdmyths.pdf. The US private sector spends just under US\$ 30 billion in R&D while the world total is US\$70 billion: www.msf.org/content/page.cfm

15 Mergers within the US, EU and the Japanese drug sectors mean that only a few firms account for over 85 percent of global pharmaceutical sales (National Institute for Health Care Management, 2002).

allows Members to exclude plants and animals other than micro-organisms from patentability. However, they must provide protection for new plant varieties, either through patents or "an effective *sui generis* system," or both.

Proposals such as that from India and Thailand, amongst others, support inserting a provision into the TRIPS Agreement that would mandate patent applicants for inventions that use biological resources and traditional knowledge to disclose the source of origin of such resource and knowledge, as well as provide evidence that they have obtained the necessary prior informed consent (PIC), and complied with national laws on benefit sharing. Such a provision would help to prevent 'bio-piracy', whereby foreign firms take biological resources from biodiversity-rich countries (i.e. India) and use them to develop pharmaceutical or biotech products. Some developed countries oppose disclosure of source of origin and PIC, particularly the US, which feels it would put an unnecessary burden on its pharmaceutical and biotech firms.

A proposal from the group of least-developed countries at the WTO (WT/GC/W/251) goes even further, and calls for a formal clarification of Art. 27.3(b) such that "*naturally occurring plants, animals, the parts of plants and animals, including the gene sequence and essentially biological processes for the production of plants, animals and their parts, must not be granted patents.*" The LDCs further push for the TRIPS Agreement to recognize that "*patents must not be granted without the consent of the country of origin or if inconsistent with Article 15 of the CBD,*" and advocate for the retention of flexibility to develop *sui generis* protection regimes for seed supply.

The environmental component is both domestic and international. Not only will pollution increase in developed nations where the firms environmental footprints are greater, employment in the South will be lost, and poverty will be exacerbated with marginalized workers. An example is the case of California 'basmati' being grown in the desert, at a high environmental and economic cost. The loss of work and pressure on developing nation farmers then contributes to the trade-poverty-environment nexus.

While developing nations are implementing national *sui generis* systems of patent protection, the laws and their implementation have yet to be proven in many parts of South and South East Asia. While public health rights have been protected, with South Africa as a precedent, we have yet to see such experiences in the environmental sense in S/SE Asia. It is important to have traditional knowledge libraries, such as those in India, set up to protect such knowledge and determine appropriate vs. inappropriate patents. In the S/SE Asian context, as capacities are weak in some nations to do this, it is important to catalogue on a regional basis to avoid inter country conflicts regarding data entry and ownership of traditional knowledge. Such a strategy can incorporate environmental protection and a variety of rights within that context throughout all developing nations that share similar biomes and ecosystems.

10.3 Transfer of Technology

Regarding the transfer of technology, India has proposed at the WTO a binding obligation on the holders of proprietary technology for the transfer of technology, especially that of environmentally sound technologies, at fair and most favorable terms when there is an obligation to adopt these technologies under an MEA.

10.4 Agriculture

Proprietary-based methods of seeds and farming -- as opposed to more traditional agriculture practiced by most poorer countries -- tends to translate into an increased reliance on chemicals and fertilizers for gaining higher crop yields and an undermining of traditional, and more sustainable, farming practices (mixed cropping, crop rotation, natural inputs). Ecosystems are then also impacted as mono cropping results in less diversity of 'food webs', imbalanced predator prey relations and fluctuations in eco populations as predators/prey are left unbalanced. This could then result in prolonged periods of pestilence, where natural predators are not found.

10.5 Medicines

With regard to medicines, TRIPs encourages the impact that biotechnology has on medical research (see Annex 2 for a discussion of the WTO's solution to epidemics and essential medicines). This will drive technology emphasized medical advancement over traditional and herbal remedies, which place more of an emphasis and are closely linked with natural resources management. Medical waste can raise new environmental concerns. Complex molecules and formulas require complex inputs and release complex discharges. Medical waste is therefore another concern for impacts on water bodies. Beyond the 15 key diseases in TRIPs, many S/SE Asian waterborne diseases are problematic on a seasonal basis. The environment has an impact on public health, the links with waterborne disease as well as airborne diseases need to be taken into account for flexibilities¹⁶ under TRIPs.

10.6 WIPO

In addition to TRIPs, global rules on intellectual property are governed by the World Intellectual Property Rights Organization (WIPO), which serves as a hub for patent registrations and recognitions for various countries and companies around the world. WIPO's mandate is to protect the ideas and patents of inventions that research and development efforts around the world have invested significant resources in before fruition. A concern is that the WIPO is growing in strength as the managing arm of a global lobby that promotes the patenting of ideas and knowledge which in many cases, were categorized as traditional and held within the public domain.¹⁷ IPR regimes do not give value or weight to traditional knowledge or to the rights of indigenous farmers, peoples and local communities. This places the informally woven and inherited weight of traditional knowledge, largely held within the public domain, at serious risk of capture by economic forces and actors. Evidence points to the misappropriation of traditional knowledge and their patenting by firms inspite of use by farmers.

10.7 Geographical Indications

A lack of protection for geographical indications may result in the pirating of market products indigenous to certain parts of the world by larger players in developed economies. Negotiators from the South are lobbying that GI's be extended from wines and spirits (a northern issue) to products of Southern interest (handicrafts and agricultural products). Of interest to commodity exporting nations would be rice and wheat varieties that are currently or are in the process of being produced in

16 S/SE Asian governments would also be wise to analyze the link between environmental management, sanitation and pollution control with the health of their rural and urban populations.

17 The 'public domain,' within traditional societies means that knowledge was free for use by all concerned, such as is the case for example with farming methods.

developed nations (basmati rice, darjeeling tea, alphonso mangoes and *kohlapuri* slippers in the case of S/SE Asia). This would expand the range of benefits and allow developing nations to build competitive advantages around their exports, specifically those related to the SME sector of handicrafts, footwear and jewelry.

10.8 South/South East (S/SE) Asian Concerns

South and Southeast Asian countries have a rich diversity of plants, which have been used by their peoples for generations. Both India and Indonesia are members of the group of mega diverse countries. The majority of people in the region still rely directly on this diversity of plants, or plant genetic resources, for food and medicine.

Some countries in South and South East Asia have begun to invest in biomedical sciences, with the growing global interest in biomedical and genetic engineering. Innovation and technology have been seen by India, Singapore and Hong Kong as opportunities for them to be regional hubs for biotechnology, pharmaceuticals, medical equipment and health care. How much will be invested in high end technology vs. those sectors that will alleviate regional poverty has yet to be determined. Malaysia, Indonesia and Singapore are investing billions of dollars to attract local start-up firms, joint ventures, overseas bio technology firms, corporate research centers, bio medical and genome centers. India continues to specialize in making existing drugs cheaper and more available, especially to developing countries, through local generic manufacturers. China is investing in research techniques to feed farm animal genomes. China and Singapore have capacities to engage in stem cell research. Many believe that the Chinese will be the first to produce the first human clone. Japan, Taiwan and South Korea are putting into place regulations to ban cloning but experiments have already laid the groundwork for research to enter the controversial stages of cloning and ethics.

Genetically modified food and seed varieties promoted by MNCs threaten the agricultural structure of food exporting nations like India, Thailand and Vietnam. However, markets for GM free foods are on the rise in Europe and other markets. Linkages between such markets and sustainable agriculture within S/SE Asia need to be explored as a means of preserving indigenous agriculture and traditional seed varieties. While Thailand has banned GM food in import and cultivation, China could lose the GM food debate as its limits on cultivable land and water will put it on the edge of compulsion with regard to high yielding varieties. The need for South-South cooperation in agricultural development needs to take place.

A shift from holistic Southern medicine to specialized drug development and research may result in increased patent capture and Southern dependence on MNCs. Also, firms that own a number of patents may choose to develop those that show market potential in the short term while ignoring the development of patented drugs that may be of more interest to developing nation public health agencies on the wayside.¹⁸ A lack of adequate supply for local diseases and health concerns could leave rural areas unserved with proper drug supplies. A 1994 Korean study found that changes in IPR policy created a market loss for most firms without technological capacity. A similar context within the patent regime can be seen in India, as illustrated by Table 5.

18 Such drug development may be necessary to account for drug resistance and immunity within mutated and adapted strains of viral and bacterial diseases.

Table 5: Patenting activity in India

	95/96	96/96	97/98	98/99	99/00
Granted	415/1118	293/614	619/1225	645/1155	557/1324
In Force	2098/6994	2003/7202	2047/6882	2088/6691	2200/6458

Notes: The first number refers to patents granted to Indians and the second to foreigners.

As Table 6 illustrates, most nations in S/SE Asia are already experiencing slow or negative growth in their pharmaceutical sectors. This trend is likely to be adversely affected by the TRIPS Agreement and its implications for private sector growth. Similarly, if research and development space as well as technology transfer is not encouraged, the South runs the risk of continuing deterioration of its own health sector.

Table 6: Pharmaceutical production, consumption, imports and exports

Country	Production as percentage of world total		Consumption per Capita USD	Percentage Share of					
				Production to consumption		Imports to consumption		Exports production	
	1975	1990	1990	1975	1989	1975	1989	1975	1989
Bangladesh	0.1	0.07	1.1	89.9	83.8	10.4	16.3	0.3	0.2
Bhutan	-	-	1.6	-	-	100	100	-	-
India	0.93	1.29	2.2	96.9	104.3	6.5	5.4	3.5	9.4
Indonesia	0.36	0.46	3.9	94.6	98.8	5.8	2.0	0.4	0.9
Malaysia	0.02	0.04	7.8	27.5	49.5	87.5	62.5	54.4	24.2
Maldives	-	0	2.0	-	-	100	100	-	-
Myanmar	0.02	0.01	0.3	77.5	60.5	23.7	39.7	0	0.4
Pakistan	0.14	0.33	5.1	80.9	79.1	20.5	21.6	1.8	0.9
Philippines	0.39	0.29	7.7	98.5	89.7	1.6	11.3	-	1.2
Sri Lanka	-	-	1.8	25.8	16.7	74.4	84.1	0.8	4.5
Thailand	0.24	0.21	6.6	71.7	87.6	29.0	14.3	1.0	2.1
Total	2.2	2.7							

Source: UNIDO, 1992, The Worlds Pharmaceutical Industries; An International Perspective on Innovation, Competition and Policy by Robert Balance, James Pogany and Helmet Forsteiner.

10.9 Conclusions and Recommendations

In order to balance the effect that TRIPS negotiations are having on the environment in S/SE Asia, the region will have to group their negotiating resources and regional bodies to protect their mutual interests in traditional knowledge, environmental resources and indigenous growth. This will require a two-pronged approach: on the manufacturing side to protect the drug industry and; on the R&D side, to invest in the future by protecting biodiversity, traditional knowledge, seed and patent banks, and geographical indications. Collective efforts will enable the region's nations to strengthen institutions, support domestic enterprises and prepare for more competition from northern MNCs. Such an approach should contribute to the protection of the environment by protecting traditional farmers, sustainable livelihoods and natural resources from bio-piracy and valuing resource exploitation through benefit-sharing.

South and South East Asian countries can assist each other through joint research and development efforts at the institutional, governmental and financial levels. Support needs to be lobbied for at the level of the

WTO and supported by the UN. Such regional agency cooperation, research and supply analysis, marketing needs, distribution requirements and infrastructure - will all yield valuable data, lessons and common concerns that civil society, the private sector and public sector stakeholders can benefit from. The essential goal should be to foster and build regional, national and provincial traditional knowledge and seed banks that can feed the domestic market (agriculture, health, industrial) and development needs without adversely impacting the environment.

The TRIPS and Health agreement needs to be better understood with regards to the following two categories. At the level of health, it should be explored how to develop domestic drug manufacture and distribution from India to S/SE Asian in order to achieve affordable distribution to as many communities as possible, to minimize disease spreading and low labor productivity and impoverishment resulting from poor community health. With respect to technological innovation and transfer of technology, it is up to developing nations to design policies that reflect the needs of environmentally sound technology transfer to build up the local drug sector.

Flexibilities specific to South and South East Asia need to be lobbied for so that Geographic Indicators that will protect indigenous livelihoods are in harmony with the environment within which they reside. Increased trade from such indigenous sectors will not damage the environment like other capital intensive business operations. This fact needs to be emphasized in the context of the environmental footprint and the trade-environment-poverty nexus.

11 Conclusion

This paper suggests negotiating strategies for the South to shape trade rules to serve sustainable development while keeping in full view the limitations and constraints they are subject to as a “block”. The point is that the North needs to address trade-environmental linkages within the holistic framework of sustainable development to ensure more equitable treatment for the South. But distributional concerns exist in the South as well, evident in the poverty-environment linkages. This creates asymmetries both in terms of impacts as well as realization of economic benefits. There is a strong case for capacity building of poor and disempowered groups who stand to lose within the framework of the formal environmental negotiations. They need to be adequately represented by the South in the negotiations (a challenge given the prevailing socio-political dynamics) and supported by the North through financial and technical assistance.

Recent negotiating history demonstrates that the South often has diverse interests, the unity that is fashioned is often fragile, and the window of opportunity they have to shape trade rules to serve the poor in the South is limited. Since the South claims the right to special and differential treatment based on their lower income, it stands to reason that the benefits of concessions must accrue to the poor in the South. If this is adopted as a unifying principle, it would give the South the moral high ground and they would negotiate from a position of strength. This is particularly so because they are essentially negotiating with Northern governments that serve the interests of multinational corporations. An addendum to this is that the South has little room for maneuver when it comes to dealing with the private sector. Increasingly businesses in the North are being required by their boards/shareholders to do business with firms that meet certain ‘voluntary’ environmental and quality standards. The only option Southern exporters have is to conform or lose markets.

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Annex 1:

Agreement on Agriculture: Definitions

Ad valorem tariff: A tariff rate expressed as a percentage of the value of the goods to be imported or exported.
Aggregate measurement of support: It is the annual level of support expressed in monetary terms for all domestic support measures where government funds are used to subsidize farm production and income.
Amber box measures: Domestic agricultural support that is considered to distort trade and is therefore subject to reduction commitments.
Blue box payments: Payments made as part of certain domestic support policies (mainly those of the European Communities [EC] and the United States) that are specifically exempt from reduction commitments.
Ceiling bindings: Tariff bindings imposed by developing countries on commodities that were not formerly subject to binding commitments.
De minimis payments: Domestic agricultural support payments representing only a small percentage of transfer to producers (less than 5 percent of the production value for developed countries and 10 percent for developing countries). Even if the effects of de minimis payments are potentially production- or trade-distorting, such support is exempt from reduction commitments.
Green box measures: Support measures that are considered to have no, or minimal, trade-distorting or production-related effects. Such payments are therefore exempt from domestic support reduction commitments.
MFN tariff: A tariff applied on a most-favoured-nation basis and which, therefore, does not discriminate against individual suppliers.
Special and differential treatment: Exceptional treatment reserved for developing countries, allowing greater flexibility in establishing support and protection measures.
Special safeguards measures: A mechanism available to members who have converted non-tariff measures to tariff protection. It allows members to impose additional tariffs on agricultural products if import volumes exceed defined trigger levels or import prices fall below defined trigger prices.
Swiss Formula: A formula for achieving linear tariff cuts. It is intended to reduce higher tariffs by greater proportion than lower tariffs.
Tariff: A duty or tax levied at the border on goods going from one custom territory to another.
Tariff escalation: Increasing tariff protection on products in line with their stage of processing. Tariff escalation implies protection of the processing industry.
Tariff rate quota: A two-tier tariff system under which a given quota volume of imports is charged at an in-quota tariff rate, which is lower than the above-quota MFN tariff.
Tariffication: The transformation of non-tariff import measures (e.g. variable levies and quantitative import restrictions), formerly applied by WTO members, into ordinary customs duties. The calculation for this transformation was based on the price gap between the external and domestic market prices, including the price effects of the non-tariff measure during the base period (1986-88).

(Reference: Goode, W., 1998: Dictionary of the Trade Policy Terms; CIES, University of Adelaide, Australia)

Annex 2:

TRIPS: The Paragraph 6 Problem

The TRIPS agreement allows the grant of compulsory licenses to override patents so that generic manufacturers may produce cheaper versions of patented life saving drugs. Countries without the domestic manufacturing facilities are faced with a problem. One option is to grant a CL (compulsory license) to the nation to import drugs from a nearby country. However, the supply of drugs may be limited and insufficient because of constraints placed by the TRIPS agreement on nations that have the capacity to produce such drugs. So country A, will be able to produce only enough for its domestic population and any excess for export would not be allowed, as it infringes on subsidized exports. The reason is that the TRIPS Agreement (Article 31(f)) requires that the production of generic drugs under a CL is "predominantly for the supply of the domestic market". This restriction would mean that exports of drugs produced under a compulsory license is only possible only if the "predominant" portion of the production output has been supplied to the domestic market. This raises the concern that the non-predominant portion may not be sufficient for the needs of the importing country or countries.

The "solution" is essentially a waiver of the Article 31(f) limitation on exports, which lifts the requirement of Article 31(f) that pharmaceutical products produced under a CL shall be "predominantly for the supply of the domestic market". With this waiver in force, it means that a predominant portion or even the total amount of production under a CL could be exported to a country wishes to import. The US and its pharmaceutical lobbies do not want generics to gain a stronger foothold, so the flexibility allowed in good faith is being drafted to minimize the abuse of such good will and flexibility will have on markets. In order to guard from the negative effects, LDCs are automatically eligible for such rights, whereas developing nations will have to establish that there is insufficient or no manufacturing capacity. In order to prevent re export and trade diversion, measures will have to be taken by importers and exporters.

While the CL is subject to a number of terms and conditions including limiting distribution, marketing, supply and ensuring transparency with regard to quantities supplied to each importing country. The concern is that too many hurdles would be presented to generic manufacturers for them to feel it worthwhile to manufacture such drugs. Competition, which would be worthwhile to keep costs low, is then not practical as economies of scale will be required to overcome hurdles in order for production to remain viable. In cases such as India, generic manufacturers are being allowed to produce and export without the need for compulsory licenses until 2005. Once they are required, it will be the governments who will issue them and monitor exports in good faith. India, is one of the few nations in S/SE Asia capable of manufacturing and producing generic drugs, which leaves the rest of the region relying increasingly on expensive imports from Japan or generics from India. In South and South East Asia, LDCs have been granted the right to be exempt from pharmaceutical patents until 2016 at the earliest. While this removes them from the obligations under TRIPs, it makes sense for them to invest and collaborate with neighboring states that have the capacity to export under CL.

An issue that surfaces in this scenario of being fully or marginally exempt from patent protection, is that government resources are being required to manage patents in an industrial environment that has not emphasized intellectual property in the past. Such resource allocation could result in taking away from a spirit of technology transfer and intellectual property acquisition and sharing.

Overall, as with other agreements, there is a concern that the right holder and the patent holder of intellectual property has greater protection through the TRIPs agreement (and the Berne and Paris conventions as well as the WIPO) than nation states do. According to article 34.1, the burden of proof is on the accused rather than on the plaintiff, so developing nations are faced with the task of proving that their methods of arriving at a patented process are different from the ones held by the patent holder. The environmental nuances of the agreement surface in a number of ways as well. While the linkages are indirect, they touch on elements of natural resource management, biodiversity and sustainable environmental management in key ways.

Annex 3:**GATS: Regional Indicators**
Contribution of Services Exports in Asia

Country	As a % of GDP		Services Exports as a % of Total Exports		As a % of Total Services	
	1980	1997	1980	1997	1980	1997
Bangladesh	0.9	1.6	18.1	14.9	2.2	3.3
India	1.7	2.4	28.2	22.3	4.8	5.4
Nepal	6.5	18.2	57.5	75.1	25.1	50.6
Pakistan	2.6	2.9	19.3	16.9	5.7	5.7
Sri Lanka	5.7	5.5	18.1	15.7	13.3	10.6
Indonesia	-	3.2	2.0	11.5	1.7	7.9
Malaysia	4.6	1.5	8.1	16.2	11.6	3.7
Philippines	4.5	18.4	20.1	37.7	12.4	37.6
Thailand	4.6	10.2	17.7	21.5	-	20.9
Hong Kong	20.3	24.0	22.7	17.9	30.3	28.5
Korea Rep	4.1	5.9	12.8	16.2	9.1	11.7
Singapore	41.4	31.6	20.0	19.7	67.9	48.7
China	1.2	2.7	12.2	11.9	5.9	8.5
Japan	1.9	1.7	13.5	14.1	3.5	2.8

Source: World Bank, 1997 and 1999

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