

SDPI Comments for the Ministry of ELG&RD on

**Forthcoming Trade Negotiations:  
Identifying Pakistan's Interests**

(A paper prepared by the Pakistan Mission in Geneva)

Prepared by

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## INTRODUCTION

This policy brief responds to *'Forthcoming Trade Negotiations: Identifying Pakistan's Interests'* (January 1999), a paper prepared by Pakistan's Permanent Mission in Geneva in preparation for the Third Ministerial Conference of the World Trade Organization (WTO) to be held in Seattle, USA, in December 1999. The paper under review provides a comprehensive overview of relevant issues and presents a thoughtful and thought-provoking discussion of Pakistan's key interests and strategic options. Its main recommendation is to "focus on implementation issues with a view to rectifying the imbalance in the existing Agreements, and to ensure that all Members gain equitably from the operation of these Agreements" (p. 1). This captures the thrust of the likely, as well as the advisable, negotiation position that will be adopted by most developing countries.

It is not the purpose of this policy brief to delve into all of the many issues raised in the paper. We will focus, instead, on two critical elements which are not only directly relevant to the Third WTO Ministerial Conference but are also important to Pakistan's long-term strategy in international negotiations, particularly those related to trade and environment. The first of these concerns general negotiation strategy and its particular manifestation in relation to the scope of future WTO negotiations. The second relates to the treatment of so-called "new issues" (of which the environment is one).

## ON NEGOTIATION STRATEGY

In focussing on implementation, the paper under review has adopted the defensible and appropriate negotiation position that will be strengthened because most other developing countries are likely to adopt a similar position. The paper makes a strong case for why this focus is necessary and how it will be related to Pakistan's key interests.

The general argument could be strengthened further by drawing attention to the **'international treaty congestion'**, and the accompanying **'negotiation fatigue'**, that has been taking place over the last decade, particularly in the areas of international trade. It is not without irony that the period most people associate with the growth of international economic liberalization is also the period when international economic regulations have grown at an unprecedented pace. More than that, they seem to have grown at a pace that is difficult to keep up with for many developing countries. Hence the need to take a little breath and see if what we have already agreed to is being implemented or not.

This argument bears directly to how Pakistan should approach various proposals for future negotiations. Three options are now on the table: a) **'sector-by-sector'** negotiations, b) a new integrated **'Round'** of negotiations where everything is linked to everything else, and c) the grouping together of **'clusters'** of issues to be negotiated as distinct packages (p. 27). However, in analyzing the discussion in the paper (pp. 27-29) a fourth, hybrid, option seems to emerge which might be called a **'phased'** negotiation option that might meet Pakistan's interests even better. Pakistan, as the Vice Chairman of the Conference, might wish to champion this option on behalf of the developing countries.

The paper suggests a preference for the 'clustering' approach with the provisos that: a) negotiations on implementation issues, 'built-in agenda' issues, Singapore issues, and 'new' issues would proceed in separate packages, b) linkages would exist between issues within a package and not across packages, and c) there would be an early harvest of negotiations on implementation issues, followed by an outcome of the cluster of 'built-in agenda' issues, and issues contained in the other clusters would be decided in the final phase (p. 28). What we are calling a 'phased' negotiation approach builds directly on this set of preferences.

**Table 1 . Options for Future Negotiations**

	Option	Champions	Pros	Cons
<b>#1</b>	Sector-by-Sector negotiation	<i>USA</i>	Specific agreements could be reached in relatively short periods of time.	Gives unfair advantage to developed countries with greatest say on agenda.
<b>#2</b>	A new 'Round' of negotiation	<i>EU, NZ, Aus, Honk Kong, Argentina, Mexico</i>	Ensures that all issues under consideration are dealt with. Theoretically this gives a veto to every country on every issue.	Tends to be very slow; requires very high level of resources and effort which places developing countries at a disadvantage.

#3	'Clusters' of negotiations	<i>Canada and many DCs</i>	Allows for efficient packaging of issues important to most parties within manageable time frames.	Details remain unclear. Definition of and prioritization between packages could be contentious and skewed to developed countries.
#4	'Phased' negotiation	<i>Pakistan??</i>	Provides a clear and principled hierarchy of deliberations that could begin simultaneously but 'mature' differentially.	Non-implementation of existing agreements could hold future negotiations hostage.

The proposal is for Pakistan to build on the arguments already outlined in the paper under review and raise concerns about 'negotiation fatigue' to marshal the support of other like-minded delegations for a '*slow-but-steady approach*' to future negotiations. The phased negotiation option would create a clear hierarchy of WTO deliberations building upon the hierarchy implied in the Geneva Ministerial Declaration:

1. The highest priority would be given to **monitoring** the implementation of existing agreements and decisions and devising ways to keep these on track.
2. Concurrently, **negotiation** would begin on 'clusters' of sectors where a clear commitment to negotiate has been made by the Ministerial Conference. This would include mandated negotiations and reviews.
3. At a lower level of intensity, **discussions** may begin in working groups on identifying options and preferences in areas where there is no commitment yet for negotiation but which have been identified as possible areas for future deliberations. However, these discussions would not be considered formal negotiations until the earlier negotiations (#2) have been completed and progress on implementation (#1) is deemed satisfactory by the General Council.
4. At the lowest level, working groups may be initiated to prepare background **investigation and review** reports of possible new issues that may be raised by WTO members. The purpose of this exercise would be, for example, to gauge whether these issues are appropriate for consideration within WTO.

Such an approach has the advantage that if accepted, and successful, it could ultimately become the model for all future deliberations within WTO even beyond this current phase. More importantly, from a conceptual point of view, such an approach builds on the lessons of negotiation theory and would provide for a clear and principled hierarchy of deliberations that could begin simultaneously but would 'mature' differentially. It could become the basis of a clear set of criteria on when a particular issue would be ready for formal negotiation. Moreover, because of the 'incubation' period provided in the 'discussion' (#3) and 'investigation and review' (#4) phases, this approach would ensure that issues that reach the negotiation phase

are actually 'mature' for negotiation and are likely to be negotiated relatively quickly. Thereby, it checks against treaty congestion by ensuring that new agreements are not negotiated until prior decisions are being satisfactorily implemented. Table 1 presents the key pros and cons of each of the four options.

## ON TAKING A PROACTIVE STAND ON THE ENVIRONMENT

The paper under review argues that Pakistan should "ensure that there is no substantive movement in the... trade and environmental agenda" (p.26). This recommendation is made on the assumption that the environment is largely a concern of the developed countries and is likely to be introduced into WTO discussions by those countries "in order to placate [their] domestic environmental lobbies" (p. 25). In particular, the paper highlights two dangers:

1. Provisions in multilateral environmental agreements (MEAs) might be used to 'trump' WTO rules.
2. The imposition of environmental standards (including process standards) could become new trade barriers to thwart developing country exports.

This represents Pakistan's now standard response to the issue and one shared by many developing countries. Indeed, there is merit to such arguments. Particularly for the latter because developed countries have exhibited a tendency to co-opt environmental concerns for protectionist purposes in prominent cases such as tuna-dolphin and shrimp-turtle, the use of clean air standards to disadvantage Brazilian and Venezuelan refineries (all involving the US), and the Austrian requirement to label tropical timber. Moreover, in light of the discussion above, trade and environment may not be the immediate priority because of all the implementation issues that remain outstanding.

However, it is clear that ***even if trade and environment may be an easily postponable issue at this point in time, it cannot be postponed indefinitely.*** This is so not only because the links between the two areas run deep, but also because lasting (sustainable) progress on either is dependent on the other. Ultimately, providing a healthy environment to our people is no less important than providing them with economic security. Moreover, we are

beginning to realize that a healthy environment is as important to a healthy economy as the latter is to the former. Sooner or later the world, and Pakistan, will have to confront the deep links between trade and environment; the sooner we do so the better off we are likely to be. This section argues that notwithstanding the attempts by some developed countries to maneuver a protectionist capture of the environmental agenda, there are compelling arguments for why it may be time for Pakistan (and generally the South) to rethink its position on this subject:

1. Despite their tendency to opportunistically use environmental provisions as disguised trade barriers, most industrialized countries<sup>1</sup> are even more worried about the trade and environment issues than developing countries.<sup>2</sup> However, as the paper under review rightly points out these countries (particularly the US) raise the issue primarily to placate domestic environmental lobbies. In doing so they strategically use the expected Southern opposition as a scapegoat to deflect the blame for inaction to the South. In essence, the developing countries, particularly those leading the argument, look like the 'bad guys' even though the major industrialized countries are themselves less than eager to undertake any action in this direction. This 'politics of posturing' is going to be ever more fervent at the Third WTO Ministerial because it is to be held in the US and environmental groups there are already preparing to focus on this issue. It would be sad if Pakistan and other developing countries were to be needlessly seen as environmental laggards and thereby provide the developed countries (particularly the US) with an easy excuse to hide behind. On the other hand an openness (even eagerness) to discuss a meaningful and South-friendly incorporation of trade and environmental concerns into WTO and MEAs could turn the table on the developed countries and force them to show their real hand. This would obviously require a careful analysis and clear articulation of our trade and environment interests. The elements of such a position are discussed later.
2. Developing countries, including Pakistan, have been consistently unsuccessful throughout GATT/WTO history in using the threat of their non-participation to influence the outcome of issues that were of high interest to key developed countries. It should be recalled, for example, that in the 1980s the developing countries refused to accept the inclusion of issues related to services, investment and intellectual property into GATT negotiations using arguments similar to what they are now using on the environment. Yet, by the end of the Uruguay Round, each of these issues had been incorporated into GATT. Most observers agree that on investment, as on other issues before it, the agreement reached between the OECD countries will most likely become the basis of what WTO will ultimately incorporate (even if only for reasons of precedent). The point is that if indeed the developed countries are bent on including a set of environmental clauses into WTO rules, they are likely to impose them one way or the other, sooner or

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<sup>1</sup> With some exceptions, most notably the Nordics.

<sup>2</sup> This was made abundantly obvious, for example, at the recent negotiations on a Biosafety Protocol (in Colombia, February 1999) where the US position was exactly what the Pakistan and Southern position has been at WTO: no MEA should be allowed to trump WTO rules.

later.<sup>3</sup> However, if Pakistan and other developing countries participate proactively in the discussion at this point--and focus on putting forth alternative proposals on how to incorporate environmental issues into international trade regimes--we will have at least some chance of influencing the final outcome. By opting to remain 'out of the loop' at this formative juncture, we stand only to be reduced to spectators of the final outcome.<sup>4</sup>

3. In general, international environmental regimes have been more accommodating in providing differential, and preferential, treatment to developing countries than trade agreements. Arguably, developing countries can defend their interests better in forums seeking 'sustainable development' than in those advocating unadulterated trade liberalization. The urge to retain trade forums (where we have traditionally been at a disadvantage) as the ultimate arbiter over MEA provisions could backfire.
4. Finally, it is important to remember that we can remain vigilant on the two points raised in the paper (MEAs 'trumping' WTO rules and the use of environmental standards as trade barriers) while still pursuing trade and environmental provisions that are equitable and advantageous to Pakistan and other developing countries.

The obvious conclusion from the above is the urgent need to shift Pakistan's strategy (on this as well as other issues) from negotiating 'reactively' to negotiating 'proactively'. Instead of simply reacting to the various agenda issues put on the table by the North, the developing countries, including Pakistan, need to come up with an agenda of their own.<sup>5</sup> Given that the ability to define the agenda translates directly to negotiative power, we need to move beyond why we find the proposals made by the developed countries unacceptable to focus on defining alternative proposals that do meet our interests.

Pakistan, as the Vice-Chairman for the Conference, is in a good position to take a leadership role within the developing countries to articulate a proactive position on trade and environment which safeguards our trade interests while also enhancing our environmental image and

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<sup>3</sup> While the developed countries do not have any interest *at this point* to explicitly deal with trade and environment issues, it is obvious that this issue will have to be tackled at *some point*. Multinational corporations, NGOs, academics and governments in the developed countries are all planning on this assumption and preparing to influence the shape of those regulations, as and when they happen.

<sup>4</sup> A large number of NGOs, academics and government agencies in the developed world are already working feverishly at defining the likely future shape of trade and environmental regulations. By remaining out of this discussion developing countries will only forfeit their right to influence its ultimate conclusions. For example, companies in Europe are already beginning to adopt eco-labelling procedures. Once these have set in place as precedents and norms they will necessarily be incorporated into WTO rules. The ability of developing countries, such as Pakistan, to influence them at that stage will be much less than what it is at this formative point in their evolution.

<sup>5</sup> This argument is extensively made in the literature on negotiation theory and practice. The literature also points out that developing countries are forced into a reactive strategy because of limited resources and their placement in the international political and economic system.

integrity. While defining the contours of such a position would obviously require greater thought (and negotiation with other developing countries), some key elements of such a position can be identified here:

1. Any discussion of trade and environment within WTO should be in the context of 'sustainable development' as defined and discussed in Agenda 21 (emerging from the 1992 Rio Earth Summit). This would include the focus on differentiated responsibility for developing countries, adherence to the right to development, and recognition that international environmental obligations undertaken by the developing countries are subject to the provision of adequate multilateral assistance. Both these principles are repeated in most MEAs and should be re-articulated within any WTO provision.
2. The WTO should clearly articulate the principle that the environment should not be used as a protectionist barrier to trade. This would include clear rules against the use of eco-labeling or other exclusionary devices based on unrelated process or production methods (PPMs).
3. All trade and environment discussions should recognize the principle of subsidiarity--that priority should be assigned to the lowest jurisdictional level of action consistent with effectiveness. International policies should be adopted only when this is more effective than policy action by individual countries or jurisdictions within countries.
4. Blanket provisions that relate WTO to MEAs in any form should be avoided. Instead, a coherent approach to trade and environment in the two regimes should be sought. Moreover, WTO as well as MEA compliance should be understood in the context in which these agreements were negotiated. This would mean, for example, that any action would only be relevant in all parties are full members of WTO as well as of the MEA in question. This would also mean that violation of MEA requirements due to the lack of international contextual conditions (such as international assistance) should not be a subject of WTO action.
5. The application of trade restrictive measures should be a device of last resort. It should be applied only when other means of improving MEA compliance and environmental conditions have been exhausted. In particular, MEAs should ensure the provision of technical and financial assistance to developing countries to facilitate conversion to environment-friendly processes and methods and the availability of relevant technology which can be absorbed and adapted by developing countries.
6. All trade and environment issues should be dealt with together by pooling the various environmental provisions now scattered within different WTO provisions. Currently WTO agreements refer explicitly to the links between trade and environment in four instances: Article XX of general exceptions in GATT 1994, the agreement on technical barriers to trade, the agreement on sanitary and phytosanitary measures, and the agreement on trade related intellectual property rights (TRIPS). These and any other environmental provisions should be negotiated as a package, including clear rules about the patenting of life forms (as in the 'Texmati' case) and trade in genetically modified organisms (GMOs).

**Table 2 . The Case for Adopting  
a Proactive Stand on the Environment**

Why is Pakistan worried about trade and environment	Why Pakistan should take a proactive stand	Elements of a proactive negotiating position
<ul style="list-style-type: none"> <li>❖ MEAs might be used to 'trump' WTO rules.</li> <li>❖ Environmental standards can be used as trade barriers.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Developing countries are likely to be used as scapegoats.</li> <li>❖ We will lose chance to influence the emerging shape of the trade and environment debate.</li> <li>❖ MEAs more accommodating in providing differential, and preferential, treatment to developing countries.</li> <li>❖ We can still remain vigilant on our concerns while pursuing a proactive agenda.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Sustainable development and Agenda 21 provisions.</li> <li>❖ Principle of not using environment as a trade barrier.</li> <li>❖ Principle of subsidiarity.</li> <li>❖ Coherence between MEA and WTO provisions and compliance.</li> <li>❖ Trade restrictive measures should be device of last resort.</li> <li>❖ Deal with all trade and environment issues together.</li> </ul>

In summary, the position of Pakistan and other developing countries of trying to stall any movement on trade and environment issues in the WTO, although understandable, is no longer advisable. It allows developed countries to use developing countries like Pakistan as scapegoats, while removing ourselves from a position where we could influence the emerging discussion on the subject and steer it towards a South-friendly direction. It is suggested that Pakistan should lead other developing countries in adopting a proactive approach to trade and environment. A summary of the key points is presented in Table 2.