

**ENVISIONING
A SUSTAINABLE
DEVELOPMENT
AGENDA FOR
TRADE AND
ENVIRONMENT**

EDITED BY
ADIL NAJAM, MARK HALLE,
AND RICARDO MELÉNDEZ-ORTIZ



Envisioning a Sustainable Development Agenda for Trade and Environment

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and Ricardo Meléndez-Ortiz

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A.N., M.A.H, R.M-O

Acronyms and Abbreviations

AB	Appellate Body
ABS	access and benefit sharing
ACP	African, Caribbean and the Pacific
ACTS	African Centre for Technology Studies
AGOA	African Growth and Opportunity Act
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
AU	African Union
AZTREC	Association of Zimbabwe Traditional Ecologists
CAFTA	Central American Free Trade Agreement
CAITEC	Chinese Academy of International Trade and Economic Cooperation
CAMRE	Council of Arab Ministers Responsible for the Environment
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CCICED	China Council for International Cooperation on Environment and Development
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COMESA	Common Market for Eastern and Southern Africa
CRNM	CARICOM Regional Negotiating Machinery
CROSQ	CARICOM Regional Organization for Standards and Quality
CTD	Committee on Trade and Development
CTE	Committee on Trade and Environment
DPGs	domestically prohibited goods
DSU	Dispute Settlement Understanding
EAC	East African Community
EGS	environmental goods and services
ENDA	Environnement et Développement du Tiers Monde
EPPs	environmentally preferable products

ESCWA	(United Nations) Economic and Social Commission for Western Asia
EU	European Union
FAO	Food and Agriculture Organization
FDI	foreign direct investment
FTA	free trade agreement
FTAA	Free Trade Agreement of the Americas
GAFTA	Greater Arab Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GM	genetically modified
GMOs	genetically modified organisms
GSP	Generalized Systems of Preference
ICAs	international commodity agreements
ICFTU	International Confederation of Free Trade Unions
ICTSD	International Centre for Trade and Sustainable Development
IDRC	International Development Research Centre
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IPR	intellectual property rights
ISO	International Organization for Standardization
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ITTA	International Tropical Timber Agreement
IUCN	The World Conservation Union
JCEDAR	Joint Committee for Environment and Development in the Arab Region
LAS	League of Arab States
M&A	mergers and acquisitions
MDGs	Millennium Development Goals
MEAs	multilateral environmental agreements
MFN	most favored nation
MRCE	Multi-stakeholder Regional Centre of Expertise
NAFTA	North American Free Trade Agreement
NGOs	nongovernmental organizations
NMFA	Norwegian Ministry of Foreign Affairs
OAPI	African Intellectual Property Organization
OUA	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
OECS	Organization of Eastern Caribbean States

OIC	Organization of Islamic Conferences
OIE	World Organization for Animal Health
OPEC	Organization of the Petroleum Exporting Countries
PIC	prior informed consent
PPMs	process and production methods
PPPs	public-private partnerships
RBA	Revised Bangui Agreement
RIDES	Recursos e Investigación para el Desarrollo Sustentable
RING	Regional and International Networking Group
S&DT	special and differential treatment
SADC	Southern African Development Community
SCM	subsidies and countervailing measures
SDC	Swiss Agency for Development and Cooperation
SDPI	Sustainable Development Policy Institute
SIDA	Swedish International Development Cooperation Agency
SME	small- and medium-sized enterprises
SPS	sanitary and phytosanitary
STDF	Standards and Trade Development Facility
STOs	specific trade obligations
TA	technical assistance
TBT	technical barriers to trade
TEDs	turtle excluder devices
TEMM	Tripartite Environment Ministers Meeting
TNCs	transnational corporations
TPA	Trade Promotion Authority
TRALAC	Trade Law Centre for Southern Africa
TRIMs	trade-related investment measures
TRIPs	Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNU-IAS	United Nations University's Institute of Advanced Studies
UPOV	International Union for the Protection of New Varieties of Plants
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

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CHAPTER 1

Searching for Southern Agendas on Trade and Environment

*Adil Najam, Ricardo Meléndez-Ortiz,
and Mark Halle*

This book seeks to provide authentically Southern perspectives on trade and environment. In particular, it focuses on whether and how developing countries can advance a more proactive agenda of their own on issues related to trade and environment.

This topic has been the subject of animated discussions in the past, and much has already been said and written about developing countries in the trade and environment debate. We do not wish to revisit these discussions. Our ambition, instead, is to build on what has been said and to advance the discussion, especially in the context of future negotiations on the subject. In particular, we are motivated by the desire to launch a conversation that could lead to the emergence of a genuinely Southern agenda for trade and environment—one that responds to the environmental challenges faced by the South, builds upon the trade priorities of the developing countries, and is contextualized within the framework of sustainable development.

The focus of this book is on trade policy—the mechanism for making choices among the different options available for governing trade, and constructing institutions to realize these choices. We are not looking at the properties of trade flows *per se* or at the details of the rules of trade, although a sustainable development-friendly trading system would undoubtedly require amendments to the existing rules and changes in how they are applied. The visions presented in this book begin with the premise that reforming the existing regulatory system is needed and is possible, and that the purpose of such reform is to breed a system where success in governing trade relations serves as a harness that will simultaneously advance economic, social, and environmental goals.

The chapters in this book are written by an outstanding array of authors from across the developing world who were invited to contribute specifically because they embody the diversity of the South in terms of its geographic breadth as well as the full range of Southern perspectives on the subject. While there are many issues on which the opinions of our authors diverge, these authors agree on three key points. First, that the multilateral trading system, with the WTO now at its center, has drifted astray without a commonly shared sense of purpose and that this is detrimental to the developmental interests of the South as well as to the health of the global environment. Second, that developing countries have deep-rooted and legitimate concerns about the existing agenda on trade and environment, which is a product of Northern environmental priorities and which either ignores or misunderstands Southern apprehensions about the trade and environment link. And, third, that developing countries need to adopt the proactive approach of advancing their own alternative visions of how the trade and environment agenda should be structured—visions that build on their own needs, priorities, and aspirations.

These three realizations underscore the context as well as the content of this collection. In addition, like so many of our authors, we are also convinced that developing countries will themselves have to take the lead in devising and pushing for such an agenda. We believe that right now is a particularly opportune time for them to do so. This, however, is not the place to expand upon this theme; it is explored at length in the subsequent chapters. Our goal here is to set the context for the ensuing discussion by introducing the larger research project of which this book is one output and to lay out for our readers a broad roadmap of what is to follow.

The chapters in this volume were written, and this volume was completed, shortly after the Doha (Qatar) Round negotiations had cautiously restarted after having stalled for several months. It is hoped that by the time this volume is published they will be safely back on track. Even if Doha should fail, it is clear that the “Doha Agenda” and its environmental components are here to stay, and that they will form the basis of future negotiations one way or the other. Whether the Doha Round “dies” or not—and we believe it will not—the issues discussed here will remain alive into subsequent negotiations.

Envisioning Southern Agendas

This book is one product of a three-year-long project called “Southern Agenda for Trade and Environment,” which was jointly implemented by the International Institute for Sustainable Development (IISD; www.iisd.org), the International Centre for Trade and Sustainable Development (ICTSD; www.ictsd.org), and the Regional and International Networking Group (The Ring) (www.ring-alliance.org).¹ The project has been conceived

as an ongoing set of conversations between and amongst leading practitioners, scholars and activists from the South on the current and future shape of the trade and environment debate. Most importantly, the “Southern Agenda” research project, and this book, has been a quest to explore what the South can do to move from a reactive agenda defined by its apprehensions about trade and environment to a proactive agenda that emerges from its own interests and priorities. We have understood from the beginning that this is an ambitious goal. We have pursued it because we believe it is important.

The current phase of the project began in the middle of 2003 and was structured around a series of regional consultations as well as discussions with Geneva-based developing country delegates to the WTO (all delegate interviews were conducted on the basis of non-attribution). Regional consultations were held in Senegal in July 2003 (for West Africa), in Chile in October 2003 (for South America), in Sri Lanka in January 2004 (for South and Southeast Asia), in South Africa in June 2004 (for Southern and East Africa), and in China in October 2004 (for North Asia). Regional background papers were produced for Latin America (Borregaard, 2003), Southern and East Africa (Sikoyo, 2003), South and Southeast Asia (Khan et al., 2004), Northeast Asia (Yang, 2004), and the Arab region (Makdisi & Chouchani Cherfane, 2005). Additionally, about twenty individual interviews were conducted with developing country delegates to the WTO, based in Geneva. (All project documents, including meeting reports, are available at <http://www.trade-environment.org/page/southernagenda/description.htm>.)

In addition to all of the above, and especially in order to animate the regional discussions, a set of regionally focused “think pieces” were commissioned in which thought leaders from each region were invited to envision the elements of a possible Southern Agenda on trade and environment from the perspective of the priorities of their region. This book brings together these regional “think pieces” with additional analysis of the findings of the project. It seeks to highlight the differences in regional priorities as well as draw out the broad common themes that are relevant across the South.

This book does not seek to posit—nor do we pretend that there is, can be, or should be—a single and all-encompassing Southern Agenda on trade and environment. Instead we embrace the notion of the South with all its inherent diversity, including its contradictions. As a matter of empirical reality, however, we note that developing countries have made common cause in, and negotiated as a loose coalition on, most issues related to the global environment, including on issues related to trade and environment (Najam, 2005a). For that reason alone, it makes sense to explore and explain why these countries react to trade and environment concerns as they do. What regional variances of perspectives and priorities exist within the South? And, how might the South help craft a new agenda on trade and environment that incorporates and responds to the felt needs and concerns of the developing

world? The last of these questions is of particular importance. At the outset of the research process that is reflected in this book, we had pointed out that “within the context of the WTO, the question is no longer *whether* trade and environmental policy are going to be linked, but *how*” (Najam, 2002). This book is an effort to begin seriously thinking about the *how*.

We begin, in Chapter 2, with Mark Halle and Ricardo Meléndez-Ortiz laying out the case for why a positive Southern agenda for trade and environment is needed and why this is an opportune time for developing countries to pursue one. This chapter serves as the conceptual framework for much of what follows. Halle and Meléndez-Ortiz point out that the multilateral trading system is drifting aimlessly, and dangerously, without a clear sense among its member states of what its ultimate goal is and with those states’ deeply divided positions on what it should be. Based on the aspirations articulated by the trading system itself, they propose that “the purpose of trade liberalization [should be] to advance, and eventually to achieve, sustainable development.” Moreover, they suggest that an immediate and achievable step towards this goal could be to align trade policy to set of larger global public policy goals, such as the achievement of the Millennium Development Goals (MDGs).

Chapter 3, by Hugo Cameron, also seeks to set the context for the regional chapters that follow. It does so by presenting a quick comparative snapshot of the commonalities among and differences in regional trade and environmental priorities across the South. Based on the various regional background papers and reflecting the insights from detailed interviews with Southern trade negotiators based in Geneva, this chapter highlights three important conclusions that are critical to understanding the rest of the book. First, and not surprisingly, that there are important differences within the South in terms of environmental challenges as well as trade priorities. Because of these differences, different developing countries and regions have varying interests and concerns related to trade and environment issues. Second, and more surprisingly, despite these differences on specific issues, the general concerns and aspirations that developing countries have for the multilateral trading system as a whole—and especially on trade and environment issues—are strikingly similar. In essence, what developing countries have in common in terms of the trade and environment agenda, outweighs their differences. Third, and very importantly, this chapter alerts us to the fact that the trade and environment issues that the developing countries consider most important—market access, environmental standards, benefit-sharing from biodiversity-related intellectual property rights, etc.—are conspicuously sidelined from the official negotiating agenda on trade and environment, which remains North-defined and North-driven.

The next eight chapters—each written by leading experts from the region in question—focus on regional perspectives and each is best understood within the context laid out in chapters 2 and 3.

The deficiencies of the existing multilateral system in terms of how it undermines Southern interests as well as the health of the global environment are elaborated in the chapters by Yash Tandon (Chapter 6) and Alejandro Nadal (Chapter 8). While these two chapters are written particularly from the Southern and East African and the Central American perspectives, respectively, the critiques presented here relate to the larger multilateral system and to the larger interests of the collective South. Both authors highlight the need for a serious rethink of the system as a whole and call upon the South to offer and articulate alternative visions for transforming the system so that it serves the interests of development, with a particular focus on the needs of the poorest in the developing world.

Carol Chouchani Cherfane and Karim Makdisi present a view from the Arab region (Chapter 4), which is a relative newcomer to the multilateral trading system and is still struggling to balance the demands of this system while safeguarding the interests of its producers, particularly small producers. Falou Samb, writing from a West African perspective (Chapter 5), and Taimoon Stewart (Chapter 9), presenting the perspective of the Caribbean Community, are similarly concerned about how the prevalent trade and environment agenda pushes the burden of compliance toward the South and how the smaller and least developed countries are particularly susceptible to being trampled by the heavy tread of multilateral trade policy. All three chapters encourage greater engagement of their region in the trading system, especially through advancing a South-friendly trade and environment agenda. However, and importantly, each of them points out that multilateral trade policy in general, and the emerging trade and environment agenda in particular, needs to respond to the special needs and concerns of new entrants, small states, and the least developed countries. They warn that unless such special and differentiated treatment is meaningfully assured, some of the most vulnerable populations in the world will only be further marginalized.

The concerns of the relatively more industrialized economies in the South are discussed by Pedro da Motta Veiga (Chapter 7), who presents a South American perspective, by Simon Tay (Chapter 10), who looks at Southeast Asia, and by Joy Kim (Chapter 11), who writes from the perspective of Northeast Asia. Each of these chapters is focused on economies that are already active and engaged in the multilateral trading system, yet it is striking that their key themes resonate with many of the issues raised elsewhere in the book. Da Motta Veiga, for example, urges South American countries to seek a positive trade and environment agenda that builds upon the development interests of these countries, but he is quick to add—as does Falou Samb in writing about West Africa—that elements of the South's defensive agenda will remain relevant because developing countries have legitimate concerns to defend. Similarly, the emphasis that Joy Kim and Simon Tay place on

regional approaches to trade and environment in Northeast and Southeast Asia, respectively, are very similar to the importance that Taimoon Stewart places on regional approaches in the Caribbean Community or Carol Chouchani Cherfane and Karim Makdisi place on such initiatives in the Arab region.

In the final chapter of the book, Adil Najam (Chapter 12) begins gathering the wisdom contained in the regional chapters to identify the broad contextual trends and issue dimensions that could become the basis of a future Southern Agenda on trade and environment. The chapter concludes that contextually there is now the opportunity within the Doha Development Round negotiations and the inclination within the developing countries, to engage more directly and more proactively with the trade and environment agenda. The chapter goes on to identify seven themes that emerge directly from the chapters in this book and around which such an agenda could eventually emerge. These seven themes are: (a) investing in regional arrangements can benefit global negotiations as well as local implementation; (b) a Southern Agenda needs to be pursued through the dispute settlement system as well as through multilateral negotiation; (c) trade and environment policy must not marginalize the already vulnerable; (d) special and differentiated treatment provisions can be used to expand the policy space for developing countries; (e) trade and environment policy coherence can benefit the South; (f) perennial agenda issues—including the proliferation of unilateral environmental rules, lack of Southern participation in setting environmental standards, subsidies and protectionist policies, intellectual property rights, etc.—will persist; and (g) the real North-South divide is all about capacity differences that need to be bridged.

Beginning a Conversation

This book should be read not as the culmination of an intellectual enquiry, but as the commencement of a public conversation—a conversation that we hope differs from prior conversations in that it moves beyond simply identifying that which is wrong by shifting the emphasis toward how things might be made right. We do not pretend that bringing about the type of reform that is needed will be easy. We do hold out the hope that it is possible.

What we offer in this book is not just an authentically Southern conversation, but hopefully an honest one. It does not shy away from controversy, it does not mask real differences in opinion, and it tries to encompass a variety of relevant viewpoints. Moreover, it is abundantly clear to us that seeking a positive Southern agenda on trade and environment does not imply that longstanding Southern concerns are somehow irrelevant or should be ignored. Far from it, a positive agenda can come only from recognizing those concerns and from devising policies and institutions that respond to them.

Finally, we do recognize that this conversation cannot be restricted only to scholars, practitioners and activists from the South. Ultimately, the circle of this conversation will have to expand and stakeholders from the North will have to join in. The purpose, after all, is not to devise a “Southern” agenda that can be somehow pitched against an existing “Northern” agenda. The goal is to build Southern as well as Northern ownership of a trade and environment agenda that reflects the interests of all concerned. Again, arriving at such an agenda cannot be easy, but we believe that it is possible.

We offer this book as a contribution toward realizing the possible.

Notes

1. Two other products of the Southern Agenda on Trade and Environment project are of particular importance. First, informal networks have been fostered through a series of regional dialogues and consultations that brought together leading practitioners, scholars, activists, and trade negotiators from each region. The consultations discussed the key trade and environment priorities for each region and identified possible regional strategies to deal with them. The second product is a companion to this book: *Trade and Environment: A Resource Book* which is being published simultaneously with this volume as a handy compendium that presents, in a reader-friendly format, information about the key trade and environment issues that are of importance to the South, that highlights the current state of negotiations on each, and that provides cutting-edge expert commentaries on the current and future direction of these debates.

CHAPTER 2

The Case for a Positive Southern Agenda on Trade and Environment

Mark Halle and Ricardo Meléndez-Ortiz

If you don't know where you are going," according to a famous expression, "any road will take you there." No collectively defined policy and regulatory system can function optimally unless it has a clear and shared vision of that for which it is intended. One of the frustrations of trying to make the multilateral trading system compatible with widely held and generally agreed societal aspirations, such as environmental sustainability, is that nobody clearly understands what goal the multilateral trading system is trying to attain. Worse still, no commonly shared sense of the system's ultimate goal is apparent among its constituent members.

This may sound like an unusual statement when applied to the World Trade Organization (WTO) and the multilateral trading system. Surely, one of the world's most influential organizations—one whose rules, once adopted, have the force of law in almost 150 countries and that has the power to impose economic sanctions even on the great powers—knows exactly where it wants to go and has the ability to track its progress?

Not necessarily. The multilateral trading system's membership includes states and customs unions. At present, and notwithstanding the formal declarations they may have signed in the past, these members are deeply at odds when it comes to a shared vision for the system. If the almost daily debates on the purpose of the latest round of negotiations are anything to go by, disagreement reaches all the way to the fundamental principles on which the system rests. Is it a system to govern the global flow of goods, services, capital, knowledge, and labor? Or for the administration of economic relations among members? Or to promote greater wealth and well-being for all members? Or merely to increase trade flows among members? Or to promote trade and market liberalization? Or all of the above?

Declaratory and preambular language indicates that *trade liberalization* is the system's evident posture and intent. But trade liberalization is a means to an end, not an end in itself. Trade liberalization is, for all but the most dogmatic, neither good nor bad *per se*. It is good if it takes us in a direction we wish to go. But what is that direction? Too many trade policy professionals refer to the purpose of trade liberalization in terms of means rather than ends. Trade liberalization, we are told, stimulates economic growth; it increases the size of the economic pie; it promotes mutual dependence and mutual understanding among peoples (see, e.g., Bhagwati, 2003).

Surely economic growth, a bigger pie, and even increased understanding among peoples are not ends, but means to an end? What is that end?

Trade Liberalization. But Why?

The General Agreement on Tariffs and Trade (GATT), adopted at the Havana Conference in 1947, refers to the challenges facing the world in the field of trade and economic endeavor and suggested that multilateral trading system should be constructed and managed “with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods” (GATT, 1947). It defines the purpose of “relations in the field of trade and economic endeavor” entirely in terms of narrowly conceived economic objectives—improved standards of living, employment, a growing economic pie (in the sense of expanding production and consumption), and increased trade. Even the reference to the environment, contained in the words “the resources of the world,” is limited to the use of these resources to stimulate trade. It is not unfair to say that trade was largely seen as an end in itself, or at best one that promoted economic resilience and health. Yet economic resilience and health are also means to an end, not ends *per se*, unless the assumption is made that economic growth will automatically bring about improved human well-being.

The 1994 Marrakech Agreement that led to the creation of the WTO begins to suggest that trade expansion may not be a sufficient goal, at least not on its own. The wording in the agreement's preamble is almost identical to the GATT text noted previously, except that the GATT reference to “full use” of the world's resources is gone. Instead, the Marrakech Agreement suggests that the growth of trade should occur “while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with the respective needs and concerns at different levels of economic development” (WTO, 1994). So from the full use of the world's resources to increase trade, we have moved to the notion of the optimal use of these resources, with optimality

being defined in terms of sustainable development. To be more specific, resources will be used in such a way as to preserve the environment and to increase the capacity of countries to do so.

If the preamble were the result of careful negotiation and represented a robust consensus rather than an aspirational statement, one could conclude that considerable progress has been made in setting a frame of reference for trade liberalization. One also could conclude that the WTO acts within a sensitive framework that places the greater public good ahead of narrower mercantilist considerations. Ten years of experience in implementing the expanded trade rules that the preamble introduces suggest this is not the case; at least, not yet.

The preamble also makes some references to development—particularly the notion of reversing the inequities that characterize the allocation of trade shares among states.

A literal reading of the preamble might suggest that the members of the WTO, in their efforts to expand world trade, have agreed to drop from the options available to them approaches to trade expansion that undermine well-established development or environmental objectives. While this is a welcome sentiment, in the ten years of its existence, the WTO has shown no evidence of even trying to translate it into an operational framework. The one exception is the WTO Appellate Body's use of the preamble as an indication of the framers' intentions with regard to how the trade regime is to be managed (Howse, 2002; Mann and Porter, 2003; Tarasofsky, 2005). So, while an aspirational target seems to exist, it appears more as a "marker," intended for further elaboration, than as a firm standard to be applied.

From a strict reading of the preamble, two conclusions may be reached, one general, the other specific. In general terms, it is clear that the signatories in Marrakech intended that the trading system not be incompatible with the wider goal of sustainable development. They may even have wished to signal that rendering the two fully compatible was now on the international trade agenda. More specifically, it appears to be the intention of the members that the trading system, in the way it is constructed and administered, should result in enhancing both action to conserve the environment and increasing the capacity of countries to ensure such an outcome.

For all the mystery that still surrounds the question of how it is implemented, this goal is certainly a step in the right direction when compared to GATT and undoubtedly reflects the heady spirit of Rio, where the Earth Summit had been held less than two years previously. In light of the WTO's absence of subsequent action, we must ask, Did the preamble's good intentions outlast the peak of environmentalism in the early 1990s? and, What difference has that preambular goal made to the functioning of the WTO? The answers depend very much on one's expectations—on whether the glass is deemed to be half empty or half full.

The first years of the WTO, it is fair to say, were viewed with intense skepticism by the environment and development communities. Far from forging a smooth channel toward harmonization of trade liberalization and sustainable development, the WTO became increasingly regarded as a juggernaut, operated in accordance with a narrowly mercantilist logic and perfectly prepared to roll over any environment or development obstacles it found in its path. Whether or not this perception was justified, it was clear that mutual supportiveness of trade and sustainable development did not flow automatically from the trade liberalization agenda.

Still, in November 2001 the WTO members adopted the mandate for a new round of multilateral trade negotiations at the Doha Ministerial. In crafting this mandate, the members went further than the Marrakech preamble, insisting on the compatibility of trade liberalization and sustainable development: “We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakech Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can *and must* be mutually supportive We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements” (WTO, 2001; *emphasis added*).

So, after stating that trade and sustainable development should be compatible, and that openness to trade should at the same time enhance countries’ ability to preserve the environment, the WTO members felt it necessary to strengthen the language in the Doha Ministerial Declaration—no doubt because they noted that this coming together of trade and sustainable development objectives was not happening automatically. The gap between intention and reality had led not to practical measures to close the implementation gap, but to an enhancement of the statement of the intention.

An Immediate Goal for Trade Liberalization: Achieving the Millennium Development Goals

In the course of almost six decades since the international trading system was put in place we have moved from a facile and somewhat overconfident vision of what trade liberalization can offer, to a statement of ambition that is both more guarded and more courageous. Gone is the classical notion that expanded trade and accelerated economic growth translate directly into increased

human well-being. In its place we have begun to articulate a vision of what positive consequences trade liberalization must also achieve and of what negative ones it must avoid.

Still, it is remarkable that there is, beyond the statements cited above, no clear and widely shared vision of the practical and measurable goal the trading system claims to wish to attain. There are no built-in and accepted tests in the multilateral trading system to ensure that trade liberalization is indeed supporting other public policy goals: the achievement of the Millennium Development Goals (MDGs), the alleviation of poverty, respect for human rights, sound management of the environment, promotion of social justice, narrowing the gaps between rich and poor, and combating exclusion. Rather, analysis and prescription have been left to exogenous entities and voices.

We therefore begin by proposing an immediate goal that follows naturally from the aspirations agreed upon by the WTO drafters: the purpose of trade liberalization is to advance, and eventually to achieve, sustainable development. Because that goal is somewhat uncertain and difficult to measure, we propose that, as an immediate objective, trade liberalization should be so structured as to contribute optimally to the Millennium Development Goals.

By dedicating trade policy and rules to sustainable development, we endorse all the traditional desires of trade strategy—its contribution to income growth and the generation of wealth, its search for efficiency and higher productivity, its rewards for enterprise, its exploitation of comparative advantage. But we suggest this is not enough. Trade policy and rules must, alongside their classical objective, contribute to higher societal goals and to the rational management of the earth's natural endowment, while promoting social justice, stimulating good governance and control of corruption, and reducing the gap between rich and poor countries and between the rich and poor within countries.

Indeed, existing and proposed trade rules and trade measures should be judged according to an overarching standard: whether or not they will contribute to this goal. If they do not—and especially if they are likely to undermine this goal—they should be amended or redrafted. As a first step toward harmonizing trade systems with sustainable environmental and developmental goals, we suggest that the achievement of the MDGs constitutes a realistic and achievable target, and that the international trading system should contribute optimally to this process.

The Broader Goal of Trade Liberalization: Achieving Sustainable Development

The fact is, trade liberalization is no longer a matter over which countries have much choice. As the South Korean minister of trade put it during the WTO Symposium in April 2005, countries can liberalize and end up like

South Korea, or they can decide not to and end up like North Korea. In reality the choice is not quite that stark, but it is not far from being so. Given the state of global integration, it is inconceivable for a country to remain fully outside the international trading system and still hope to run a functioning economy. And without a functioning economy, prospects for sustainable development similarly grow bleak. Any country joining the WTO must acquiesce to the full set of agreements that have been negotiated over the past six decades (with the exception of a few, relatively minor, plurilateral agreements). In addition, in order to join, countries must usually make a series of additional concessions—lower tariffs, tighter intellectual property protection, more circumscribed use of subsidies—that go beyond the standing rules. Finally, on joining, members find themselves in the middle of a round of negotiations that will lead to still further disciplines. It is no exaggeration to say that joining the trading system leads to a massive transformation of a nation's economy, with such a transformation's attendant social and political implications (Rodrik, 1997; Stiglitz, 2003).

Successful participation in the WTO often also requires onerous investments and adjustment costs on many fronts. Members are required to establish or strengthen institutions, while at the same time facing the costs associated with lost tariff revenue and with removing other trade barriers. Full integration further requires an overhaul of supply and productive capabilities and an investment in connecting to international markets. And adjustment is not limited to economic activity; new rules and commitments frequently determine the reallocation of a wide variety of resources, including labor, human settlement and distribution of population, natural resources, land use patterns, and pollution.

Some 150 countries are members of the WTO, and around 25 are in the waiting room (see www.wto.org). Together, this constitutes more than 90 percent of the world's countries (and customs' territories). We draw two conclusions from these facts. First, remaining outside the multilateral trading system is less and less an option for any but the most closed or the tiniest economies. Second, because of the central impact of the trading system on the character of the global and increasingly integrated economy, it is essential that trade not be considered in isolation from the impact the trading system has on other public policy objectives and goals.

We cannot afford to fight for poverty alleviation on the one hand, and extend a trading system that aggravates poverty on the other. We cannot accept that trade patterns, or the way the trade rules are crafted, make it nearly impossible for countries to take the necessary action to reverse the loss of biodiversity. At a minimum, the trading system must be so designed that it respects the basic principle to "do no harm." Better still, it should be designed so that it serves as an important means to achieve the MDGs and, beyond them, sustainable development.

We do not in any way wish to imply that trade is inimical to these wider goals, or that liberalization generally makes their achievement more remote. Trade liberalization is neither intrinsically positive nor intrinsically negative. Whether the net impact of liberalization on growth, on development, and on the environment is *in fact* positive depends on how the policies in the different areas are crafted, and on the extent to which they are mutually compatible or supportive. This strikes us as precisely the point. By ensuring that trade rules and policy are attentive to objectives that go beyond the strict confines of mercantilist logic, it is possible to ensure that not only the goals of trade are met, but also the goals of sustainable development. Surely this is what we must wish?

Making Trade Work

Defenders of the current trading system will argue against this assessment of inadequacy (see, e.g., Bhagwati, 2005). The trading system, they would suggest, is not the root of all social problems, and when trade does cause social tension or if it leads to environmental depletion, it is most likely the result of policy failures outside of the trade area. Weak institutions, poor capacity, corruption, absence of adequate regulation or implementation of existing regulations, ill-conceived systems of trade protection, outdated industrial strategies, and many other factors are to blame for the negative outcomes.

There is a lot of truth in this argument, but shifting the blame does not advance us much. The fact that we are not dealing with a perfect system is precisely the point. During the Uruguay Round, the latest wave of liberalization was sold hard to the developing countries as an advance that would benefit everyone. Admittedly, some would benefit more than others from the proposed changes, but there would be no losers. We now know, ten years into the application of the agreements and thanks to the work of analysts such as Dani Rodrik (1997, 2003), that trade liberalization—including the package of disciplines agreed in the Uruguay Round, which are now part of what all WTO members must accept—*can* benefit countries. Whether or not it *does* benefit them depends on the policies and institutions in place. Where these policies and institutions are in place and functioning adequately, trade openness can fuel a process of development and a rise in public environmental expectations. Where they are not in place, trade openness can lead to severe dislocation, social tension, and environmental degradation, despite its potential to generate other outcomes.

In view of the above, we believe that our focus must be not simply on what trade openness could do if a whole range of conditions were in place. We should focus instead on where trade openness actually leads—on the reality of trade rather than the stylized picture drawn from trade liberalization theory and models. And having focused on this reality, whatever its

cause, we must set about improving it, so that trade openness—and how it is structured, managed, and furthered—leads to an improved situation for countries on the social, environmental, and economic fronts simultaneously.

It is one thing for Brazil and India to contemplate lowering their tariffs and entering into the competitive world market. It is quite another for Tokelau, St. Vincent and the Grenadines, or Burundi to do so. The vast differences in geography, institutions, capabilities, and endowments—whether natural or built, whether physical or human—mean that countries will both benefit in vastly different ways and suffer negative impacts that are quite distinct from those suffered by their neighbors (see Rodrik, 2003).

To make matters worse, in the past, the priorities for liberalization were not set with sustainable development in mind, or even with the developing countries in mind (Najam & Robins, 2001; Chang, 2002). The system has evolved as a result of compromises inherent in negotiations and from policy and position formulations that traditionally privileged the voice of exporters in economies over those of other stakeholders. It also comes from a mechanism devised in the logic of postwar reconstruction to manage the vicissitudes of transatlantic, and later, transpacific trade (Hoekman and Kostecky, 2001). So the areas of trade policy that have seen the most rapid liberalization are those in which the more powerful traders have an advantage. Areas that might benefit a wide range of developing countries tend to remain on the back burner. Thus, when these latter countries throw open their borders, they tend to lose out in open competition with the more powerful players. Even their few comparative advantages cannot shield them from the power of those countries with capital, experience, and the backing of strong institutions. In many cases, countries' comparative and competitive disadvantages, including some characteristic of their natural endowments or geographical location, are overlooked.

We need to rethink the role of competitive advantage, one cast with sustainable development in mind. We need to design a system—or reform the present system—so that each player in the game might find and capture real gains in the trading system. It may well be that, because of efficiency and lower labor costs, New Zealand can sell kiwi fruit in Switzerland cheaper than Swiss farmers can sell kiwis. It is more likely, however, that New Zealand's lower price stems from subsidized energy, subsidized transport, or export credits. What good would it do for Grenada to throw open its tourist sector, only to find that the benefits of increased tourism remain overwhelmingly outside the country and economy?

Some Positive Movement

Given that we now have ten years' experience implementing the WTO rules, can we detect any movement in the direction of a fairer trading system, of

one dedicated to an overriding goal such as sustainable development? In some ways we can.

We are moving in the direction of insisting that reality correspond more to what has been promised. And, where the outcomes are substantially different from what theory said they would be, it is assumed that the failures should be corrected, rather than that time be wasted insisting that the theory was right, only misapplied. Developing countries are beginning to demand real benefits on the table before giving greater access to their markets. As was especially evident at the 2005 Hong Kong Ministerial, these countries insist that commitments guaranteeing these benefits be built into agreements and carry the same obligations to compliance as apply to those provisions relating to market access.

There is a growing sense that for trade expansion and liberalization to pay genuine dividends, they must take place in the proper sequence with other changes, such as institutional strengthening, capacity building, development of standards and norms, governance changes, and investment. Trade liberalization was embraced by some during the 1980s as a substitute for development strategies, but is no longer regarded as a sufficient therapy on its own (Rodrik, 1997). It will be effective only if combined with other interventions, with other developments, in a package that ensures it will have a positive overall impact.

There is movement at the national level to open the domestic trade policy process to a wider range of ideas and interests—to reinterpret the national interest not only as comprising the commercial interests of the major export-oriented corporations, but also as embracing the interests of a wide variety of stakeholders, including those that feel strongly about social justice, poverty alleviation, and the environment. The relationship between trade and other fields of human endeavor is being studied closely—not only trade and environment, but trade and human rights, trade and conflict, trade and poverty, and trade and policy space.

The Appellate Body (AB) of the WTO is beginning to look far and wide for policies, treaties, and public declarations that reveal what governments intended when they adopted those policies, negotiated the treaties, or made the public declarations (Howse, 2002; Tarasofsky, 2005). In the first case heard by the WTO in 1995 (the Reformulated Gas case) the AB reversed the practice of GATT panels and declared that WTO rules must not be interpreted “in clinical isolation” from other relevant international agreements. In the Shrimp-Turtle case the AB cited the Rio Principles and several environmental agreements, including at least one that was still in draft form, to ascertain the level of protection the states around the world had intended to give the sea turtles. In the Beef-Hormone case, the AB imported from international environmental legislation the controversial notion of applying the precautionary approach and, in two subsequent cases, went a

long way to defining how it may be applied to trade law (see Mann & Porter, 2003).

So, the highest constitutional instance of the WTO system has pointed toward effective application of a framework that would allow trade liberalization to contribute to a wider set of public goals. There is broader understanding today, as evidenced by the language of the Doha Declaration quoted above, of the risks of a serious backlash against the current order based on a misinterpretation of trade liberalization that could lead to deepening inequities, the growth of marginalized populations, and the destruction of the environment.

The Challenges Ahead

The challenge, then, is not to do away with the international trade regime. That would make no sense. The challenge, instead, is to make the system work not only for narrowly defined commercial interests, but for a wider set of interests, in support of a range of widely accepted public policy goals gathered under the title of sustainable development. We must reform the system so as to eliminate big gaps between countries in terms of how trade openness contributes to their development. We must reform the system so as to preclude some countries from being major losers and to avoid environmental collapse. The challenge is one of meaningful and deep policy integration. For this we need a common project, a shared vision, and a broad systems approach that links trade with the other elements of sustainable development.

Unfortunately, many obstacles stand in the way of progress in this direction. For one thing, the trading system, for all of the hortatory phrases contained in various preambles and texts, is not based on a notion of global equity, of global justice, or of global sustainability. The system, like trade theory itself, is based on the notion of comparative advantage and on negotiation revolving around trade-offs. For most of its existence, this seemed to be sufficient, because GATT dealt essentially with the treatment of manufactured goods at international borders. In dealing with border measures, and with trade in goods, the theory of comparative advantage functions reasonably well when it is allowed to.

The problem started when trade policy began to move “behind the border,” toward a one-size-fits-all prescription, and to deal with domestic policy as it affects trade (Stiglitz, 2003). At that point, not only did trade policy come face to face with other policy areas and with the challenge of diversity in endowments and capabilities, but also the notion of policy supremacy began to emerge. Because trade policy is linked to commercial interests and therefore to political power, its definers have a tendency to think of it as the defining policy and to believe that other policy areas should be aligned behind its imperatives.

Yet, in stepping on the toes of other policies, it upset other constituencies and forced into the open the question of the compatibility of trade policy with other policy objectives. It swiveled the public spotlight so that it shone starkly on trade policy, its impacts, and its implications. Trade, which until that time had had an easy ride, for the first time was obliged to stand up in the court of public opinion to justify itself.

For many, this upset a cozy relationship between export interests and government trade policy people. It began greatly to complicate the trade policy process, as new and often powerful interests insisted on participating in the crafting of trade policy and negotiating positions. And it happened at a time when there were considerable fears, but little objective evidence, of what trade really did to the environment, to poverty, or to development space.

Effecting greater policy integration is not easy, even when the principle is accepted. A mercantilist trade regime and a strongly mercantilist culture developed in the GATT and WTO over a half-century (Hoekman and Kostecki, 2001). Trade policy professionals have tended to resist looking beyond the established, narrow perspective on trade and related topics. In short, they have been slow to accept that trade policy is intimately tied to other policy areas, and that each affects the other. They tend to stick closely to the view that trade should take place in a manner as unimpeded as possible, and any negative consequences dealt with when they happen. They hold fast to the notion that nothing is to be given without something being received in exchange, secured through hardball negotiation. This is hardly a platform from which sustainable development can easily be launched.

With trade policy now largely focused on areas traditionally in the domestic policy realm, this restricted and restrictive approach is no longer viable. Nonetheless, this approach continues to exist, in part because adapting to new realities can be slow, in part because the process through which trade policy is developed at the national level continues to be flawed (see Rodrik, 2003). If trade policy represents key export interests effectively, few countries have a mechanism in which the range of legitimate interests are consulted, and their concerns reflected in a policy that balances these interests with sustainable development in mind.

Finally, there is strong reaction in the trading system against accepting the real consequences of trade liberalization. The reaction begins with denial: things are not as bad as the alarmists claim. It continues with blame shifting: the consequences may well be real, but it is not the fault of trade liberalization. Its third stage is, in many ways, the most damaging: trade may well have some negative impacts, and trade policy may have to be amended, but liberalization's good intentions will be nickel-and-dimed to death in endless squabbling about the details that can take years to resolve.

The net result of this can be a sharpening resistance to trade liberalization, loss of support for even its positive outcomes, polarization between those whose interests are served by greater trade openness and those who are more concerned about the consequences of open trade, and, if taken too far, the chance of a real backlash against the system in which the baby might disappear with the bathwater.

In terms of the future direction of trade policy, we appear to have a number of options before us:

- To take the goal-oriented texts in the WTO seriously and accept that trade liberalization must be subservient to the wider goals, especially the goal of sustainable development, that have been adopted by WTO members and by states in many other forums.
- To freeze progress in trade liberalization and risk a return to a wary, protectionist approach that will serve neither trade nor sustainable development. In this perfectly plausible scenario, the WTO agreements and the pattern of regional and bilateral trade agreements would represent the high-water mark of trade openness, with the future slowly receding from that mark as protectionist policies are put in place.
- To persist in the aggressive pursuit of narrowly defined mercantilist interests and the deepening of the current inequities, with the risk of provoking the sort of backlash against the system that has been evident at various stages of WTO's existence.
- To negotiate concessions and compensation in other fields for those countries that receive a raw deal from trade, so that the unfair system persists, mitigated to some extent by payoffs.

Of these four scenarios, the first is by far the most desirable, and the fourth is the most likely. The second and third remain plausible and real. Assuming, for the sake of argument, that the transition to it can be managed, surely the first of these scenarios is the only one that can be fully acceptable and in the general public interest, especially in the interest of the developing countries of the South. The second and third options carry the risk of a resurgence of protectionist behavior, with all of the dire consequences that history has taught us to expect from that strategy. The fourth can be justified only on the grounds that it maintains the domestic political power of the commercial sector, against concessions made to the victims of that power. It is a viable strategy if the compensation is sufficient, but it is far from the preferred outcome. So what chance is there to promote the preferred strategy? And what are the prospects of the South taking a lead in championing such as strategy? The next, final, section of this chapter explores these questions.

Why the South Should, and Can, Shift the Direction of Trade Policy

Given the inequities built into the trading system, and given their experience with the Uruguay Round and WTO membership, one might assume that the developing countries have a strong stake in moving rapidly towards the Utopia set out in the Marrakech Preamble. Sadly, what little pressure there is to do so comes not from the South but from the North, and very likely for a mixed set of motives that will be explored below. Before we get to that, however, it is worth exploring the reasons for Southern resistance to the trade and environment agenda.

The Logic and Limits of Southern Apprehensions

Developing countries have a number of reasoned and reasonable concerns about the addition of specific environmental provisions to the trade agenda, and they have been consistent in their general resistance to these issues (Chang, 2002; Khan, 2002; Najam, 2004). Subsequent chapters in this book discuss many of these concerns in detail. Also, there are several facets to the South's fairly steadfast front against extending the scope of environmental standards applied within the trading system. Trade negotiators in developing countries tend to be particularly concerned about such intrusions into the trade agenda. In presenting these arguments, it is important to underline the evident fact that the South is not unanimous in its resistance to the environmental agenda in trade. The arguments below are, it is conceded, something caricatured, representing a notional "center of gravity" within the broad panoply of developing countries' reactions to the issues.

First, it must be noted that many representatives of developing countries in the WTO and other international trade negotiation processes tend themselves to come from a highly mercantilist culture and tend to regard trade issues in narrow export-gain terms. These representatives tend to believe that gaining access to markets in the rich countries on favorable terms is an objective that trumps all others. While they are likely to be more sensitive to the real impact of the current trade rules on their societies and their prospects for development, they are equally likely to be looking for a trade-based solution to the issues that they face.

Second, it follows that these representatives are wary of any conditions on market access that stem from the advantages enjoyed by rich countries. Where environmental requirements become established conditions for market access, developing countries often find themselves at a disadvantage. Because they tend to have lower standards, they find their access to markets compromised, even when these lower standards are the result not of indifference to environmental degradation, but rather of poverty. If countries have

limited capacity, have restricted access to the best technology, or have yet to develop detailed national environmental standards, they are inclined to see being kept out of richer markets as a double punishment. They may be inclined to argue that only trade-led growth will enable them to afford the technology, institutions, and capacity to manage the environment sustainably.

Third, in support of this argument, they point out with some justification that, at a similar stage of development, most rich countries put aside environmental standards in favor of a strategy based on rapid economic growth, using the resulting wealth to address the social and environmental consequences. Why should this door be closed to them?

Fourth, they argue that the motivation behind rich countries' interest in making trade subservient to certain environmental considerations contains a large element of protectionist sentiment. They suspect rich countries of wishing to replace the tariffs and quotas behind which their production was once safe with new "green" barriers made up of environmental norms, standards, certificates, and regulations, all playing to the advantage of those countries that have had the time, wealth, and leisure to develop stringent environmental requirements and whose populations demand them.

Fifth, they present the argument that to abide by the present requirements of the international trading system is already extremely onerous and expensive. Each new requirement adds to the expense and complication, and is therefore unwelcome. Most developing countries argue that they favor high standards of environmental care and strive within their domestic settings to ensure them. However, they resist the notion that, to the extent they cannot afford these standards or are slow in putting them in place, they could be penalized in trade terms for their shortcomings.

Sixth and finally, most developing countries, with their limited trade policy and negotiation capacity, already find the multilateral trade agenda hard to follow. Any new requirement—especially when it is perceived as somewhat marginal to the central purpose of removing trade barriers—tends to be unwelcome. This is clearly the case for the environment, regarded by most developing country trade delegates as a Northern priority.

These six sources of resistance to the environmental agenda in trade are each, in some measure, justified.

The first, however, is a self-defeating argument. Giving priority to trade at the expense of other public policy priorities means giving priority to trade as it is practiced today, at the expense of a form of trade that might be more equitable; more likely to advance a range of interests, not only commercial ones; and more likely to lead to overall policy coherence.

The answer to the second objection, surely, is not to resist the environment but to insist that any environmental conditionality is accompanied by technical assistance to ensure developing countries have the means to respond to rich countries' environmental requirements without putting their

trade at a disadvantage. Just such a link is now being made in some of the bilateral and regional trade agreements, and could help bring about a win-win situation for the trade and environment fields.

While it is true that most rich countries de-emphasized environmental quality at some point in their race for wealth, it is just silly not to learn the lessons from these often negative experiences and to insist today on the right to repeat mistakes that could easily be avoided if these lessons are applied. There is now enough evidence to demonstrate that a strategy of environmental depredation is a bad economic option, and that development that is built on a sound notion of environmental care is likely to yield greater economic results.

As to the fourth argument, there can be no doubt that the rich countries wish to use their comparatively higher environmental standards, and their clearly superior ability to enforce these standards, as a trade advantage. However, the tendency to regard every environmental condition relating to trade as green protection is shortsighted and inaccurate. Many standards respond to real and demonstrable environmental threats to human health and well-being or to the requirements of biodiversity conservation. Others respond to a clear and democratically determined preference of the citizenry or the consumer. The U.S. consumer's preference for "dolphin-free" tuna, while debatable in terms of trade impact or policy consistency, is a clear and honestly felt wish on the part of the tuna-purchasing population of Americans who wish to have a choice among the products that they buy. At the same time, there is no doubt that protectionist sentiment taints too much of public and governmental opinion in the trade field. It would appear sensible for developing countries not to reject the environment in the context of trade *a priori*, but instead to work out ways of screening out protectionist measures while allowing justified environmental standards to become the international norm.

With respect to the fifth and sixth arguments, it is a self-evident reality that the trading system is onerous for many developing countries with limited capacity. It is thus perfectly reasonable to argue in favor of a simple agenda, uncomplicated by what these countries see as a range of peripheral concerns, not always obviously linked to the immediate requirements of trade. But there are two ways to deal with limited capacity—the first is to cut back the workload to fit with the capacity; the second is to expand the capacity to ensure that the essential elements of the workload do not go unattended. There is an emerging trend in the WTO and in an increasing number of bilateral and regional trade negotiations in which new disciplines are matched with technical assistance to expand the poorer countries' ability to shoulder those disciplines. Thus in the environment field, obligations to respect certain environmental standards are matched with assistance to put the necessary capacity in place. To the extent that the new disciplines carry

the risk of noncompliance sanctions, the ability to exact these sanctions can be linked to the capacity of the poorer country to respect its obligations. This trend has entered the WTO with the crafting of the mandate for trade facilitation negotiations, and could well help alleviate the overload problem that is currently besetting too many developing country trade delegates.

The quick survey above acknowledges that developing country objections to the environmental agenda in trade are based on a sound analysis and have considerable justification in real experience. It also suggests that there are better ways to react to Northern environmental demands than simply to dig in the heels and resist.

The Case for a Positive Southern Strategy

We suggest that a positive strategy will pay better dividends to the developing countries than the rejectionist one that has too often been employed. There are several reasons for this:

First, we are convinced that there is a growing demand that globalization—and that trade in particular—contribute to other widely shared public policy objectives, including environmental sustainability. This demand comes both from developing countries and from an ever more informed civil society in North and South. Just as it cannot be acceptable to have a trading system that undermines efforts at poverty alleviation, it cannot be acceptable to have a trading system that sets back international and domestic progress in bringing resource use within sustainable boundaries. In the longer if not the shorter term, the WTO and the broader multilateral trading system will have to find ways to harmonize the goals of trade liberalization with those of sustainable development. Those countries that accept this and move out to accept it will find themselves in a situation of comparative advantage.

Second, much of the pressure for environmental responsibility in the trading system comes not from Northern governments, but from the Northern consumer and citizen. If the European Union, Switzerland, Norway, and many others are insisting on an environmental agenda in the WTO, it is because their positions reflect a strong citizen demand for it. Whether or not WTO progresses on environmental issues, environmental factors will continue to be part of the requirements for market entry in countries with high environmental standards. A successful trade strategy is one that gives the market what the market wants, not one that condemns consumer preference as unfair or discriminatory.

Third, the rapid global changes to which we are all trying to adapt makes the objective of policy coherence ever more urgent. It simply will not do to pursue environmental objectives in one set of forums, and trade in another, with little or no connection between the two. Indeed, the capacity limitations noted and acknowledged above dictate that what capacity there is must

be harnessed to coherent and mutually supportive goals. The effort to expand trade liberalization must complement or, ideally, be coequal to the effort to advance sustainable development. But this goal can only be achieved by identifying and pursuing opportunities for coherence and complementarity. Denying the connection or, worse still, rejecting it does not appear to be a wise strategy.

The arguments above suggest that a trade policy that embraces the environment will, in all likelihood, be advantageous for developing countries in general, at least over the middle to long term. Further, because environmental standards are increasingly required by consumers and by markets, resistance is not likely to pay off.

Developing countries, even when hostile to the trade and environment debate, have compelling environmental priorities of their own, including many that are significant from the point of view of trade. A study from the Chinese Academy of Sciences calculated that if environmental costs were factored into the country's annual average GDP growth, from 1980 to 2000 that growth would be 6.8 percent, instead of the officially recorded 9.6 percent, a drop of about 30 percent (*The Economist*, 2005; also see *People's Daily*, 2004). Many other developing countries produce goods that are highly sensitive environmentally, and those countries suffer loss of market share because of environmental problems associated with that production. For example, Pakistan's two principal exports are cotton and textiles, and leather goods; between them, they make up the majority of the country's export income. The production of both cotton (because of the heavy use of pesticides) and leather (because of the heavy metals used in tanning) are beset by extremely serious environmental issues, and both have suffered market access problems as a result of those issues. Empirical economic studies have shown that cleaner production in these industries will provide win-win benefits for Pakistan in terms of environmental as well as trade benefits (Khan et al., 2003).

Beyond these overall considerations and the domestic environmental concerns that relate to trade, there are other reasons why developing countries should consider retiring their hostile attitude to environmental standards in trade policy. In straight trade-gaming terms, the environment is a bargaining chip that developing countries can play. With the strongest demand for environmental standards in trade coming from the EU and a handful of other rich countries, a clever strategy on the part of developing countries might involve a willingness to concede on some environmental disciplines in exchange for concessions in other areas important for developing country trade or development interests (Najam, 2004). If successful, developing countries might find that they had received development or commercial benefits in exchange for environmental disciplines that are, in any event, in their interest to adopt.

Thus, we believe that the most compelling reasons for a Southern agenda on trade and environment are neither domestic nor tactical, but strategic. The current trading system, based as it is on comparative power more than comparative advantage, is unlikely, through the usual mechanisms employed by the GATT and WTO, to evolve into one that reflects equity, plays a lead role in alleviating poverty, and advances sustainable development. If one can assume that the trade-offs made are equal on all sides (and that assumption is far more positive than the reality has proved to be in the past decades), then the outcome of a trade negotiation will do nothing to change the balance of power and influence in the system. The concessions wrested by the developing countries from the richer ones will have been won at the price of conceding market access or other advantages to the North, with the result that present imbalances are perpetuated.

The only way in which this reality is likely to change is through the adoption of clear goals to which trade policy is subsidiary, and through the restructuring and reform of the trading system so that it stacks the trade deck in favor of achieving these goals. Clearly, dedicating the WTO to sustainable development would change the way in which the system functions. It would not simply add another filter against which prospective trade agreements are screened. It would, instead, harness trade so that the economic power it can release into the global economy is channeled toward the greater public good and not simply to the imperatives of commercial interests.

What could result from even a modest move in this direction? First, a shift in relative power away from purely commercial interests and towards a greater balancing of the various interests that reside among the broad stakeholder groups linked to trade. Second, a greater scope for legitimate development and environment concerns—most prominently, those embodied in the widening range of environment and human rights agreements at the international level. Third, a strong incentive to create policy coherence and to efficiently use scant institutional and human resources. Finally, it would open scope for trade to be linked more closely and more compellingly to such other public targets as the MDGs. Strong and unequivocal support from developing countries for a move in this direction could be a key trigger in shifting the juggernaut of WTO in a direction that might, in the medium term offer an entirely more favorable deal to the developing countries and to dismantle the mercantilist fortress that, for now, dominates the trade landscape and that looms menacingly over all attempts to dedicate trade liberalization to a wider set of goals for humanity.

Conclusion

What would it take to shift the direction of global trade policy? More than anything else, it would require leadership—understood here as that magic

combination of vision and the gift of honest persuasion. Indeed, looking back at the history of international trade, and at many other domains of human endeavor, real advances have resulted from the courage of leaders who have kept two things simultaneously in their sights: The fact that the present system, for all the efforts to tweak it, fine-tune it, or adjust it, will never do the job that needs doing; and a clear vision of the goal they wish to reach. Such leadership is required at this critical juncture in the evolution of the multilateral trading system.

We need to push for the clear articulation of sustainable development as the overriding goal adopted by the trading system. If the preference is to state the goal in other terms, this need pose no insurmountable problem, provided it is clear that the tool of international trade is harnessed to an end—a goal—based on higher human aspirations. We do not insist that the term “sustainable development” be employed, provided that its basic components are embraced—an efficient and vibrant economic system; a commitment to equitable development, social justice, and the elimination of poverty; and respect for the health and integrity of ecosystems and natural resources.

Perseverance also is required. We are aware that the above ambition is weakened by the very general terms in which it is necessarily expressed. The adoption of such a goal would require a long process of transforming intention into screening tools, indicators, monitoring programs, and so on. We would need to develop databases and monitoring systems to better track the effect of trade liberalization on sustainable development indicators. We would need a flexible mechanism that permitted the trading system to undo its inevitable mistakes, even in the context of agreements that end up as part of a “single undertaking.” Retooling the trading system to meet sustainable development requirements is a process that would inevitably take a good deal of time.

In addition to leadership, vision, and perseverance, what is needed? The vision is a compelling one—and one with the potential to engage the creative forces of a large proportion of humanity. But concrete change needs more than vision and perseverance. It needs transparency and it needs honesty—about how the system presently works, who benefits and who loses, what deep inequities are built into the system as it functions at present, and who pays the price for these inequities. Before we can improve on reality, we must come to grips with it. This, again, will require leadership—and it will require courage.

With this in mind, we propose an immediate set of goals—the Millennium Development Goals—as our first staging post on the trek toward sustainable development. These goals have the advantage that they have been endorsed without reservation by the entirety of the WTO membership. Further, they cover a number of the essential steps toward making the world a more equitable place through a combination of actions that embrace almost all

categories of universal human ambition—from poverty alleviation to environmental responsibility, and from social justice to primary education.

How uplifting it would be to work out how the trading system—in its multilateral, regional, and bilateral dimensions—might maximally contribute to meeting the MDGs. How exciting it would be to imagine changes to the present rules and practices, new criteria, new tests that prospective disciplines would need to pass, all of which would have the effect of shunting the trading system into place as one of the primary engines hauling the world community into a sustainable future, achieving and surpassing the MDGs along the way.

We are in no doubt that, once engaged, the process would generate such enthusiasm and would deliver such clear results that it would transform the way in which the world community functioned. It would generate massive support for the trading system, as well as massive pressure to ensure that the system makes an optimal contribution to human well-being through a development process that leads directly to sustainability.

CHAPTER 3

Southern Priorities for Trade and Environment: Regional Comparisons

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The developing countries of the global South exhibit enormous variety in their geography, levels of economic development, social concerns, and environmental challenges. At the same time, however, many of these countries share common ground with respect to the range of environmental problems they face and their approaches to the multilateral trading system. These commonalities tend to be amplified at the regional level, where countries have deeper geographical, socioeconomic, and often historical and cultural ties.

This chapter serves as an informational background to the chapters that follow. It presents a synthesis of, and is largely based on, three sources of information and analysis, all of which were produced as part of the larger “Southern Agenda for Trade and Environment” project, of which this book is one output. First, and foremost, it benefits most from a set of comprehensive background papers on regional trade and environment priorities that were produced by the leading trade and environment experts in the relevant regions (Borregaard, 2003; Sikoyo, 2003; Khan et al., 2004; Yang, 2004; Makdisi and Chouchani Cherfane, 2005). Second, it is based on the results of the various regional multi-stakeholder consultations that were held across the developing world. Third, it is based on an analysis of detailed consultations with Geneva-based, developing-country representation to the World Trade Organization (WTO).² This chapter is not meant to provide a comprehensive account of all trade and environment issues in each region—these are contained in the various regional background papers. Rather, it seeks to compare the issues that are of priority within different regions and across the regions of the South.

The regional discussion presented in this chapter generally corresponds to the regions discussed in subsequent chapters: the Arab region, South America, Central America, the Caribbean, South and Southeast Asia, North Asia, Southern and East Africa, and West Africa. It does not correspond to them exactly, however, because of data limitations and because different international organizations and different contexts define different regions differently. At some level, any regional definition is bound to be arbitrary. Our purpose, however, is merely to provide snapshots of commonalities among and variances in regional priorities for regions that have been generally defined on the basis of geographic proximity, and traditional and linguistic affinities. Significantly, most of these regions have histories of advancing generally similar, or joint, positions in international forums.

What is clear from the extensive consultation processes undertaken during the project is that a number of emerging “Southern agendas” exist on trade and environment. Moreover, the clusters of priorities we discuss are informed by a deep understanding by developing countries of their own environmental and trade challenges, and include both “reactive” and “proactive” strategies. Significant interregional convergence exists around a number of crosscutting and specific trade and environment issues. It is noteworthy, however, that the issues identified as pressing priorities in the regional consultations and by developing country delegates often diverge from the WTO’s Doha negotiating mandate on trade and environment, which is still a primarily Northern environmental agenda. This points to a “disconnect” between the concerns of developing countries on trade and environment on the one hand, and what is being expressed at the level of multilateral trade negotiations on the other.

To explore these themes, this chapter begins by providing a snapshot of the socioeconomic and environmental elements that underpin trade and environment negotiations for the various regions. The chapter then highlights a “menu” of issues that have been identified from region-based enquiries and seeks to understand the relevance of these issues to the various regions of the South.

The Socioeconomic Context

Despite the variety of and diversity inherent to developing countries, there are many compelling reasons why they are, and can be, analyzed as a group (Najam, 2005a). From a socioeconomic and trade perspective, the countries of the South have much in common. Most are pervasively and persistently impoverished, and display relatively low levels of human development indicators. Many are heavily reliant on Northern markets for their exports. In most regions, agriculture plays a central role in economic production,

exports, and employment. Most of these countries also are challenged by a significant capacity deficit in terms of their ability to engage fully in all aspects of trade negotiations, including on trade and environment issues. There are exceptions to each of these generalizations, but that is exactly what they are: exceptions.

All regions of the South are characterized by relatively high levels of poverty, defined by the World Bank as the proportion of people living on less than US\$ 2 a day (US\$ 1 is the criterion for those living in extreme poverty). Across the South, 1.1 billion people survive on less than US\$ 1 per day; 70 percent of these are in rural areas where they are highly dependent on ecosystem services and natural resources for their livelihoods and sustenance (United Nations Environment Programme [UNEP], 2003). While poverty remains pervasive in many areas, inequality has increased. For example, during the 1990s, twenty-one developing countries experienced declines in their levels of human development (United Nations Development Programme [UNDP], 2004).

While the South as a whole is characterized by poverty and low human development, these characteristics are widely varied within the developing world. For example, North and Southeast Asia tend to have much higher levels of economic development than sub-Saharan Africa. The two sub-Saharan African regions show the highest incidences of poverty. Latin America, followed closely by Africa, exhibits the greatest income disparities in the world, with this inequality increasing throughout the 1990s (UNDP, 2004). The general experience, particularly in sub-Saharan Africa, suggests that trade-led economic growth is neither a sufficient condition for poverty alleviation nor for resolving income disparities (United Nations Conference on Trade and Development [UNCTAD], 2004).

In addition to high poverty levels, developing countries face the challenge of relying on low value-added commodities for exports, putting a great deal of pressure on natural resources (UNEP, 2003). Given the long-term decline in commodity prices, the South finds itself having to export increasing quantities of natural resources in order to pay for higher value-added imports from the North. At the same time, the developing world faces a variety of market constraints on their exports, including tariff escalation, over-subsidization in the North, restrictive rules of origin, environmental measures, and sanitary and phytosanitary (SPS) measures.

Most Southern exports are directed at markets outside their regions, particularly to Europe and North America. South and particularly Central American countries suffer from the syndrome of increasingly concentrated exports to the U.S. market, making them highly dependent on the U.S. economy. African exports are directed chiefly at the European market. Only Southeast Asian economies show a significant intra-regional trade pattern.

Environmental Priorities

Environmental problems facing human populations—and especially those populations without the financial means to rectify or adapt to them—are numerous and acute (UNEP, 2003). The UN Millennium Ecosystem Assessment (2005) reveals that approximately 60 percent of the ecosystem services that support life on earth—including fresh water; capture fisheries; air and water; and the regulation of regional climate, natural hazards, and pests—are being degraded or used unsustainably. The assessment warns that the harmful consequences of this degradation—which affects the poor the most—could grow significantly worse in the next fifty years. Moreover, it points out that ongoing degradation of ecosystem services is a serious roadblock to achieving the Millennium Development Goals (MDGs) agreed to by world leaders in 2000, which include the objectives of reducing poverty and increasing levels of health, nutrition, sanitation, and environmental performance.

Countless environmental challenges face peoples in all regions of the South. While developing countries tend to face a somewhat different set of environmental challenges than developed countries, the relationship between environmental sustainability and economic development is too complex to make broad generalizations: countries face environmental challenges at every level of income. Nevertheless, and somewhat strikingly, all seven regions surveyed in the Southern Agenda project display a great deal of commonality in their *trade-related* environmental priorities. There is wide agreement that land and marine ecosystems are being adversely affected by the unsustainable exploitation of the natural resource base across Asia, Africa, and Latin America, and that this has deep implications for present and future economic growth for economies in these regions that are highly dependent on natural resources. Given the importance of agricultural exports and genetic resources for most countries in the South, land-use and biopiracy issues are of particular concern, while the effects of human activities on fisheries and marine resources are critical for coastal states. The arrival of new technologies, such as genetically modified crops (genetically modified organisms, or GMOs), poses further challenges to farmers, exporters, and policy makers. With most regions experiencing rapid urbanization (and, in some cases, rapid industrialization), waste disposal and use of hazardous materials are also becoming increasingly problematic.

Exploitation of Natural Resources

Much, if not most, of the economic production in developing countries relies heavily on natural resources. The increasing competitiveness of world exports and the drive to acquire foreign exchange for debt servicing and government spending has raised the opportunity cost of leaving natural resources unexploited (Sikoyo, 2003; Khan et al., 2004). The rapid rise of China and

its growing demand for commodities has further fueled this trend (Yang, 2004). In short, strong economic forces are driving a number of developing countries to exploit their natural resource bases, often beyond sustainable levels. The effects of pressure on natural resources manifests itself in at least four main areas common in varying degrees to all regions: biodiversity and forest/habitat loss; nutrient depletion and soil erosion; desertification and water scarcity; and marine resources depletion.

The West African and South American experiences of export-led production of primary resources are indicative of the experience of many other regions in the South. West African countries have organized their economies around primary commodities such as cotton, cocoa, fish, and bauxite, which for the most part are exported to markets outside the region. But in the 1970s, as a result of long and repeated periods of drought, natural resources began to degrade at an alarming rate. Rural populations were ill-prepared for the environmental crisis. They were unable to turn to governments for support, as these were caught in a debt crisis at the beginning of the 1980s, followed by twenty years of austerity measures imposed by the IMF and the World Bank. This in turn, put further pressure on the rural poor, who had to turn increasingly to the exploitation of what was left of the natural resource base for their survival. Hence the vicious circle of poverty: both a cause and consequence of environmental degradation.

In South America, deforestation—due to large part to global demand for wood products, agricultural expansion, and mining—continues to be a major concern, primarily in the Amazon basin (Borregaard, 2003). The main exports from the region reflect this demand for natural resources, and include commodities such as wood pulp, agriculture and animal feed, coffee and coffee substitutes, fresh and dried fruits, oilseeds, crude oil and oil products, and copper and iron products. As the Economic Commission for Latin American and the Caribbean (ECLAC, 2003), reports, “most of these products are subject to wide price swings, some face long-standing restrictions on market access (i.e., agricultural produce) in developed countries and others are subject to new restrictions (steel and rolled steel).”

Other regions face similar pressures. Overgrazing, salinization, deforestation, and water scarcity plague North Africa and the Middle East (Makdisi and Chouchani Cherrane, 2005). Unregulated mining and resource-intensive agriculture introduce hazardous chemicals into the local environment in Southern and East Africa, where illegal trade in endangered species is also a problem (Sikoyo, 2003). All of the above threats are also present in Asia, where increasing populations and overfishing in particular threaten the long-term viability of marine resources across South, Southeast, and Northeast Asia (Khan et al., 2004; Yang, 2004).

Fisheries are of critical importance to the South as a major source of animal protein, income, and employment, particularly in Africa and Asia.

In these two regions, fish accounts for more than 50 percent of total animal protein intake. Yet fish stocks are in dramatic decline in all regions, with implications for both marine sustainability and food security. Subsidies from advanced countries to their fishers, together with a total absence of fishing controls on the high seas, remain a major motivator of this overfishing. Meanwhile, per capita fish consumption in developing countries, with the exception of China, has declined between 1985 and 2005 at the same time that the countries' share of seafood trade has been growing. Developing countries now account for about 50 percent of this trade by value, and fisheries constitute 20 percent of the South's agricultural and food processing exports—more than tropical beverages (coffee, cocoa, tea), nuts, spices, cotton, sugar, and confectionary combined (see Aksoy and Behin, 2004).

The issue of natural resources exploitation *per se* has not been integrated into the WTO work program, despite its importance to the economies and populations of the South. However, some elements related to natural resources have been forwarded by developing countries, including patent rights over genetic resources, stable prices for commodities, eco-labeling, and reductions in fishing subsidies. During the consultations that this chapter is reporting on, a number of suggestions on trade and environment were put forward by Southern experts and practitioners. For example, multilateral trade policies could help the South move higher up the value-added chain and away from dependency on natural resources by dismantling tariff escalation and tariff peaks for processed products from developing countries and improving supply-side capacities. Further, the Doha negotiations on fisheries subsidies were seen as providing real potential not only for market access gains, but also for reducing destructive large-scale fishing operations by subsidizing countries.

Regional Particularities

Despite the near-universal concern of the South around exploitation of natural resources, different elements of environmental priorities are important to different regions.

- In **sub-Saharan Africa**, environmental issues related to agriculture and poverty are preeminent (Sikoyo, 2003). There is a great deal of concern over the transformation of small-scale subsistence farming to export-oriented agribusiness and the latter's environmental impact through the use of herbicides and pesticides and the greater demands on scarce water supplies, particularly in northern Sahel areas. Poverty-related effects are at the forefront of environmental concerns. Encroachment onto marginal lands for subsistence agriculture and the use of forest resources for energy are endemic problems, particularly in rural areas. Sub-Saharan African countries also are worried about adapting to

climate change brought about by the increasing global production of greenhouse gases. Coastal African marine resources are affected by coastal states' lack of capacity to monitor and control illegal, unregulated, and unreported fishing. Further, without the capacity to assess the impact or risk of GMOs, these regions tend to be more reticent about the adoption of these technologies than more wealthy regions.

- Like much of sub-Saharan Africa, the **Middle East and North African region** is characterized by serious overgrazing of lands, inefficient use of water resources, and subsidies for farmers, all of which have led to widespread damage to its already fragile lands (Makdisi and Chouchani Cherfane, 2005). More than 80 percent of the land in the Gulf area has been classed as “degraded” as a result of wind erosion and salinization. These factors, together with industrial pollution and ship ballasts, pose a threat to the wide variety of terrestrial and aquatic biodiversity in the region. Water is an increasingly scarce resource: eight out of the fifteen most water scarce countries per capita in the world are located in the region (United Nations, 2003). Demand for water is far outstripping supply, with the result that more and more groundwater has been tapped, fast depleting aquifers. In addition, oil-rich countries of the region have very high energy production and consumption rates.
- For the **South American and Mesoamerican regions**, biodiversity loss is a central issue, related primarily to pressure on forest resources and bioprospecting (Borregaard, 2003). These regions have the greatest variety of natural species and eco-regions in the world, and six countries are considered to be “mega-diverse”: Brazil, Colombia, Ecuador, Mexico, Peru, and Venezuela. Overexploitation of marine resources in these regions, particularly in the coastal commercial fisheries of Chile and Peru, impacts marine biodiversity. Bioprospecting by Northern biotech companies and research institutions poses a further threat to biodiversity and the economic prospects of regional economies. Many people in South America also are concerned about the effects climate change and the loss of carbon sinks as a result of deforestation. In more industrialized and urban areas, air pollution, heavy metal contamination, and urban waste disposal are growing sources of environmental degradation.
- **South and Southeast Asia** demonstrate perhaps the widest diversity of environmental challenges, due largely to the area's varied marine and terrestrial ecosystems and the levels of economic development across the region (Khan et al., 2004). Environmental challenges range from poverty-related concerns, such as pressure on forests from collection of firewood and subsistence agriculture, to air pollution and urban waste in the region's burgeoning cities. A prime concern, particularly in

Southeast Asia, is deforestation and the burning of tropical forests, with the resulting effects of biodiversity loss, greenhouse gas emissions, and haze and air pollution. Progress on chemical and industrial waste management is seen as essential, particularly given the importance of textiles—often a highly polluting sector—to many economies in the region. As members of the mega-diverse group, India and Indonesia are particularly concerned about threats to their ownership of genetic resources through biopiracy. Overfishing, the impact of climate change and human activity on coral reefs, and marine pollution from cities and agriculture are causing alarming declines in marine resources and irreversible effects on other ocean life.

- Environmental priorities for the **Northeast Asian region** include global warming, transboundary air pollution, marine pollution, and the depletion of fish stocks (Yang, 2004). Deforestation also is problematic. In 1998, China, Russia, and Japan were the second, third, and fourth largest carbon dioxide-emitting countries in the world, respectively. The incidence of acid rain in the region has been linked to transboundary air pollution. With respect to marine pollution, chemical and industrial wastes, untreated municipal sewage, and agricultural pesticides and nutrients in runoff cause widespread damage and stimulate eutrophication and harmful algal blooms. Added to these are oil pollution from wastewaters and accidental spills, atmospheric pollution, and marine and coastal litter. Overfishing and serious marine pollution in the region also are causing serious damage to fisheries and aquaculture resources. In 1999, China surpassed Japan to become the biggest net timber importer in the world, and is now one of the biggest exporters of processed wood products. This has fuelled concerns that China's growing demand is exacerbating illegal logging in neighboring countries.

Policy Concerns about Trade and Environment

Clearly, the South faces a wide range of pressing environmental problems alongside its formidable trade and development concerns. The integration of environmental issues into the multilateral trading system, however, imposes a daunting challenge to developing economies. In addition to dealing with the threat of environment-related protectionism by developed countries, developing economies face serious capacity constraints at all levels to articulate their own environmental agenda at the WTO. Developing countries are nevertheless concerned with a range of issues at the interface of trade and environment, and are eager to see these addressed at the WTO. Notably, other than environmental goods and services, none of the negotiating items included in the Doha Declaration on trade and environment figure high on the list of priorities of most developing countries.

The key concerns raised at the regional consultations pertained to a) the nature of the development-environment link; b) capacity building; c) agriculture; d) environmental standards; e) intellectual property rights and biodiversity; f) environmental goods and services; g) risk management and genetically modified organisms; and h) the Doha trade-environment negotiating issues. The first two are crosscutting concerns, while the remaining six are related to specific issues. Here we introduce each of these concerns, based on the discussions at the various regional consultations and interviews with various developing country delegates at the WTO.

The Development-Environment Link

The importance of viewing trade and environment through the lens of “development” was emphasized in all regions, particularly in poorer regions such as sub-Saharan Africa. Many Geneva-based delegates pointed to the link between poverty and environmental degradation, and said that the multilateral trading system should facilitate, rather than hinder, the prospects for the South to pursue economic development. A number of delegates pointed to the links between market access and poverty, and between poverty and environmental degradation. Many said that a pro-poor approach to trade was an important part of making trade rules work in favor of the environment. Limiting protectionism in import markets was seen as critical in helping to provide resources for better environmental management.

In the regional and the Geneva consultations, negotiators and experts insisted that the way forward had to be a *sustainable development approach* that balanced environmental, economic, and social concerns. This implies that environmental protection itself could be used as a source for development. It was suggested that the principle of common but differentiated responsibilities, expressed in many multilateral environmental agreements (MEAs), could be brought into the WTO and linked to special and differential treatment (S&DT), an idea that was supported by a number of Geneva-based delegates. Many delegates felt that discussions at the work of the WTO Committee on Trade and Environment (CTE) and the Committee on Trade and Development (CTD) needed to be better coordinated, as outlined in the Doha mandate. Most delegates, however, felt that this is not being done satisfactorily (also see Najam, 2002).

Capacity Building

The need for capacity building was a key and recurrent theme in all our consultations. Further capacity is required for governments and civil societies to research, strategize, and participate in both trade and environment decision-making fora. Capacity building should be understood as a comprehensive concept that looks beyond periodic expert meetings to the establishment of

permanent, multi-stakeholder research capabilities at the regional and local levels. This could take the form, for instance, of nonpartisan and professional institutions that could provide monitoring and analytical capacity to inform regional positions.

Many delegates pointed to the need for further regional integration and cooperation in order to bring forward a stronger voice and more equitable negotiating power vis-à-vis developed countries on trade and environment at the WTO. Stronger domestic coherence between trade and environment branches of government was seen as critical to enabling countries to better participate, particularly regarding the Doha negotiating mandate on MEAs and WTO rules. It was also stressed that coherence required consultation not only among those responsible for trade and those for the environment, but also with other stakeholders, including non-state actors. More coherence and consultation between key stakeholders at the national and regional levels was seen as a worthwhile strategy for overcoming the existing capacity deficits.

Existing capacity building programs for trade negotiations, including current WTO trainings, were seen to be too superficial. More legal capacity was urged, in order to enable developing countries to participate more fully in dispute settlement processes. Many expressed support for a bottom-up approach to capacity building, particularly where innovative mechanisms for civil society inputs could be accommodated, for instance, in the environmental sphere.

Geneva-based delegates from developing countries face significant capacity constraints in their ability to play a proactive role in the trade and environment negotiations. In many of the poorer developing country offices in Geneva, one extremely busy negotiator is responsible for covering all WTO issues, often with little assistance from a country's capital. As a result, trade and environment issues—particularly those representing primarily Northern interests—are often seen as secondary to major market-access issues, such as agriculture, and services, and frequently drop off the table. Yet, as shown below, trade and environment concerns considered as priorities by developing countries often are closely intertwined with wider market-access agendas.

Agriculture

Agriculture concerns emerge not only with respect to the impact of Northern agricultural support on agricultural export prices and land use, but also through concern around developing countries' loss of market access and competitiveness due to Northern environmental, health, and technical standards. As a result, developing countries have been active players in the ongoing WTO agriculture negotiations and the South has generally viewed calls for the inclusion of "non-trade concerns" with a great deal of suspicion, believing that these are meant to gain further scope for agricultural protectionism.

A central focus of South American countries is the potentially harmful effect of agricultural subsidies on the economies and environments of both the North and South (Borregaard, 2003). For example, some countries in the region have argued that Northern subsidies lower returns for producers in developing countries, inhibit investment in agriculture, and contribute to the expansion of low-profit agriculture and its spread toward ecologically vulnerable tropical forests.

The potential for developing countries to subsidize their own producers is limited. Instead, opinions emerging from the South and Southeast Asian region favor taxing large farmers for overuse of chemical inputs and using the revenues to create incentives for organic agriculture and certification (Khan et al., 2003). In general, delegates saw a need to redefine subsidies. Experts from the region suggested that blue box (partially decoupled farm payments under production-limiting programs) and amber box (trade distorting) support should be phased out, and that green box (minimally trade distorting) subsidies should be redefined and more disciplined. In addition, delegates indicated that the focus of trade negotiators should be on eliminating those subsidies that caused poverty and were environmentally perverse.

In the West African context, concerns were expressed over the potential for negative environmental impacts by the transformation of agriculture from small-scale subsistence farming to agribusiness, together with the related use of pesticides and high water consumption in arid regions. In all of the regions consulted, the potential benefit of expanding access for organic agriculture from the South was seen as a significant win-win area for both trade and environment. This desired shift, however, was tied to concerns around major market-access barriers in the areas of certification, nontariff barriers in developed economies, and domestic capacity to support and market organic produce abroad. Experts from Northeast Asia also supported developing stringent green box criteria to avoid trade distortions, mentioning at the same time that policy interventions in agriculture by developing countries should fall under green box exemptions.

Geneva delegates repeatedly pointed out that most developing country governments simply do not have the financial and technical resources required to help farmers cope with the proliferation of eco-labels and environmental standards. While some participants raised the prospect of including organic agriculture under the negotiations on environmental goods (currently being considered in the WTO negotiating group on nonagricultural market access), one delegate suggested that this would be problematic, as the issue most likely would evolve through the agriculture negotiations instead.

Standards and Labeling

Concern around environment and health-related standards consistently emerged as an area of major importance in our consultations. While many

experts took a defensive perspective vis-à-vis high—and climbing—standards imposed by the North, a few saw eco-labeling as a potential opportunity for developing countries to make headway in implementing more sustainable production practices or capturing niche markets. Capacity building took a central place in the debate, because most developing countries lack the capacity to set up their own standards and eco-labels and therefore are often forced to use those elaborated by developed countries or by institutions dominated by the North. One view was that Southern countries were “standard takers,” not “standard makers.” All discussants on this topic said that environment-related standards such as eco-labels, if imposed by developed countries, needed to be undertaken together with measures to assist developing country exporters to meet them and avoid losing market share.

Developing country negotiators were particularly wary of eco-labeling, and warned that labeling rules must not end up as disguised restrictions on international trade. Several felt that the issue should be dealt with in the Committee on Technical Barriers to Trade (TBT), which could focus on simplifying certification in general, not just in terms of eco-labels. Participants at all the consultations, as well as a number of Geneva-based delegates, lamented the unilateral imposition of Northern standards and the negative effects these could have on developing country exports. Small and medium enterprises, which account for most labor in the South, are at a disadvantageous position in this regard, as they lack the capacity to respond and adapt to continually evolving environmental standards (Makdisi and Couchani Cherfane, 2005).

All regions were unanimous in calling for greater transparency in standard setting. For instance, developing countries need better representation at international standard-setting bodies, such as the International Organization for Standardization (ISO). Without this representation, international standards tend to reflect the priorities of developed countries. Moreover, developing countries find it difficult even to remain informed of all the various standards coming from different sources, most without their participation. One step toward mitigating this problem would be to maintain an updated compendium of all imposed environmental standards. Enabling domestic firms and agencies to gain experience with the harmonization of standards at the regional level was seen as a potentially effective way to build the capacity of these firms to adapt and implement new standards.

Costs associated with certifying “environmentally preferable products” (EPPs, i.e., goods or services where the environmental benefits derive in the course of their production, use, and disposal), such as organic agriculture and horticulture, were identified as another major barrier to market entry. Some experts pointed out that one way around the problem of meeting certification costs was to make greater use of domestic certifiers and to focus initially on the regional market. Regional approaches to accreditation, conformity

assessment, and notification/enquiry points could offer convenience, cost-effectiveness, and credibility.

In the context of labeling and promotion of developing country exports, participants at the Northeast Asian consultation pointed to the mandate expressed in paragraph 32(i) of the Doha Declaration as a possible way forward. Paragraph 32(i) instructs the CTE to examine “the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development.” Some participants argued that developing countries could consider using “sustainable development” labels to gain market niches and/or to give premiums to sustainable products originating from the South. Thus far, however, India is the only developing country to have submitted a formal proposal under this item since Doha.

Intellectual Property Rights and Biodiversity

According to the United Nations Development Programme (UNDP, 1997), more than two-thirds of the world’s plant species come from the South; some 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 at about US\$ 32 billion per year. Only a fraction of this, however, returns to developing nations in terms of payment for raw materials and royalties.

Although intellectual property rights (IPRs) is a broad issue, many in the South view IPRs from the standpoint of equity, in particular the movement of ownership rights of biological resources from South to North. Many developing countries are already active participants in related negotiations at the WTO Committee on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the World Intellectual Property Organization (WIPO), and the Convention on Biological Diversity (CBD). The CBD, under Article 15, 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 is fair and equitable sharing of any subsequent benefits. It also seeks to protect and preserve traditional knowledge systems and share benefits from them with originating countries. The TRIPs Agreement, by contrast, rewards inventions by requiring countries to recognize IPRs as private rights. It does not require Members to reference 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 allows members to exclude plants and animals other than microorganisms from patentability.

Members must provide protection, however, for new plant varieties, either through patents or “an effective *sui generis* system,” or both.

Many of those consulted worried about how the TRIPs Agreement was affecting property rights over germplasm and by extension, farmers’ rights and access to seeds. Participants at the South American consultation noted that the issue has always been a priority for the region, and countries in the region have previously emphasized the need for flexibility for those protecting various traditional agricultural varieties and traditional knowledge. The group of fifteen mega-diverse developing countries, for instance, has pushed hard for acknowledgement of the CBD’s Bonn Guidelines around designing a regime on access and benefit-sharing for genetic resources, as mandated by the World Summit on Sustainable Development (WSSD) in 2002.

Existing proposals at the WTO, such as those from Brazil and India, support such an amendment to the TRIPs Agreement. Specifically, they demand that patent applicants for inventions that use biological resources and traditional knowledge disclose the source of origin, and 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 so-called “biopiracy,” whereby foreign firms take biological resources from biodiversity-rich countries and use them to develop pharmaceutical or biotech products. Disclosure of source of origin and PIC is opposed by some developed countries, particularly the United States, which feels it would put an unnecessary burden on its pharmaceutical and biotech firms.

The West African region’s experts pointed to a proposal from the group of least-developed countries at the WTO (WT/GC/W/251) that goes further than the Brazil–India approach by calling for a formal clarification of Article 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.” This stance was echoed by experts from Southern and East Africa, who urged that the CBD take precedence over the TRIPs Agreement, indicating that most of the biological resources in the region are vested in groups and communities that are not legally constituted, reflecting a system of ownership that may be at odds with the prevailing norms of the TRIPs Agreement.

Experts at the South and Southeast Asian regional consultation suggested that developing countries could improve their knowledge base in designing and implementing appropriate *sui generis* systems by establishing an information clearinghouse. Traditional knowledge libraries, such as those in India, have already been set up to protect such knowledge and determine appropriate versus inappropriate patents. Because capacities for such an undertaking are weak in most developing countries, taking a regional approach could help avoid intercountry conflicts regarding data entry and ownership of traditional knowledge.

IPRs also are a concern in the context of their influence on technology transfer. Market liberalization in the North has resulted in a shift from public financing of research and development toward private funding. Critics of this shift 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. While growth strategies have long been associated with the capture of current market share, IPR regimes capture *future* market share by treating ideas, designs, and formulae as property. IPR regimes, as currently configured, are viewed by many Southern experts as preventing the South from taking advantage of new technologies and therefore hampering development. From an environmental perspective, many said that IPRs should be relaxed for pollution-abatement technologies to combat environmental degradation.

Environmental Goods and Services

Environmental goods and services (EGS) is the only formal Doha Round trade and environment issue that also emerged as a priority for the South. Under paragraph 31(iii), the Doha Ministerial Declaration commits WTO members to negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.” Environmental goods talks are taking place as part of the negotiations on non-agricultural market access, which are mandated by paragraph 16 of the Doha Declaration, while environmental services are being addressed as part of the extensive bilateral request-offer process in the services negotiations.

The need to operationalize language in paragraph 16 mandating less than full reciprocity and special and differential treatment was raised by some as a way to gear EGS negotiations towards the interests of the South. For many developing and least-developed countries, however, particularly in sub-Saharan Africa, products of comparative advantage are agriculture-based and hence there is a need to find a way to deal with these (Sikoyo, 2004). In general, liberalization of EGS was seen as an area that holds both opportunities and pitfalls for the South (Borregaard, 2003).

The Northeast Asian region is the most active of those surveyed on environmental goods and services, from both an export and import perspective (Yang, 2004). Inputs from the region showed that developing economies in Northeast Asia potentially can reap benefits from EGS liberalization. One difficulty, however, is working out criteria on which environmental goods should be classified. Some experts suggested that a definition based on “direct use for environmental purpose” and “direct environmental efficiency and tradability” should be adopted. A phased approach was proposed to address the dilemma concerning the classification of environmental goods, that is, in the first phase, include end-of-pipe technologies (e.g., wastewater treatment,

pollution control), and in the second phase (after five to ten years), expand to EPP. Some emphasized linking environmental goods and services to specific requirements of MEAs.

In the South American region, negotiations on EGS also were regarded as providing potential economic and environmental opportunities (Borregaard, 2003). Participants at the South American regional consultation felt it was important to get involved in trade and environment discussions, participate more actively in the WTO discussions, and give special attention to environmental services as the discussion becomes more advanced. They further recommended that countries from the region (either individually or together) bring forward lists of environmental goods to the WTO negotiations. At the same time, some thought that the inclusion of “nontraditional” goods and services initially should be discussed outside the formal negotiations process to assess their potential impact.

The issue of including EPPs generated a great deal of debate beyond the South American region, particularly in Asia. Such products could include organic agricultural products; sustainably harvested timber or non-timber forest products; fish products from sustainably managed fisheries resources; or products made from natural fibers such as jute. However, developing countries have been cautious about including EPPs in WTO negotiations over concerns that such products might need to be distinguished based on the process and production methods (PPMs) used in their making. They fear that PPM-based distinctions could be misused for “green protectionism” and could open the door for other PPM-based criteria, such as labor standards, to be brought to the WTO. At the Northeast Asian consultation, participants held different views on whether to advance EPPs in the EGS context. While some were against its inclusion, others suggested that many EPPs are also agricultural products of export interest to the South, and including EPPs in environmental goods lists could help to address nontariff barriers in these product categories. In South and Southeast Asia, most delegates expressed a need for solid research on the subject, but were wary of changing the current WTO definition of “like” product to account for EPPs due to fears around the imposition of PPM-based criteria on other developing country exports.

Environmental services emerged as a priority area for the South and Southeast Asian regions and the Southern and East African regions (see Khan et al., 2004; Sikoyo, 2004). For the former, the environmental services sectors in which the South has comparative advantage—i.e., environmental consulting services, janitorial services, and pollution abatement services—should be opened up not just for commercial presence but also for Mode 4 (movement of natural persons). While opening up sectors as part of a “cluster-approach,” developing countries could consider specifying the environmental component of each sector (e.g., environmental engineering under engineering services) before making commitments. Experts from Southern/Eastern Africa

advised a cautious approach to services negotiations, saying that these should not undermine the ability of governments to provide regulations governing environmental services.

Skepticism was a common theme in the Geneva consultations on the subject of EGS. In spite of their broad consensus on the potential for gains for the South on the issue, several interviewees said that the discussions so far seemed to be “an exercise in market access for developed countries.” They were suspicious that the EGS debate would be used to curtail rather than expand market access for the South. Some delegates were highly critical of the services sectors that had been proposed for early liberalization, saying that opening up water and waste management to foreign investment would harm their countries.

Risk Management and Genetically Modified Organisms

The thorny issue of genetically modified crops arose as an environmental concern in all regions and a great deal of internal debate exists within some regions on this issue. Genetically modified organisms (GMOs) pose a conundrum for the South, especially agriculture-dependent developing countries (UNCTAD, 2004c; Zarrilli, 2004). On the one hand, GMO technology may boost yields and reduce fertilizer and pesticide inputs, and have potentially positive impacts on food security and local environments. On the other hand, concerns abound regarding the potential for cross-pollination with non-GMO species, farmers’ control over seeds for replanting, and the threat of losing export markets to countries that may not accept GMO products. Experts have additional worries about the costs associated with establishing an appropriate labeling system to monitor the import and export of genetically modified crops. In general, there was a strong call for the development of domestic research capacity to fully understand the benefits and risks of biotechnology.

Despite these fears, a number of developing countries have adopted GMO technologies for agricultural production. Most are located in the Americas, where many countries export to the largest producer and consumer of GMO crops, the United States. Production is concentrated in Argentina, Brazil, China, and South Africa, primarily in varieties of canola, cotton, maize, and soybeans. In 2003, a number of other developing countries joined these countries’ ranks, including Colombia, Honduras, the Philippines, and Uruguay (Borregaard, 2003).

In Africa, where most countries’ primary overseas agricultural export market is the European Union (which imposes strict import controls on GMO food), countries are less sanguine about using GMOs. This was highlighted when several African countries in Southern and East Africa—including Malawi, Mozambique, Zambia, and Zimbabwe—rejected donated maize derived from GMO seeds during famines in 2002 and 2004. The uncertainty

of these and other African countries around GMO technologies has prompted the African Union to develop a “Model Law” on biosafety for African states. The objective of the Model Law is to ensure the conservation, evaluation, and sustainable use of biological resources (including agricultural genetic resources), and traditional knowledge in order to maintain and improve their diversity. The efficacy and future of this legislation remains in doubt (see Samb, Chapter 5), however. At the West African consultation, participants recommended that countries put legislation on GMOs into place and establish a regional legal system to manage biotechnology in agriculture, for instance, through a labeling scheme. Participants proposed the creation of inventories of traditional knowledge and genetic resources before allowing the arrival of GMOs, in order to safeguard traditional seed varieties and their use.

While China and the Philippines have moved ahead with GMO production, and India is experimenting with GMO cotton, Asian countries for the most part remain circumspect about adopting the technologies without a full risk assessment. Most countries in the region face capacity issues with respect to their ability to create appropriate assessment procedures. This problem was encountered by Sri Lanka during an earlier attempt to ban GMO imports, which it dropped due to fears that it would not be able to justify such a ban at the WTO.

Dealing with the Doha Issues

For developing countries in general, but especially for Southern delegates in Geneva, the key immediate challenge is dealing with the trade and environment issues on the Doha negotiating agenda. While numerous proposals have been forwarded by developed countries, there have been relatively few proposals on Doha Declaration paragraph 31 from the South. In part, this is because every aspect of developing countries’ participation in the trade and environment debate is colored by the immense capacity imbalance that exists between rich countries’ governments and their poorer counterparts. Even the more-advanced developing countries are not able to afford to bring delegates or experts from other relevant ministries in their capitals to attend the CTE sessions, as many developed countries do.

The formal negotiations are ongoing in three main areas, enumerated under paragraph 31 of the Doha Declaration: (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); (ii) procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and (iii) the reduction or, as appropriate, elimination of tariff and nontariff barriers to environmental goods and services.

While discussions at the special (negotiating) sessions of the CTE initially focused primarily on paragraph 31(i), attention shifted to paragraph 31(iii)

after Cancún Ministerial meeting. There has been little focus on paragraph 31(ii)—most delegates that we spoke to viewed paragraph 31(ii) as a procedural issue, as opposed to a major substantive negotiating area, and acknowledged that progress was still needed at a political level over the sticky question of observership. Most voiced general support for further interaction between the WTO and MEA secretariats, however. The mandate on environmental goods and services was described by one senior negotiator from a developing country as “the most substantive part of the environmental negotiations.”

A number of negotiators saw market access as their most immediate concern in trade negotiations, and these negotiators were worried that developed countries might use the environment mandate as a pretext for protectionism. One negotiator put it bluntly: “Frankly, [the trade and environment] debate is of questionable interest to us unless it opens avenues for pursuing sustainable development and expanding market access.” Nevertheless, delegates accepted that the trade and environment issue was now part of the broader WTO agenda whether or not they had wanted it to be, and by and large they were eager to look for ways in which their countries could benefit from the new negotiations.

A number of delegates expressed some degree of frustration and confusion around the MEA-WTO relationship mandate in paragraph 31(i). This was particularly evident around what the *demandeurs* (primarily the EU and Switzerland) themselves wanted in terms of the formation of new disciplines. Questions raised include: will identified MEA “specific trade obligations” (STOs) become a binding part of the WTO? How will accepting MEA trade measures affect most favored nation (MFN) status, given that not all WTO Members are parties to MEAs? Why is GATT Article XX, with its least trade-restrictive tests, insufficient for addressing environmental concerns? Preoccupied as they are with the threat of environmental obstacles to market access, Southern delegates are not comfortable with the idea of allowing STOs to trump WTO rules.

Many negotiators wondered aloud if the WTO was even competent to determine the WTO-MEA relationship. Some delegates expressed a preference for a limited, clear discussion on paragraph 31(i) that would result in some sort of a political declaration rather than new technical rules. They wanted talks to be restricted to the handful of science-based STOs. Many echoed the observation brought up repeatedly at the CTE that proper coordination among trade and environment officials at the national and international levels could help avoid most WTO-MEA conflicts. Delegates pointed to the flexibility in how MEA rules were applied to developing countries, contrasting them with WTO obligations. They argued that meaningful special and differential treatment should be used together with the MEA principle of “common but differentiated responsibilities” in any outcome on the WTO-MEA relationship.

More than one delegate pointed out that developing country noncompliance with MEAs was not because of a desire to flout them, but more a result of a lack of economic, technical, and institutional capacity. Pointing to the success of the multilateral fund associated with the Montreal Protocol, they said that developing countries needed, and wanted, more help in order to meet their MEA commitments. In the words of one delegate, “if developed countries were willing to pay, no developing country would refuse to take measures to preserve their environment.”

Conclusion

Integration of trade and environment at the multilateral level both poses challenges and creates opportunities for the South. The benefits to developing economies from this integration depends very much on their capacity to establish links between environment and development, and to work out an agenda that best reflects their development perspectives and interests. There is a great need for capacity building in developing economies to support their efforts to integrate trade and environment into their national policies and to participate effectively in relevant negotiations in international trade and environment fora.

A common theme across the regions and in Geneva was the need for expanded market-access opportunities for Southern goods and services. On the one hand, developing countries are wary of environmental standards being used as new non-tariff barriers to their exports. On the other, there was a great deal of interest around how developing countries could best make use of sustainably produced goods, for instance, through organic agriculture or sharing of benefits from biodiversity-based products. The formal WTO negotiating mandate held relatively little interest for most regions, indicating an urgent need to shift the trade and environment focus at the WTO to include the concerns of the majority of the organization's members.

Notes

1. Trineesh Biswas, from the International Centre for Trade and Sustainable Development (ICTSD), worked with the author in interviewing Geneva-based developing country delegates and experts and in analyzing the results of those interviews for use in this chapter.
2. Regional consultations were held in Senegal in July 2003 (for West Africa), in Chile in October 2003 (for South America), in Sri Lanka in January 2004 (for South and Southeast Asia), in South Africa in June 2004 (for Southern and East Africa), and in China in October 2004 (for North Asia). Background papers, consultation reports, and other project-related documentation is available at <http://www.trade-environment.org/page/southernagenda/description.htm>.

CHAPTER 4

Envisioning an Arab Agenda for Trade and Environment

Carol Chouchani Cherfane and Karim Makdisi

The Arab region is composed of twenty-two nations with roughly 300 million people.¹ Like much of the South, the region has been in turmoil for well over a century. Borders have been drawn and redrawn due to the region's colonial legacy. Civil strife and conflicts, generated over claims to land and the region's vast oil and gas resources, and stoked by foreign meddling, have taken a heavy toll on Arab society and institutions. Because of this complex history—which has left the Arab world politically fragmented and its civil society weak—it is difficult even to speak of an “Arab region” in the way that one might today talk about Europe or the Caribbean, which have far stronger and closer political and economic ties among its constituent members. Furthermore, long-standing national policies in the region have created political, social, and economic barriers that inhibit what would otherwise be a natural community of interests built on the common language, customs, history, and cultural ties of the Arab people. This is despite high-level statements advocating the need to enhance regional integration.

Today, widening socioeconomic tensions between rich and poor, young and old, and men and women are readily apparent in the Arab countries at the national and regional levels. These are manifested through rising unemployment among vulnerable groups, a growing informal sector, and high population growth rates, as well as mounting pressures on urban infrastructure and tenuous social safety nets. Volatility in oil markets strongly affects public expenditures in some countries, while excessive public debt and dependency on international instruments of financial assistance greatly influences decision-making in others. While the reign of monarchs and the rule of presidents are relatively consistent in the region, governments come and go at a dizzying

pace and often take with them the political commitments of ministers and the institutional memory of ministries. Accordingly, despite efforts to provide stable and secure conditions conducive for economic growth, development in the Arab region is pursued under constant conditions of uncertainty and short-term time horizons. It is no surprise, then, that efforts to engage the region in actions to achieve sustainable development—which by definition requires planning for the future in spite of all the uncertainties faced in the present—are fraught with challenge.

Despite this uncertainty, some trends influencing trade, environment, and development relationships in the Arab region are becoming increasingly apparent, namely:

- The states in the region have become increasingly concerned with their international image in light of new post-Cold War realities. They have embarked on top-down economic reforms and formally endorsed the sustainable development paradigm. Public policy, however, has not kept up with these changes and there remains a lack of political will for integrated approaches to development planning and an absence of genuine public participation in decision-making.
- Export-led economic growth has been accepted as the new development model, although trade liberalization is being tempered by nontariff barriers to trade and concerns about threats to small- and medium-sized enterprises (SMEs), which account for most employment in the region.
- The region is becoming increasingly bifurcated. Regional trade integration is being marginalized in favor of global, sub-regional, and bilateral agreements. Economic differentiation is also polarizing the interests of oil- and non-oil-based economies in negotiations at regional and global forums.
- Environmental degradation is increasing the cost of economic growth, while production and consumption patterns are becoming increasingly unsustainable; this is being fueled by population growth, the expansion of tourism, and the exploitation of natural resources.
- Access to information and communication technologies is increasing the pace of change and is empowering civil society to demand increased participation in public policy. Such participation remains weak and in need of strengthening, however.

These trends will define sustainability in the region in the coming years and influence the formulation of national development strategies. The ability of countries to adopt and implement integrated and mutually supportive trade and environmental policies will thus be central to efforts seeking to reverse or reign in unsustainable development trends while taking advantage of the opportunities presented by increasing globalization.

This chapter first examines these trends in more detail within the changing regional context, and then proposes trade and environment principles and priorities that Arab countries should actively pursue as part of their proactive agenda. These priorities focus on the need to adopt sustainable development as the overarching framework for trade and environment policies and to enhance critical and open debates about trade and environment links through effective public participation and increased consumer awareness. Other priorities include issues related to effecting regional integration, securing market access for key export products, enhancing competitiveness, and building capacity to engage in negotiations, dispute resolution, and policy analysis.²

The Changing Context in the Arab Region

Efforts to manage constant conditions of uncertainty and recurrent cycles of conflict, as well as weak democratic governance and civil society institutions, have led Arab governments in the postcolonial era to favor centralized political systems and tightly controlled economies. Much like in Latin America and other regions of the South, import substitution was initially viewed as the path toward industrialization and employment generation, and thus trade was focused on exporting primary commodities and importing basic necessities that were not available at home. Natural resources were owned by the state, and wealth was accumulated and redistributed according to the prerogatives and priorities of governments. Private enterprise development was generally constrained (with the notable exception of Lebanon), while the environment was assumed to be an open-ended sink that presented no limits to growth or threats to human health. However, recent trends and greater awareness about these issues in the region have prompted top-down changes in the way policies are pursued in the Arab region. This section elaborates upon some of the key trends.

Official Acceptance of Trade Liberalization and Sustainable Development without Sufficient Resources of Political Will to Implement Commitments

Mounting international and domestic pressure to open up markets and increase public participation in decision-making has pushed Arab states to pursue socioeconomic reforms that, in turn, signal their recognition of the new political realities of the post-Cold War era. Such reforms are predicated on the adoption of developmental paradigms that embrace trade liberalization and export-led growth, as well as sustainable development. For the most part, however, these reforms remain superficial and politically motivated. As such, Arab countries have remained passive actors in the formulation of the

global development agenda, much of which has been forged by international donor institutions and Northern interests.

Nearly all Arab countries today share the official desire to liberalize and integrate into the world economy. The prime mechanism sought for achieving this goal is membership in the World Trade Organization (WTO). As of December 2005, there were twelve Arab members in the WTO, with six others formally listed by the WTO as observers.³ The memberships of Palestine, Somalia, and Syria have been held back for mostly political reasons; while the League of Arab States (LAS), which helps to coordinate regional positions, continues to be denied observer status in WTO meetings to the frustration of most Arab delegations (Makdissi and Chouchani Cherrane, 2005). While Arab governments have become increasingly aware and active in the WTO process in the post-Doha Development Round, the pre-Doha period was clearly characterized by a simple political desire to enter the WTO "club" in response to Northern pressures, with little knowledge and awareness of the potential consequences that its associated agreements might have on consumers, SMEs, or key sectors in the region.⁴

Concurrently with increased trade liberalization policies and accession into the WTO, Arab countries have officially embraced the notion of sustainable development. Accordingly, most participated in the 1992 Earth Summit and the 2002 World Summit on Sustainable Development (WSSD), which prompted the signing of the Arab Initiative for Sustainable Development and a host of other regional declarations.⁵ On the surface, this is a positive step in terms of overall political acceptance of sustainable development: These declarations and initiatives reflect an evolution in thinking about sustainable development from one focused on the environment to one that is more interdisciplinary and incorporates themes such as trade liberalization, technology transfer, debt, financing, and participatory approaches to sustainable development.

A closer analysis of the Arab region's policies, however, reveals lack of support for integrated approaches to policy-making, limited implementation of commitments, and inadequate public participation in the decision-making process. These shortcomings are due in part to limited technical and institutional capacity associated with the difficulty of overcoming a traditional environmental-management culture that is unable to handle the more dynamic, multi-sectoral approaches needed to achieve sustainable development (United Nations Economic and Social Commission for Western Asia [ESCWA], 2003a). However, it is also due in large part to an absence of political will, particularly at the national level, to implement sustainable development commitments. This is despite the fact that sustainable development provides the counterbalance that can help negotiators and decision makers mitigate the disruptive effects of unfettered trade liberalization development models on the ground.

Accordingly, while the Arab region has become increasingly vocal in support of sustainable development at the regional and global levels, a gap in implementation remains at the national and local levels. Most countries signed on to sustainable development doctrines seeking to attract the favor of the North or international donors. As such, some policy adjustments were made, but in the absence of structural changes in governance, public participation, or decision-making processes. Because of a lack of genuine accountability to the public, Arab regimes have little incentive to move beyond formal declarations in support of sustainable development and change the status quo. This has limited the ability of countries to adequately prepare their local markets for globalization or to mitigate the adverse effects of trade liberalization.

Rising Concerns about Trade Liberalization Threats to SMEs

Even as trade liberalization and export-led growth have emerged over the past decade as the undisputed official development model, public policy in the Arab region has struggled to adequately prepare domestic markets, particularly SMEs and consumers, for the massive changes (positive or negative) brought about as a result of WTO membership. In order for this model to be effectively translated into a national development policy that minimizes the costs and maximizes the benefits to its citizens, public policy officials in the Arab region need to critically assess and understand the new premises that shape the way that trade and environment policies are formulated, namely that a) freer markets and more open competition are generally good for economic growth, at least in the long run; b) there will be potentially high losses for traditionally managed SMEs in the region until and unless they adapt to the new realities of global competition; c) consumer preferences, not only Northern regulations, are driving markets to demand more environmentally friendly products and production processes that present new barriers to trade; d) the private sector and civil society are independent actors that should be active partners in the development process; and e) open access to reliable information is a key tool to enhance competitiveness as well as public health and safety.

Recognition of these new premises should encourage policies that introduce and promote concepts of profitability, efficiency, productivity, and flexibility as indicators of achievement into the regional marketplace. These measures, in turn, will directly challenge business-as-usual practices and traditional protectionist policies based on tariffs and publicly managed export agencies historically found in the Arab region and much of the South. However, incorporating this new way of thinking into public policy requires a dramatic shift in national planning approaches. Policies currently focused on supporting inefficient, inward-looking state-run enterprises and

bureaucracies, which help to guarantee employment for a growing workforce, must shift to ones based on private-sector enterprise, entrepreneurship, and innovation to generate employment and income opportunities. This is a formidable task in Arab countries already suffering from import competition and the closure of many small businesses. The challenge is multiplied by the fact that disseminating information and extending assistance to a plethora of small entrepreneurs is much more difficult and resource-intensive than issuing directives to a handful of state-run enterprises. However, support to SMEs in the Arab region is crucial, as firms employing less than 50 persons collectively contribute more than 90 percent to regional employment and provide an engine for economic growth in the region.

As such, policy makers in the Arab region and the South have to take care that they do not become mere passengers on the WTO train, but actively seek to direct WTO agendas and drive negotiations to address the socio-economic and environmental concerns of developing countries. Of particular importance in the Arab context is the impact of rapid trade liberalization on SMEs.

Bilateral and Multilateral Agreements Replace Regional Integration

For decades, Arab governments have echoed popular sentiments and passed countless resolutions calling for regional integration as a means to strengthen solidarity and forge a more powerful economic and political bloc. However, these calls have fallen short as multilateral, subregional, and bilateral trade agreements between Arab countries and powerful Northern blocs, such as the EU and the United States, proliferated instead. In 1998, after repeated efforts to promote some form of economic integration, the LAS finally secured Arab consensus to establish the Greater Arab Free Trade Area (GAFTA). GAFTA, which officially came into effect in January 2005, calls for tariff reductions over a ten-year period with a target of zero by 2007. However, progress in realizing these commitments remains very slow and the original targets have not been met. Once again, the words contained in the declarations were not matched by the required political will as most Arab governments excluded a number of commodities, thus rendering the free trade area almost meaningless (Derki, 2005).

Most Arab countries maintain major obstacles to trade, with the notable exception of the Gulf Cooperation Council (GCC) countries,⁶ which maintain relatively open trade regimes particularly within the subregion. The average import tariff for the Arab region is higher than that of any other region except Africa. Nontariff barriers include restrictive licensing measures, complicated customs procedures, outright import bans, state trade monopolies, and restrictive foreign exchange arrangements (ERF, 2002). Arab exporters are often more bothered by restrictive environmental regulations in

fellow Arab countries than those in other destination markets; poor access to accurate information and costly customs requirements are also common complaints of those trading within the region (ESCWA, 2001). As such, intra-regional Arab trade stands around 8 percent of total trade flows, which is a modest increase from about 5 percent in 1970.⁷ These figures compare unfavorably with intra-regional trade in other regions such as East Asia (22 percent in 1998), North American Free Trade Agreement (NAFTA) countries (51 percent), the European Union (57 percent), and even the Andean Pact countries (11 percent) (ERF, 2002).

Despite the poor performance of intra-Arab trade, Arab countries are actively pursuing other multilateral and bilateral trade agreements with the hope of increasing their integration into the global economy through alternative means. The approach to these agreements varies between country and subregion. For example, while bilateral trade agreements have and are being forged between the United States and several Arab countries, Saudi Arabia maintains the position that such agreements should be negotiated collectively between GCC members and the United States, as is the case with free trade agreement (FTA) negotiations between the GCC and the EU. Nevertheless, most other countries of the GCC have finalized or are negotiating bilateral trade agreements with the USA. Additionally, while the Agadir Agreement was made possible due to common export concerns among Egypt, Jordan, Morocco, and Tunisia relative to trade with the EU, other countries that have association agreements with the EU have not expressed much interest in joining, and the implications of the agreement remain mostly limited to the textile and garments sector. A result the proportion of trade among members in three Arab subregions (*Mashriq*, *Maghrib*, and Gulf)⁸ is significantly higher than overall intra-Arab trade. For instance, nearly two-thirds of intra-Arab exports from *Maghrib* countries flow to other *Maghrib* countries, while about 75 percent of the GCC's Arab export share goes to other GCC countries (ERF, 2002).

Ultimately, the failure of Arab countries to implement regional integration policies has exacerbated the tendency of Arab trade to be increasingly oriented outward, toward Europe, Asia, and the United States. Indeed, the Gulf countries are actively engaged in trade and investment with India and its neighbors; while Jordan and now Moroccan exports are shifting toward the U.S. Accordingly, regional integration policies are being marginalized in favor of bilateral agreements that seek to increase access to specific markets, and service sectors in many Arab countries are among those most targeted for liberalization. This complicates the negotiation process because the multitude of bilateral negotiations being forged rarely afford Arab governments the opportunity to delve into specific problems raised by a trading partner's tariff and nontariff barriers, or the time to examine the full implications of opening markets back home. These issues will thus remain problematic as

long as the Arab region and countries of the South cannot collectively negotiate common positions in this area.

Environmental Degradation Is Increasing the Cost of Economic Growth

Economic and social policies in much of the Arab region continue to exclude the value of the environment and of natural resources. Recent studies from the World Bank (METAP, 2003) suggest that the overall cost of environmental degradation represents on average 4.3 percent of GDP in the seven Arab countries examined (Algeria, Egypt, Jordan, Lebanon, Morocco, Syria, and Tunisia). According to the studies, air pollution alone cost Egypt an estimated 2.1 percent of its GDP, which in 2003 would be roughly US\$ 1.7 billion. These costs are exhibited in morbidity, mortality, and losses to human health, labor productivity, and natural resources, all of which stymies efforts to increase economic growth.

No discussion of the environment in the Arab region can exclude the challenge of water scarcity. Eight out of the fifteen most water-scarce countries in the world are Arab. Demand for water is far outstripping supply, groundwater extraction is exceeding sustainable rates of withdrawal, and much of the region's water supply is from transnational sources. The situation is exacerbated by population growth and the fact that nearly 80 percent of water use is consumed by the agricultural sector. This allocation is grounded in the political need to support rural communities and ensure food security in a region that is constantly in crisis. The effective management of shared water resources is thus crucial to ensuring the health, welfare, and livelihoods of the region's population and environment (ESCWA, 2003b). However, the water situation constrains agricultural productivity and increases the sensitivity of vulnerable groups in rural areas to import competition. This is exacerbated by the heavily subsidized agricultural exports from water-rich countries in the North.

Furthermore, as the liberalization of trade in goods and services increases, the flow of goods and persons through the Arab region is also increasing. This is already evident in the tourism sector along coastal areas. For instance, investments in resorts and real estate developments catering to nonnationals have been particularly high in Bahrain, Egypt, Lebanon, Morocco, Tunisia, and the United Arab Emirates in recent years. This imposes additional stresses on scarce water resources and contributes to the degradation of the coastal zone and the loss of biodiversity.

Negotiations to liberalize environmental goods and services that might help to mitigate environmental degradation also provide a mixed bag of opportunities and challenges for Arab countries. Morocco has agreed not to impose any restrictions on the commercial representation of environmental service providers or expert staff and has notified the WTO to this effect (WTO, 2003). This is important because Morocco is taking significant steps

to strengthen its industrial wastewater effluent standards and regulations and is looking to European and American environmental technology providers to help large and small manufacturers become compliant with these new environmental standards. Kuwait and the United Arab Emirates have made similar liberal notifications on environmental services to the WTO in the areas of sewage services, refuse disposal services and sanitation, and related services (WTO Services Database, 2004). However, environmental service providers within the region and in other developing countries may be disadvantaged during their start-up if forced to compete with well-developed service providers in the North. Furthermore, the environmental sector in the South provides opportunities for the thousands of engineers and scientists that seek to enter the workforce, but have no place to apply their new skills. Liberalization of the sector should thus be considered in light of national efforts to better protect the environment, while providing skilled work opportunities for an increasingly educated, but unemployed workforce in the Arab region.

Access to Information Remains Weak and the Public Interest Marginalized

The political reform process currently being pursued in most of the Arab region has been tentative and heavily influenced by external political and policy pressures. However, improved access to information through media outlets and advances in information and communication technologies have made it easier for civil society organizations to follow developments in the global arena regarding issues and challenges associated with trade, environment, and sustainable development.

Nevertheless, while awareness has increased, understanding and analysis regarding policy implications of political commitments remains weak. Furthermore, while the level of civil society participation has increased, the ability of these nongovernmental actors to influence the decision-making process remains limited. Accordingly, more structured and transparent institutional frameworks are needed to facilitate regular dialogue between the public and private sectors and civil society to enhance understanding of the issues and concerns facing different parties within an integrated policy development framework.

Trade and Environment Policy Making in the Arab Region

The evolution of commitment to trade and environment policy issues in the Arab region can be divided into three phases:

- *Phase one (early to mid-1990s)*: This phase is characterized by limited awareness of trade and environment issues and links as demonstrated by the lack of official participation and involvement of most Arab

countries in GATT/WTO forums, particularly those related to the environment. Indeed, with the exception of a few specialist consultants or experts within the trade ministries, there was little awareness of these issues, and little information filtered down to other concerned agencies. With regard to oil resources, most officials were convinced that this was off the international agenda. Arab civil society was, for the most part, excluded from official discussions, although there was growing concern about production and consumption patterns, particularly in reference to population growth and economic development.

- *Phase two (mid to late-1990s)*: This phase witnessed an emerging understanding of the importance of trade and environment links, particularly with regard to restrictions on market access and the realization that the oil sector could be a subject of negotiation within the WTO. Some countries in the region established trade and environment working groups or subcommittees within the framework of their national WTO committee (e.g., Egypt, Tunisia). However, most of these committees did not meet regularly and were not particularly influential in preparing positions for negotiation, particularly since officials outside of trade ministries had little input. During this period, “there remained a very widespread confusion among much of the business and government sector over just what WTO was all about” (Abu-Ghazaleh, 2002), and the fundamental fear was that environmental provisions were simply another way of imposing Northern values and priorities on the South. Civil society and the private sector were becoming more aware of trade and environment links, but on the whole they were not engaged or invited to participate in official deliberations on the subject.
- *Phase three (late-1990s to present)*: Most decision makers in Arab countries are now aware of the basic direct and indirect links between trade and the environment, mainly because of high-profile meetings such as the WTO Doha Ministerial meeting and the WSSD Johannesburg Summit. Increasing attention and assistance is also being directed toward examining the potential implications of multilateral agreements, particularly for the energy sector. However, Arab countries also remain concerned about issues of market access and competitiveness, and tend to view inclusion of the environment at the WTO within the context of cynical negotiation techniques by the North to create new barriers to trade for products from the South. More Arab countries have also sought to establish national trade and environment committees (e.g., Jordan, Lebanon, Morocco, and Yemen), with public and private sector representation.

Despite this progress, an Arab agenda on trade and environment does not yet exist in any appreciable sense. Nevertheless, issues and priorities for

action in the Arab region have been identified within a capacity-building framework adopted by the Council of Arab Ministers Responsible for the Environment (CAMRE) in 2003, namely the Regional Program for Trade and Environment Capacity Building in the Arab Region. This program identifies market access, competitiveness, and dispute resolution as the key priorities in the regional trade and environment agenda. In order to achieve progress in addressing these priority topics, a better understanding is needed regarding the role of governance, policy analysis, institutional capacity, negotiations, information dissemination, and private sector development in trade and environment policy making in the Arab region.

Governance

Formulating integrated policy formulation is a daunting task for all countries. Industrialized countries have found that when they seek to ensure the mutual supportiveness of trade and environment policies and agreements, one of the most difficult challenges they face is coordinating policy among government institutions (Organisation for Economic Co-operation and Development [OECD], 1999). This challenge is multiplied in the South, and particularly in Arab countries, where institutional mandates sometimes overlap, national governments come and go, and political exigencies and preferences often determine the shape of policies and the ability to implement programs. Furthermore, ministries of trade and foreign affairs have been wary to allow environmental institutions entry into closely guarded decision-making circles, particularly those that involve negotiations. Environmental ministries are also reticent to devolve responsibilities on sustainable development to ministries of economy, social affairs, or planning.

Priority setting and policy coordination on trade and environment issues is thus a balancing act that can be successful or ineffective. This is dependent on the institutional framework and the identification of mutual benefits that can emerge for economic and environmental actors by taking coordinated action on a common set of priority issues. The establishment of national trade and environment committees in several Arab countries is an important step toward strengthening governance and establishing mechanisms for inter-sectoral coordination, but more remains to be done.

At the regional level, new institutions have emerged to support sustainable development policy coordination. The most important is the establishment of CAMRE in 1987, which provided the first political forum in the region for addressing environmental matters. Appreciation of the integrated nature of sustainable development emerged during the 1990s and was manifested in the establishment of the Joint Committee for Environment and Development in the Arab Region (JCEDAR) as an advisory body to CAMRE. The membership of JCEDAR is both governmental and nongovernmental

and includes representatives of national environmental agencies, nongovernmental organizations (NGOs), private-sector associations, and regional organizations, including United Nations organizations. Mounting concern regarding the potential impacts of trade liberalization on the environment, as well as threats to export competitiveness and market access posed by non-tariff barriers and environmental requirements, prompted the council to include trade and environment issues among its list of sustainable development priorities in 2002.

Ensuring policy consistency and complementarity between trade-related multilateral environmental agreements (MEAs) is also important for Arab countries. With the notable exceptions of the Kyoto Protocol to the Framework Climate Change Convention and the Biosafety Protocol to the Convention on Biodiversity, Arab countries have tended to sign trade-related MEAs, but have depended on international donor assistance to implement them. National implementation thus suffers because of lack of resources, political will, and a weak civil society base that does not have the capability to serve as a watchdog. Arab countries need to be more proactive in identifying and voicing their interests on MEA topics, and in finding synergies among agreements so as to make better use of existing resources and capabilities.

Policy Analysis

Effective policy formulation, negotiation, coordination, and implementation cannot take place in the absence of solid policy analysis. Unfortunately, governments and private actors in the South tend to have limited technical and financial resources at their disposal to engage in integrated policy analysis. Nevertheless, some progress is being made in this area in the Arab region.

For instance, environmental reviews have been conducted at the regional and bilateral level, but the impetus for conducting these reviews has come from Europe or the United States within the context of assessments required during the negotiation of free trade agreements. Furthermore, the environmental reviews in the region have focused more on the impact that trade liberalization can have on the North, rather than on Arab countries. Nevertheless, some progress is being made. The government of Lebanon, for instance, took the initiative to conduct an integrated assessment of the implications of free trade with the EU on their olive oil sector. A sustainability impact assessment of the Euro-Mediterranean Free Trade Area and of the free trade agreement between the European Commission and the GCC specifically examine the implications of trade provisions on socioeconomic development and the environment in both the North and South. These assessments have been useful in informing decision makers and civil society about the potential positive and negative effects of liberalization and the need for mitigation measures.

Microeconomic policy analysis also is important for priority setting and policy formulation. For example, policy analysis on the impact of environmental requirements on competitiveness, particularly that of SMEs, is fundamental to formulating informed negotiation positions. Trade and environment assessments have generally agreed that some level of economic dislocation results from increased trade liberalization in the region, particularly in the textile, garment, agricultural, and agro-food sectors. SMEs, small-scale farmers, and other vulnerable groups face significant challenges posed by increased import competition and growing consumer demand for products that meet more stringent environmental and health standards. Governments and civil society should thus use impact assessments as a means to inform national decision-making and the negotiation process.

Institutional Capacity

While governance and policy analysis may be improving, the infrastructure and institutions needed to implement mutually supportive trade and environment policies are still emerging. Few accreditation and conformity assessment bodies exist in the region, and Arab countries' technical capacity to adjust to new environmental requirements in destination markets is constrained. Arab countries have recognized these gaps in capacity and are seeking to launch mechanisms to strengthen these accreditation agencies. Monitoring and inspection institutions also are in need of strengthening, particularly those affiliated with customs authorities, to ensure that Arab countries do not become a dumping ground for lower-quality products.

This raises three major challenges that require policy setting and action in the Arab region and in much of the developing South.

- First is the importance of *standard setting*. While not all Arab countries have independent standard-setting authorities, most governments agree on the importance of formulating standards and adopting them to national conditions. For strategic reasons, Arab governments support a science-based approach to standard setting to ensure that frivolous environmental standards and regulations are not adopted, and this policy should continue to be followed. Accordingly, while citizens and NGOs in the Arab region and the South may be more favorable to applying the precautionary principle to standard setting, the importance of eliminating all unnecessary obstacles and hidden barriers renders it important for the South to support the rational use of science-based risk assessments to justify the adoption of standards.
- Second are the issues of *environmental enforcement* and *conformity assessment*. The assurance of national assessment remains a fundamental problem for developing countries, including those in the Arab region.

The application and enforcement of national environmental and health regulations on domestic producers on the same terms as those applied on imports can easily be called into question since the legal and institutional frameworks for environmental and health monitoring and enforcement remain weak in most countries in the region. This weakness impedes the ability of Arab countries to strengthen their capacity and commitment to reliable conformity assessment systems and prevents them from adequately protecting their citizens from poor-quality imports. The burden of demonstrating compliance with these standards also is becoming increasingly time consuming and costly. This is a problem that arises not only with exports to developed country markets, but also in trade within the region, where conformity assessment requirements at the border are often construed as veiled protectionism.

- The third challenge and opportunity presented by the trade negotiations to Arab countries is raised in the Doha Development Agenda paragraph 32(iii) and refers to *product labeling*, which can be extended to emphasize the need to strengthen *mechanisms to enhance consumer protection*. Such instruments allow consumers to make educated decisions based on their personal preferences. However, consumers must also be informed about what to look for and what their rights are if product labeling is to be an effective tool in informing consumer choices. While consumer protection organizations have been established in the Arab region (e.g., in Jordan, Lebanon, and Egypt), there remains limited awareness among individual consumers in the region about potential risks to human health, whether in agricultural products, processed foods, or textiles and garments.

Negotiations

Achieving coordinated and collective Arab positions on WTO issues for negotiation is fraught with challenge. During Arab ministerial meetings in preparation for the WTO Ministerial meetings at Doha in 2001, in Cancún 2003, and in Hong Kong in 2005, Arab officials affirmed the need to coordinate Arab positions in areas such as agriculture, public health, market access, and the exchange of information and experiences. However, this was sought despite the acknowledgement by Egyptian Minister of Foreign Trade Youssef Boutroux-Ghali that a “unified position from Arab countries is difficult to achieve since each of them has a different economy and one can find more differences than common points” (ESCWA, 2003c).

A key barrier to increased effective Arab coordination and participation within the WTO is the rejection by the WTO of accreditation of Arabic as

an official language. Another key barrier is the perceived politicization of the WTO process that has prevented a number of Arab states from joining. Some Arab countries also have complained that the WTO accession process is being used to extract concessions from countries on policy measures that may be permitted under the WTO, but still targeted for removal by WTO Member States (e.g., dual energy pricing).

The politicization of the WTO may be best illustrated in the protracted negotiations regarding observer status for the League of Arab States (LAS) and other international organizations of interest to the Arab region. For instance, the WTO rejected the request of the LAS to participate at the Ministerial Conference held in Doha in 2001, prompting several Arab delegations to express their regret regarding this decision. It was strongly felt that, particularly within the context of GAFTA, the LAS could assist in enhancing coordination among Arab states in WTO committees such as the Committee on Trade and Environment (CTE). The view in the region is that the United States and Israel have held up the application of the LAS because the league's charter still calls for a trade boycott on Israeli products (see IslamOnline, 2004; Kontorovich, 2003). The fact that the United States engages in a similar boycott against Cuban goods (via the Helms Burton Act) reinforces the widely held belief in the Arab world that there are double standards at work to harm Arab interests and divide the Arab world. Egypt, which has led Arab insistence on the importance of granting the LAS observer status has, in turn, withheld consent on other inter-governmental organizations obtaining observer status as a "means to exerting pressure" (International Centre for Trade and Sustainable Development, 2002).⁹ As such, the LAS remains excluded from the CTE and other forums, along with a host of other organizations of interest to the Arab region including the Organization of the Petroleum Exporting Countries (OPEC), the Gulf Cooperation Council (GCC), and the Organization of Islamic Conferences (OIC).

Information and Transparency

Within the work of national trade and environment committees and national deliberations on these topics, civil society and the private sector also participate increasingly in discussions about trade and the environment. Civil society participation has helped to shift the debate from issues exclusively on the WTO agenda to topics that involve broader sustainable development issues, including topics addressed by MEAs, such as the trade in hazardous waste or genetically modified organisms (GMOs) and biosafety.

Indeed, it is imperative that these topics be treated on a par with those raised within the Doha Development Agenda when setting a Southern agenda on trade and environment. For instance, the majority of Arab countries have not yet adopted operational biosafety systems. Accordingly, there

is an urgent need to formulate clear policies regarding the release, commercialization, handling, and labeling of GMOs within an integrated framework that effectively informs consumers. Mechanisms to improve the dissemination of information and transparency of the decision-making process on trade and environment issues can help to direct the policy-making process to address issues of concerns to the public interest, and also empower governments to address broader trade and environment priorities beyond those on the immediate WTO agenda.

Private-Sector Development (Particularly for SMEs)

Private-sector development and entrepreneurship should be the cornerstones of development policies in the Arab region, particularly in countries struggling to find new employment opportunities for their burgeoning, and increasingly young, workforce. However, private-sector development has not come easily in a region traditionally dominated by state-owned enterprises and public-sector control over energy resources and energy-related industries. Nevertheless, diversification policies have achieved results with the number of private industrial establishments in the Gulf countries growing. SMEs also remain dominant in the textile, garment, and agro-food industries throughout the region.

Nevertheless, SMEs in the region are facing significant challenges associated with the increased competition from imports of less expensive substitutes in their traditionally protected home market and from the costs of compliance with increasingly stringent environmental, health, and safety standards being demanded by foreign markets and at home. While larger firms in the region are able to adjust to these market changes, SMEs find it more difficult to make the necessary investments and productivity improvements given their limited access to capital, information, and skilled human resources. Mansour (2001) makes the important point that while in East Asia and in the North “SMEs tend to be in ‘modern’ manufacturing and services, often in the field of cutting edge technology, with strong entrepreneurial bases, vibrant export sectors, and a large base of educated and technical manpower,” in the Arab region “SMEs are concentrated in labor-intensive and traditional activities with low levels of productivity and poor quality products[, and] there is little or no technological dynamism.” Because of this, some of the more aggressive trade liberalization policies in the region have resulted in the closure of many small businesses and increasing unemployment, fostering disillusionment with trade liberalization policies and resistance to stringent environmental requirements.

There is a clear need for governments to establish policies to facilitate *technology transfer*, particularly to SMEs that need access to financial capital, know-how, and information. For example, environmental funds established

in Morocco and Tunisia help firms improve their environmental performance. However, publicly supported mechanisms for facilitating technology transfer may be construed as a subsidy. Indeed, while the WTO sanctioned environmental payouts by governments until quite recently under Article 8 of the Subsidies and Countervailing Measures (SCM) Agreement, no one sought to renew the clause due to fears that it may open new opportunities for “environmental protectionism” by the North, despite the benefits the exception could also provide for developing countries. While no environmental funds have been challenged under the WTO framework to date, Arab governments should support such green initiatives, particularly if they can be used to assist export-oriented SMEs, as well as firms seeking to comply with more stringent domestic environmental regulations.

Finally, an important point needs to be made about the dispute resolution system. Developing countries often do not have the financial or human resources to raise disputes before the WTO on regulations, including those that might be contested under the argument that they seek to enforce compliance with process and production methods (PPMs) that are unrelated to the characteristics of the final product. In the Arab region, this is exacerbated by the fact that private-sector exporters do not usually have regular access to government decision makers to inform them about emerging barriers to trade and threats to their competitiveness in export markets. Moreover, non-related issues on the international political agenda often make it difficult for smaller countries to bring disputes before the WTO because of the high capacity cost required to do so and out of the fear that it might alienate an ally on another matter of foreign policy. Accordingly, the absence of effective institutions and mechanisms for public-private dialogue and the limited political clout of the South in the absence of a collective agenda make developing countries vulnerable to regulatory supremacy by the North.

Envisioning the Road Ahead

Arab states initially ignored the importance of trade liberalization policies and thus were taken by surprise during the initial negotiation process at the WTO. Arab awareness—particularly in the aftermath of the Doha framework—has evolved considerably and now acknowledges at least some of the potential negative repercussions of liberalization, for instance, on market access and competitiveness. The smaller GCC countries and some Maghrib countries, particularly Egypt, are now certainly more active in the WTO negotiation process.

Civil society in the Arab region, though still weak, has begun to take bolder steps to stimulate national and regional dialogues on key issues; as a result, consumer associations are being formed to protect Arab consumers, or at least make them aware of their rights and responsibilities. The private

sector also has been working to increase Arab export competitiveness and to pressure governments to reduce their own barriers to trade and insist that Northern countries do the same. For their part, Arab governments have taken small, but positive steps to increase economic liberalization and advance sustainable development, although better policy integration is needed. However, many of these official reforms were introduced to placate the North, and, as such, the necessary political will to effectively implement commitments and ensure public participation remains limited.

When looking at the crossroads ahead, two paths clearly emerge. The first one looks familiar and consists of status-quo policies whereby the Arab region continues with its piecemeal approach to negotiations in a reactive mode designed, at most, to blunt the most negative impacts of trade liberalization on Arab export industries, particularly those supported by the largest and most powerful players and interests. To be sure, some gains would be made along this path but, we argue, they would be limited in scope and restricted in terms of benefits. The situation for consumers and SMEs would surely worsen as access to relevant information and new technologies and management techniques, respectively, remain limited even as the pace of change quickens. The region would continue to lack the proper research, institutional, and infrastructural resources and proper incentives to innovate. Moreover, in the continued absence of genuine government accountability and effective public participation fed by a strong civil society, politically and economically powerful blocs in the North would continue to seek alliances with elites in the Arab region to extract personal gains even as environmental stress becomes unbearable and the precious natural resources of the region continue to be remorselessly depleted in the name of growth and development. Sustainable development, in short, will remain mere ink on the paper used to write declarations and speeches.

The second path remains untrodden. It requires a rethinking of what we mean by “development,” a more proactive and independent civil society and, above all perhaps, political will and long-term commitment on the part of national governments. Accordingly, this section offers six key issues that the Arab region should consider when envisioning the road ahead to a more positive, proactive trade and environment agenda and action plan. These relate to the need to a) enhance critical and open debate about trade and environment policies through strengthened and effective public participation and consumer awareness; b) adopt sustainable development as the overarching framework for trade and environment policies; c) move forward in regional integration plans and raise standards; d) secure market access for key export products; e) enhance competitiveness without degrading social nets; and f) build capacity to engage in negotiations, dispute resolution, and analysis. A proactive regional agenda on trade and environment should thus highlight these priorities and positions with a view toward adopting the

corresponding requisite implementing instruments. Embedded in all these priorities is the fundamental need to increase political will.

1. Promote Genuine Public Participation

The idea that policies related to trade and environment should be debated openly and critically, and with proper access to information to producers, importers, exporters, and consumers, should be a fundamental prerequisite to any future vision. Although there has been improvement in the Arab region in terms of setting up national trade and environment committees to include some form of private-sector and NGO participation, it remains limited both in scope and implementation. Of course, this particular vision is closely connected to a larger political reform process by which Arab states become more democratic and thus more accountable to the public. Indeed, while political and social reforms slowly move forward in the Arab region, it is vital that Arab civil society find ways to build its own capacity while remaining independent and critical. While affiliation to larger global civil society actors and international organizations provides some measure of protection and effectiveness, regional networking within the Arab region must increase to ensure a wider public participation role that would be more difficult to suppress. New information and communication technologies, including most obviously the internet, has made trans-national communication significantly easier and cheaper, but civil society in the Arab region has not taken full advantage of this.

The media and consumer organizations would play a particularly important role in protecting and informing the public. Consumer power in the North has significant bearing on the development of standards and formulation of market preferences in terms of what products they choose to buy. Perception also plays a role that must be appropriately managed by regulatory authorities, including biases against products from a certain country regardless of product quality, a problem faced for instance by Yemeni fish exporters to the EU. A corresponding increase in Arab consumer awareness and power in the market would help to ensure rising standards for local products (e.g., banning of DDT in agricultural products), as well as imported ones (labelling of GM products). Such consumer awareness must come through, and then in turn, promote effective information dissemination to the public at large. Arab civil society should, for instance, work with (as opposed to being led by) government agencies to increase bureaucratic transparency and facilitate the dissemination of information about goods and services. This can be achieved through improved labelling regimes and other public awareness-raising mechanisms (e.g., press releases, media reports, and school curricula) to allow citizens to make more informed consumption decisions.

2. Sustainable Development Comes First and Should Be Seen as a “Win-Win”

In establishing policy perspectives and negotiation positions within the framework of the WTO—or indeed any trade liberalization agreement—Arab governments should hold fast to the principle that sustainable development should come first. Often times, in eagerness or under pressure from the North, Arab governments have signed trade agreements without seriously considering the implications of the concessions they are granting. A more holistic framework for analysis is needed and sustainable development should be seen as part of a win-win strategy whereby, on the one hand, the Arab region can join the broader South in using key principles of sustainable development to blunt Northern protectionist impulses and policies, and on the other, advance important domestic developmental goals.

Such an approach would build upon the principle of “common but differentiated responsibilities,” which can be fundamental to the assertion that the Arab region is willing to take responsibility for its policies and consumption patterns. However, developmental needs—and particularly those of poorer countries, such as Yemen—must allow developing countries in the South to have different agendas and timetables from those countries in the North that are responsible for the majority of the world’s environmental degradation. Support should also be extended to the “polluter pays” and the “domestically prohibited goods” principles, which can help ensure that the North does not simply dump its waste in the South. At the same time, adopting a sustainable development framework also offers a “win” scenario in that it would allow Arab civil society to increase its voice, thus reminding governments of their obligations and responsibilities.

There are other important implications for adopting sustainable development as the main framework within which to consider trade and environment. Sustainable development is a holistic approach that recognizes the “big picture” in that it considers the social, economic, political, and cultural interests of the public at large, present and future, rather than only the interests of local elites or the North. An illustration of this would be to debate the consequences of the Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement in the context of sustainable development, such that the Northern interest in cracking down on copyright or patent violations, for instance, while not giving sufficient protection to indigenous communities for traditional knowledge on medicinal plants. A sustainable development framework within the free-trade logic of the WTO could balance the concerns of foreign investors against the rights of local communities in terms of access and benefit-sharing working. Second, Arab negotiators should insist that MEAs have a developmental component to them—in the spirit of the Earth Summit and the WSSD—and that such MEAs offer an effective forum to

negotiate with the North with regard to particular problems. Indeed, Arab interests lie in engaging the North in international legal mechanisms, including the MEAs and the WTO, should problems arise and vociferously opposing the use of unilateral measures frequently taken by the North.

3. The Time for Genuine Regional Integration Is Now

As discussed earlier, the idea of Arab regional integration is not new; its modalities have been debated for decades. Indeed, such integration served as a major political, economic, and social objective in the postcolonial era dominated by nationalist leaders and economists. Of course, its failure to reach fruition at a time when other regions—at least some of which are arguably more heterogeneous socially and politically—have managed to do so, tells the story of failed pan-Arab nationalism as a combination of neocolonial interference from the North, the Arab-Israeli wars, civil strife, and persistent corruption throughout the Arab region. The need for economic integration, however, remains stronger than ever as a means of helping countries in the region overcome challenges posed by globalization.

The road ahead must start at home. As pointed out earlier, it is often more difficult and costly to export a product from one Arab country to another, than to export it outside of the region. Thus, regional integration would have several obvious benefits. First, it would open a relatively large market of about 300 million consumers—many of whom have similar preferences—to Arab producers, thus raising intra-Arab trade well beyond the current 10 percent of total trade. Second, if managed properly, integration would stimulate competition in the region and promote a corresponding increase in standards, including environmental standards, as Arab consumers become more aware and discriminating in their tastes. As such, the capacity of regional standard-setting institutions should and would be enhanced. Finally, regional integration would considerably strengthen Arab negotiation positions vis-à-vis powerful Northern blocs, which have been employing a “divide and rule” strategy of unilateral measures and bilateral negotiations to ensure that their interests are protected. Indeed, the current piecemeal approach to trade agreements being taken by the Arab countries is a direct challenge to the forging of Arab regional integration to influence the global trade and environment negotiations. Arab governments need to invest in strengthening regional economic integration first.

To be sure, a great amount of political will is needed to break down rivalries among traditional elites and monopolistic tendencies. Moreover, ensuring that the rules of integration encourage SMEs to flourish while they prevent intra-Arab specialization (and competition to export to the richer countries of the North) in certain industries (e.g., fisheries) from burdening on the poor is a task that poses serious challenges. If regional integration

remains politically impossible, then further measures should be taken by the three main Arab subregions (Gulf, *Maghrib*, and *Mashriq*) to integrate subregionally as a first step toward larger integration. Of course, it should be noted here that the GCC has already taken the boldest steps toward this end, while the *Mashriq* is by far the most divided because of the still unresolved question of Palestine and the ongoing conflict in Iraq.

4. Secure Greater Market Access for Strategic Export Goods

The Doha Development Agenda calls for negotiations on the reduction or elimination of all tariffs and nontariff barriers on all nonagricultural products, particularly those of interest to developing countries (paragraph 32[i]). Within this context the elimination of nontariff barriers are among the chief trade and environment priorities of Arab countries, particularly as they limit market access and threaten export competitiveness. Market access refers to matters related to conformity with discriminatory regulatory and voluntary nontariff barriers to trade, particularly those that deal with product standards, process requirements, and conformity assessment procedures. Nontariff barriers and market-distorting subsidies imposed in the North continue to be a source of contention for Arab exporters. The difficulty is augmented by the fact that the conformity assessment infrastructure for accreditation and certification also remains limited.

Food security, population growth, poverty, and employment are important issues for the Arab region and the South. However, uneven liberalization of the agricultural sector—which is a significant source of employment in Arab countries—has reduced economic opportunities in the sector and has led to social tensions and increasing dependence on food imports. Alleviation of these stresses should be of first priority for policy makers. Increasing market access for agricultural goods not only involves changing tariffs and quota systems, but also eliminating nontariff barriers and providing technical assistance for farmers, to help them comply with environmental, health, and safety requirements.

Another market access problem for Arab exports involves trade shifting due to problems associated with market access and compliance with more stringent environmental regulations. For example, in the late 1990s, exports of Jordanian phosphate-based fertilizer suffered as Europe shifted to buying from Ethiopia and India, because Jordan could not initially meet new European regulations on maximum cadmium thresholds in fertilizers. After a period of transition, adjustments in production processes were instituted that allowed for conformity with the regulation for certain products in order to access the EU market. However, this required innovation and investments in technology by the primary Jordanian exporter, as well as its competitor in Morocco, in order to maintain access to the European market. As this

example indicates, technology transfer, technical assistance, and research and development are needed to comply with more stringent environmental, health, and safety regulations. Enhancing such arrangements should thus be fundamental components of Arab negotiation positions and policies related to increasing market access and competitiveness at home and abroad.

Also, strong links connect agriculture and the environment in a region that is chronically water scarce and home to some of the planet's most threatened ecosystems. Arab countries should raise the issue of agricultural liberalization in the North, but seek continued protection of this sector domestically. Such a position can be defended under safeguard measures and the principle of common but differentiated responsibilities, and within the framework of policies that seek to better manage scarce water resources. Accordingly, Arab countries have a major interest in participating actively in negotiations on agricultural topics in any context to ensure that they take full account of their food security, environmental, and rural development concerns, and to coordinate with other countries in the South to negotiate common positions to this end.

The liberalization of trade in environmental goods and services also needs to be appropriately studied within the context of other national policies to ensure that environmental and social impacts associated with its application are appropriately monitored and managed in the spirit of advancing sustainable development. Increased access for environmental goods and services has implications for the Arab region, because liberalization of the sector can potentially displace nascent environmental service providers growing in the region. Furthermore, there may be benefits to liberalizing the sector in Arab countries that are more favorable to the use of public-private partnerships in the provision of public services, such as water supply, wastewater treatment, waste management, desalination, and energy services. Arab interest is emerging in this area and is apparent by the fact that some countries have agreed not to impose restrictions on environmental services in certain modes of supply, while ensuring that local producers are given sufficient protection to grow and compete with imported capital and foreign service providers.

5. Enhance Competitiveness, but Not at the Expense of Social Welfare

Concerns about competitiveness in the trade and environment context have been widely recognized (Makdisi and Chouchani Cherfane, 2005). Such concerns include matters related to technology transfer, intellectual property rights, efficiency, incentives for clean production, eco-labeling schemes, and the special needs of SMEs. It would be self-defeating, however, to increase competitiveness through efficiency gains that exacerbate unemployment and the marginalization of socioeconomically disadvantaged groups. Rather, such policies should avoid narrow definitions of economic growth and seek,

instead, to maximize social welfare, sustainable development, and overall quality of life.

For example, despite the North's position regarding the "subsidization" of heavy industries that use the region's relatively abundant energy resources, Arab countries could make similar claims regarding water and agricultural land subsidies offered by most European governments to their farmers, given the wealth of water and arable land in Europe. In the case of natural resource-related subsidies, Arab countries are concerned about the North applying a double standard in their dealings with the region. Regions should be allowed to use the resources and instruments at their disposal so as to enhance their competitiveness and their comparative advantage in the global marketplace.

A major policy issue for petroleum-exporting countries in the Arab region and elsewhere in the larger South, is the dual (two-tier) pricing practices for natural resources—namely, petroleum resources for which governments keep domestic prices lower (or export prices higher) than if they had been determined by market forces. This has enabled some countries to use their natural resources to promote industrialization and attract investment in a manner that strengthens the development and the competitiveness of their national industrial sector. While dual pricing is not inconsistent with WTO rules, it is difficult to find acceptable mechanisms to keep domestic prices lower than world prices. This is because energy inputs supplied domestically at prices lower than those available internationally are a non-actionable subsidy (permissible subsidy) when those inputs are available throughout the economy and are not specific to export production.

Indeed, it is no surprise that the MEA of greatest interest to energy exporting countries is the Kyoto Protocol. The fear is that the effects of implementation will fall unevenly on energy-exporting countries. Countries may implement the protocol by introducing energy efficiency standards, energy taxes, or subsidies, or by using specific environmentally sound technologies, eco-labels, and government procurement policies. These measures, however, could have implications for energy demand in the long run, although exports are unlikely to falter, given growing global demand. The manner in which governments allocate emission allowances, however, will affect the competitiveness of industrial sectors. In this regard, Article 4.8 of the Kyoto Protocol is of particular importance, stating that in the implementation of commitments, "the parties shall give full consideration to what actions are necessary to meet the specific needs and concerns of developing country parties arising from adverse effects of climate change and/or the implementation of response measures." In particular, this article refers to "countries whose economies are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products." The relevance of these provisions for oil-producing Arab countries is clear: they would, on the one hand, be

likely victims of the adverse effects of climate change in terms of increased desertification, water scarcity, and food production. On the other hand, such Arab countries would be “harmed by the implementation of response measures given their degree of openness and their high rate of dependence on oil-wealth” (Babiker, 2004).

6. Build Negotiation, Institutional, and Research Capacity

The need to build capacity in nearly all aspects of trade and environment is obvious. First and foremost, there is an urgent need throughout most of the Arab region to develop effective research, analysis, negotiation, and dispute resolution skills. Top-quality specialized organizations and academic institutions to enhance such skills are rare in the Arab region. Negotiators are thus often thrown into negotiations without the research and analysis needed to establish strategic positions. Developing dispute resolution skills also is essential, particularly in so far as this skill relates to improving national and local understanding of the trade-related provisions of MEAs and of dispute resolution mechanisms, and to reconciling differences in interpretation and implementation of environmental provisions in trade agreements.

Furthermore, there is a clear lack of capacity in dealing with the various and varied aspects of agreements within the WTO, given the limited resources available. For instance, while the Doha Development Agenda identifies specific areas for discussion with CTE, the Arab region is also concerned and oftentimes more interested in on-going negotiations and issues raised by the Committee on Technical Barriers to Trade (TBT) and the Committee on Sanitary and Phytosanitary Standards (SPS) with regards to environmental-, health-, and safety-related TBTs and SPS measures. This is partially because, while the CTE is charged with examining the impact of environmental requirements on trade, discussions regarding international standards and standard-setting processes continue with the later two committees. Arab countries should actively use the TBT and SPS committees as platforms for voicing concerns regarding discriminatory trade practices and the need to ensure common, but differentiated treatment for developing countries. Limiting these debates to the CTE marginalizes the discussion and does not provide it with the weight it deserves within the framework of negotiating and implementing WTO agreements.

The Arab region also should argue within the context of the WTO negotiations for urgent consideration of the challenges faced by SMEs, and that the Northern members of the WTO should use their resources to upgrade SMEs' capacity and opportunities as corridors through which employment and income can be generated for nationals at home. Arab governments also should demand more capacity building and technical assistance in the area of standard setting, environmental enforcement, and conformity assessment,

particularly if countries of the North wish the South to improve their environmental performance. The North has a moral responsibility to help the South increase the capacity of its environmental institutions and enterprises to comply with more environment- and health-related standards, or else suffer the consequences of an increasingly disadvantaged and unstable developing world. Unfortunately, however, mechanisms to facilitate technology transfer to the South are slow and may be shifting from aid to trade, as in the case of the liberalization of environmental goods and services. While the North, as primary exporters of these services, seeks liberalization of the sector, the benefits to the South remain mixed. Thus, Southern governments and the private sector should determine together to what extent the liberalization of the sector can actually assist development in the South.

Finally, improving institutional capacity is critical. Establishing, or enhancing national trade and environment committees and giving them the authority and resources to conduct analysis is a key tool in this regard. Because most Arab countries do not have the time or resources to deal with the growing list of MEAs, they tend to squander the funds they have on consultants (usually foreign) whose work is neither effectively monitored nor efficiently utilized. A strong and effective trade and environment committee could oversee such research, provide recommendations, and explore synergies that could improve institutional cooperation.

Conclusion

This chapter argues Arab policy makers to move urgently to implement the commitments made within the context of sustainable development and trade liberalization with a view to maximizing the benefits to the Arab public at large. The region's colonial legacy and continued political fragmentation must not be allowed to stand in the way of its developmental needs and integration, and it is up to Arab civil society to ensure this.

Ultimately, it is vital that Arab policy makers adopt strategies that form part of a larger Southern agenda in order to achieve the priorities that they share with the rest of the developing world (Najam, 2002). Southern coordination had led to the success of the Doha Round in general, and in particular, the need to consider the developmental needs of the South within the context of all WTO negotiations. In the future, too, a united Southern voice representing the majority of the world's population and natural resources stands a better chance of achieving gains in global negotiations than a piecemeal approach. It is in the interest of the Arab countries to stand with the rest of the South.

Arab governments should also join the South in insisting that all trade and environment agreements incorporate the developmental needs of the South first and foremost through such established principles as common but

differentiated responsibilities, technology transfer, and the removal of trade barriers in the North in such key sectors as agricultural goods, fisheries, and textiles. Arab countries, and indeed countries throughout the South that also have large agrarian sectors and limited water resources, should raise the issue of agricultural liberalization in the North, but seek continued protection of this sector domestically. Such a position can be defended under safeguard measures, and within the framework of policies that seek to better manage their scarce water resources.

The Arab region also has a major interest in developing an array of official and non-state South-South synergies. This may be illustrated in the evolution of the TRIPs Agreement from one to which the South reluctantly agreed—as part of a larger package of concessions from the North with regard to agricultural and other subsidies (that are not yet realized)—to one that has become a battleground of ideas and political will (with regard to such key issues as access and benefit-sharing and medicine prices). The solidarity among Southern (including Arab) positions was crucial in getting the North to incorporate the developmental needs of the South. Crucially, there was a great deal of South-South civil society coordination, and it is this increase in transnational civil society networking that Arab civil society should seek to enhance in order to advance common interests in access and benefit-sharing, affordable medicines, genetically modified seed and product labeling, and other biosafety issues.

Of course, the South is composed of a huge array of differing, and often competing, interests, and needs. The key, then, is to concentrate on the commonalities among Arab states rather than on the differences among them. As such, the Arab region, and the South in general, should agree on and affirm their own set of priorities in a sustainable development context, and not allow the North to perpetually set the rules of the game. Fortunately, the emerging boldness and awareness in the South has encouraged many countries to “just say no.” The South should remain firm in its convictions when the benefits of freer trade are outweighed by the costs that trade may inflict on the environment and society at large.

Notes

1. For the purposes of this paper, we shall refer to the Arab Region as those countries that formally belong to the League of Arab States (LAS) and who share the common language of Arabic.
2. Official Arab support for orienting trade and environment deliberations on these topics is articulated in the *Sustainable Development Initiative in the Arab Region*, adopted by resolution of the Council of Arab Ministers Responsible for the Environment (CAMRE) in July 2002, and in the *Regional Program for Trade and Environment Capacity Building in the Arab Region*, adopted by resolution of the Executive Bureau of CAMRE during its meeting in June 2003.

3. The Arab members of the WTO are Bahrain, Djibouti, Egypt, Jordan, Kuwait, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, and the United Arab Emirates. The six Arab observers in the WTO are Algeria, Iraq, Lebanon, Libya, Sudan, and Yemen.
4. As one UN study noted, for instance, Arab negotiators were initially convinced that the liberalization of oil and gas sectors were not included in the WTO mandate (ESCWA, 1997). Today, natural gas is being tabled by an Arab country as a possible environmental good (Qatar submission to the WTO).
5. Key regional declarations include the: *Arab Declaration on Environment and Development* (1986); *Arab Declaration on Environment and Development and Future Prospects* (1991); *Regional Action Program for Sustainable Development* (1992); *Declaration of the First Conference on the Environment from an Islamic Perspective* (2000); *Abu Dhabi Declaration: Perspectives of Arab Environmental Action* (2001); *Oman Declaration on Environment and Sustainable Development* (2001); *Arab Declaration to the World Summit on Sustainable Development* (2002); *Joint AMCEN/CAMRE Ministerial Declaration* (2002); and the *Arab Initiative for Sustainable Development* (2002).
6. The GCC is composed of: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE. Yemen is still negotiating to enter the GCC.
7. It should be noted that these figures are inclusive of trade in oil and gas resources, which if removed would raise intra-Arab trade figures significantly (to about 20 percent of total trade).
8. The Mashriq countries includes Egypt, Iraq, Jordan, Lebanon, Palestine, and Syria; the Maghrib region includes Algeria, Libya, Morocco, and Tunisia; while the Gulf region is composed of the six members of the Gulf Cooperation Council (GCC) and may include Yemen, which is still negotiating to enter the GCC.
9. It should be pointed out that none of the main Arab states (Syria, Lebanon, Saudi Arabia, and Algeria) that continue to boycott Israeli products have gained WTO membership, while Arab WTO members such Egypt, Jordan, and the members of the GCC had all given up at least the secondary and tertiary boycott by the time of their accession.

CHAPTER 5

Promoting Trade for Sustainable Development in West Africa

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Humanity's relation with its natural environment, especially in terms of the way the environment has been used for economic and social development, has been a recurring issue in the evolution of modern civilization. While some literary or scientific studies have sought to present the relationship between the environment and economic development as one of opposing or independent forces, more recently the concept of sustainable development has been popularized as a vision for the future that reconciles the twin goals of economic development and environmental conservation. This has happened both because of increased policy attention to the concept and because of greater public awareness.

From the Stockholm conference in 1972 to the World Summit on Sustainable Development (WSSD) in 2002, sustainable development has become a primary concern of the international community. At the 2001 Ministerial meeting of the World Trade Organization (WTO) in Doha, Qatar, the concept of sustainable development gained prominence when WTO Members agreed to negotiations on trade and environment as part of the work program mandated by the Doha Ministerial Declaration (Paragraphs 31, 32, and 33).

In 1987, the World Commission on Environment and Development (WCED, 1987) had released a report entitled *Our Common Future* (popularly called the Brundtland Report), which described sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This report effectively introduced the concept of sustainable development to the environmental lexicon and thereby stitched together the goals of economic development and environmental conservation. The concept of sustainable development gained further international legitimacy at the 1992 Earth Summit where the

principal document, *Agenda 21* (UNCED, 1992; Repetto, 1994), set the goal of balancing the relationship between humans and their natural environment through the three pillars of economic development, social development, and environmental protection. Over the years, sustainable development has become a bedrock principle for environmental policy and developing countries have come to champion the concept (Najam, 2005b).

This chapter focuses on the environmental aspect of sustainability in its analysis of, first, sustainable development in West Africa, and second, the elements of sustainable development that are relevant to international trade. Sustainable development issues are particularly pertinent in Africa given the strong links among poverty, environmental conservation, and economic growth (Rodrik, 1998). Given that high rates of poverty can lead to environmental deterioration, and that the alleviation of poverty is an important goal in itself, it is important that international trade be used to encourage economic growth and thereby alleviate poverty and environmental deterioration. This connection was illustrated by the Brundtland Report, which described poverty as one of the most important causes of environmental degradation and argued that greater economic growth could generate the necessary resources to combat such “pollution of poverty.”

At the same time, it is sometimes argued that principles of environmental conservation need to be taken into consideration in the process of economic growth and trade liberalization, and this chapter also looks at how trade liberalization policies can directly affect environmental conservation. This puts the following elements in the forefront, namely, market access, intellectual property, technology transfer, biodiversity and agriculture, trade in services, technical assistance, and capacity building.

This study is thus divided into four parts. An inventory and prioritization of sustainable development issues in West Africa is followed by an assessment of sustainable development instruments in West Africa, with a focus on the protection of genetic resources and related knowledge, as that is an area of particular importance for the region. Then, an examination of multilateral negotiations on trade and environment issues investigates the extent to which the multilateral trading system addresses environment and sustainable development issues of concern to West Africa. Finally, the paper looks at relevant elements of an African agenda for the integration of trade, economic development, and environmental concerns, including how to negotiate and for what aims.

Sustainable Development Issues in West Africa

In Africa, sustainable development serves both as a vector and as a performance indicator for economic and social development aimed at poverty alleviation. Indeed, rural poverty can involve environmental degradation insofar

as the deprived populations exert increasing pressures on natural resources through, for example, the destruction of forests to produce firewood, which consequently leads to soil erosion. If we add the exploitation of underground water reserves and surface waters, and the water pollution that goes hand in hand with poverty, the net result is not only environmental deterioration, but also a reduction of agricultural production and long-term problems with the sustainability of daily rural life. At the same time, the function of the tight, two-way link between environment and international trade is illuminated by the manner in which international trade, through economic growth, can itself affect environmental conservation (see Khan, 2002; Malhotra, 2003).

The concept of sustainable development, which encompasses all the links among trade, growth, and environmental issues, is thus a necessary tool for the understanding of environment and trade issues in Africa. International trade can have, in this context, a direct environmental impact on agriculture, forests, biological diversity, and health. In addition, it can have an impact through its effects on economic development and poverty reduction in newer issues such as enhanced market access, new agricultural structures, and genetically modified organisms (GMOs). This wide range of issues can be categorized into two sets of issues whose relevance and specificity are real and tangible for the Africa continent: Traditional issues where trade directly affects the environment, and new challenges in the trade-development-environment nexus, many of which pose indirect challenges to the region.

Traditional "Direct" Issues

Given widespread poverty and a rapidly growing population, African dependence on natural resources and on agriculture for meeting basic needs is strong. A number of sustainable development questions are raised, however, because international trade affects environmental concerns in several issue areas (ENDA/IISD/ICTSD, 2003), some of which are presented below.

- **Agriculture** is a vital sector for the countries of this region. It contributes more than 30 percent to gross domestic product (GDP), occupies between 50 to 80 percent of the population, and constitutes an important share of export revenue. The issues of concern are those of productivity, competitiveness, and of the risks generated by various farming methods, which can have a direct impact on the environment and in particular on desertification.
- **Forest resources** are being overexploited for the benefit of the export markets and used extensively by the poor as fuel, food, medicines, and clothing. There is little, if any, forest area being safeguarded for future use or conservation purposes.

- The future of the economy and the means of survival for many Africans depend on the **fisheries** products of the sea and the coasts. There is, therefore, a strong need to preserve this critical environmental resource while helping those whose livelihoods depend on it. In addition, the gradual exhaustion of marine resources around the world calls into question the ongoing subsidies provided by many countries for large-scale fishing industries.
- **Biological diversity** is threatened, both directly and indirectly, by current practices. As the number of species decrease, ecosystems become increasingly fragile and vulnerable to climatic changes and other factors. Biodiversity conservation depends on the management of natural resources and is valuable from social, economic, and environmental perspectives. For example, it is believed that 90 percent of genetic information and traditional knowledge is located in developing countries and that approximately 75 percent of all pharmaceutical products, which deliver economic, health, and social benefits, are derived from plants are based on indigenous traditional knowledge dependent on biodiversity conservation (Shiva, 1991).
- The links between the environment and **human health** are undeniable due to the effect that chemical and other dangerous substances can have on human health. These byproducts are also an important source of damage to the environment through air and water pollution. In addition, access to medicines and the transfer of technology constitute two other major issues of importance, each raising controversial debates in this field.

New “Indirect” Challenges

When the United Nations adopted the Millennium Development Goals (MDGs) in September 2000, the international community was clearly indicating that the stated objectives of the MDGs could be achieved only if development succeeds in having a major impact on rural poverty, given that three quarters of the most deprived people of the planet live in the rural areas (see <http://www.un.org/millenniumgoals>). In this sense, international trade can affect the MDGs’ environment-related goals, both directly and through their impact on poverty reduction. Many of the new and indirect challenges at the forefront of the emerging trade and environment debates also are central to the implementation of the MDGs:

- **Market access** to local, national, and world markets is severely hindered in this region, especially for farmers and farm products. The lack of basic infrastructure and technical resources (farming equipment)

required for the marketing and selling of products could be substantially improved by removing obstacles to exports of agricultural products originating from developing countries. In this respect, the most important step is for developed countries to eliminate subsidies on products of export interest to developing countries. Developed countries also need to eliminate tariff escalations and tariff and nontariff barriers, which discriminate against developing countries. This, more than anything else, could help reduce poverty and, thereby, minimize the poverty-related adverse impacts on the environment.

- The **impact of agriculture and development vis-à-vis biodiversity** clearly requires global evaluation. Particular attention should be given to the need for popular participation in the formation of national and regional agricultural policies. In addition, there must be popular participation in the creation of separate socioeconomic models for, and the consequent treatment of, two types of agribusiness: smaller family businesses, which are inclined to safeguard biodiversity, and larger agribusinesses, which are focused on intensified farming techniques and which thus more aggressively affect the environment.
- **Genetically modified organisms (GMO)** pose one of the most important policy conundrums for Africa as a whole, and particularly for West Africa. The main challenge of biotechnology is the ability to reconcile its considerable contribution with the risks and uncertainties associated with its large-scale use. The use of GMOs can increase productivity, can control of diseases connected with agriculture and livestock farming, and may address food security concerns, which has critical ramification for a continent that harbors more than 40 percent of the world's starving people. But these potential benefits must be weighed against the possible, but unknown, risks of introducing GMOs on a wide scale.

Sustainable Development Instruments in West Africa: Focus on Genetic Resources

The interlinked questions of the management and protection of biodiversity rank high in the agenda on sustainable development in Africa. When managing biodiversity, how can community rights be reconciled with private interests and national sovereignty with respect to access, use, and sharing of benefits arising from the marketing of biological resources? When aiming to protect biodiversity, what type of entitlement regime needs to be applied to protect biodiversity, i.e., should it be patents, collective appropriation, and/or a domestically created, locally suited sui generis system?

The importance of such questions, and of policy instruments designed to respond, is highlighted because of the vast biological resources that characterize

the continent and the emphasis on private property ownership in international agreements; for example, through the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). In West Africa, two regional instruments have been created for the management and safeguarding of genetic resources, namely a) the “African Model Law for the Protection of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources” (Model Legislation, 2000; referred to as “Model Law”), and b) the Revised Bangui Agreement on intellectual property rights. The first is an ignored instrument, and the second a distorted one.

The African Model Legislation on Genetic Resources: An Ignored Instrument

The official name of the African Model Legislation (2000) makes its area of focus abundantly clear: It is concerned with the protection of the rights of local communities, farmers, and breeders and with the regulation of access to biological resources. It was adopted in Lusaka, Zambia, in July 2001 by the Summit of the Heads of State of the Organization of African Unity (OAU), now known as the African Union (AU). It called for African countries to introduce and to adapt the provisions of the Model Law into their national legislation.

There is, however, a clear lack of interest on the part of African countries for the Model Law Agreement (Nwauche, 2003), and the agreement is ignored, for several reasons. On the one hand, the members of the African Intellectual Property Organization (OAPI) have not only ignored the Model Law, but also have opposed its weak protection for plant breeders' rights. On the other hand, some other African countries (South Africa, Kenya, and Tunisia) have opted to become members of the “International Union for the Protection of New Varieties of Plants” (UPOV) 1991 Convention, whose provisions on rights of farmers and on protection of plant varieties are the opposite of the Model Law insofar as they adopt stronger intellectual property protection for seeds, including more restrictions on the right of farmers to save and sell seeds. The Model Law takes a position of total opposition to the concept of patenting life forms. This has to be understood in the context of Article 27.3(b) of the TRIPs Agreement, which says that WTO Members must “provide for the protection of plant varieties either by patents or by an effective *sui generis* system.” Most WTO members have understood this to refer to the 1991 UPOV *sui generis* protection system, which some developing countries feel is a too restrictive a protection scheme for life forms. There are, in addition, external pressures being exerted, such as from the United States and other developed countries, for the Model Law not to be used as “the model” for Africa.

Annex X of the Revised Bangui Agreement: A Distorted Instrument

In March 1977, the African and Malagasy Office of Intellectual Property became the African Organization for Intellectual Property (OAPI) with the revision of the Libreville Agreement in Bangui. The Libreville Agreement had, since 1962, served to unify national legislation, create a common supranational intellectual property authority, and centralize procedures for its member states. The revised Libreville Agreement, known as the Bangui Agreement, set out intellectual property guidelines for African countries and addressed the need to cover all rights issues, notably models, trade names, products and service trademarks, and the need to better involve patent rights in development. It was revised more than twenty years later in order to conform to the developments taking place in the international understanding of intellectual property rights, including with the adoption of the TRIPS Agreement. The Revised Bangui Agreement (RBA) entered into force on February 28, 2002, and the OAPI includes sixteen French-speaking African countries (see Kongolo, 2000; Nwauche, 2003).

Annex X of the RBA deals with genetic resources and introduces the concept of intellectual property rights on seeds. The RBA restricts the right to save seeds and imposes a system of privatization of living organisms, despite the fact that neither the Convention on Biological Diversity (CBD) nor the WTO require such a system. As such, it can be argued that the RBA espouses the most controversial aspects of UPOV 1991, contradicts the African Model Law, and goes beyond the requirements of the TRIPS Agreement and of CBD. In short, the RBA's content seems aligned to the interests of the industrialized countries and it has been judged by civil society to be prejudicial to biodiversity and to the protection of the traditional knowledge of indigenous peoples who are and have been for many generations the guardians and owners of biodiversity (Kongolo, 2000). In fact, increasingly strong opposition has developed, both amongst the members of the OAPI and within the NGO community (Nwauche, 2003). Fortunately for the development prospects of West African countries, which require a more flexible protection system for biological resources and seeds than that espoused in the RBA, Annex X did not enter into force on February 28, 2002, like the nine other Annexes of the RBA, on the pretext that measures for implementation had not yet been taken.

There seems to have been a lack of participation by farmers and other stakeholders in the preparation of Annex X. In addition, there was a lack of coordination between the RBA and the Model Law, which OAPI member states had just adopted within the OAU in 2001. As a result of the lack of coherence between these two texts, completely different interpretations of the intellectual property obligations of West African countries were adopted by the two relevant organizations, and the development-friendly concerns

incorporated into the Model Law were conspicuously ignored in the RBA. The failure to consider the need for seed saving, benefits sharing, and other flexible elements of an intellectual property regime for biodiversity in the RBA could have had deep socioeconomic implications for the African continent if strong action by several NGOs and certain Member States had not kept Annex X from coming into force.

Toward Compromise?

The overlapping jurisdictions on the protection of genetic resources and related knowledge in West Africa are not limited just to the regional instruments described above. Rather, multilateral agreements such as the TRIPs Agreement, UPOV, the CBD, and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) lead to structural and institutional incoherence that needs to be rectified (Nwauche, 2003). These incoherences are echoed in several other environmental fields, in which national bodies, regional organizations, multilateral environmental agreements (MEAs), and international organizations have overlapping responsibility and sometimes quite differing visions and impacts upon sustainable development in Africa.

An attempt to make sense of the multitude of instruments addressing sustainable development issues in West Africa might take into account the three jurisdictional levels identified in *Agenda 21*: national, regional, and international. The instruments at each level are often in conflict in Africa because of legislative gaps in domestic implementation of international or regional instruments; negative conflict spurred on by the contradiction between various regional and international instruments which forces domestic policy makers to choose prefabricated policy packages on issues of vital importance to their domestic development strategy; and positive conflict spurred by differences or gaps between instruments that lead to new approaches or new instruments that synthesize other approaches. It is in this legal maze that African countries navigate, making it all the more difficult to build environmental awareness and to implement sustainable development on the African continent.

When prioritizing issues and choosing between policy instruments, advocates of sustainable development also have to choose the relevant decision-making body and partner to advance their goals. There may be different policy-making processes for the economic, social, and environmental pillars of sustainable development and, likewise, different actors for different implementation strategies. For example, one will have to decide on the level of involvement of nongovernmental organizations, private sector, and government legislators. Other policy issues include the allocation of resources because sustainable development plans can require economic policy choices that undertake short-term costs in lieu of long-term benefits. In addition,

technical assistance, promotion of investment, the transfer of technologies, and the strengthening of capacities remain unavoidable elements for the promotion of sustainable development.

The way forward could involve the creation of an African Commission for Environmental Protection by the AU to coordinate all sustainable development related activities in the continent. The commission, in close cooperation with the WTO and the United Nations Environmental Program (UNEP), could encourage both the adoption of new regional and subregional agreements on trade and environment and ensure that Member States respect existing agreements.

Negotiating Trade and Environment

Trade-environment links have existed in the trading regime for more than fifteen years. Indeed, the Marrakech Agreement creating the WTO in 1994 included an explicit recognition of the objective of sustainable development (WTO, 1994). The 2001 Doha Ministerial Declaration, however, was unique in creating a negotiating agenda on trade and environmental issues, most notably in paragraphs 28, 31, 32, and 51. The Doha mandate confirms that environmental measures do not necessarily obstruct trade and that trade rules do not prevent countries from adopting environmental protection policies. As such, developing countries need to adopt a proactive approach to build their own environmental policy (Najam, 2002).

Both the core WTO agreements and the ongoing negotiations provide unique opportunities to West African countries to advance their vision of how international trade can be made supportive of sustainable development. These opportunities are present most notably through use of GATT Article XX; negotiations on special and differential treatment (S&DT) in sanitary and phytosanitary (SPS) standards; services liberalization; fisheries subsidies; technical assistance; regional trade agreements; environmental funding; and Article 51 of the Doha Declaration.

GATT Article XX

The WTO Appellate Body has clearly indicated that Article XX of GATT, which deals with exceptions to GATT rules, is limited in scope and does not in itself provide Member States the authority to prescribe rules aimed at protecting their environment (see Hawse, 2002). Instead, Article XX provides for certain general exemptions from WTO disciplines, including for “measures necessary to protect human, animal or plant life or health” that do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade (GATT, 1947). The article is not a *carte blanche* allowing for all environmental regulations, but rather, has been

defined by WTO dispute settlement jurisprudence to set forth conditions for using the provisions for environmental purposes.

It is up to the developing countries to make use of jurisprudence, and/or its derived insight, both to adopt domestically environmentally friendly regulations and to invoke GATT Article XX each time the environmental regulations are brought to the table. Whether developed countries would take a developing country's environmental measure to dispute resolution, however, depends on the delicate set of alliances and the leverage between developing and developed countries. Nonetheless, the ability to defend environmental regulations, such as for biosafety or protection of biodiversity, could possibly be safeguarded under Article XX(b) of GATT and is within reach of developing countries.

Sanitary and Phytosanitary Standards

Members still continue to study environmental measures and to assess their effects on market access in regard to developing countries. In particular, sanitary and phytosanitary measures continue to affect developing countries' ability to export to developed countries' markets, given that many developed countries impose health and safety standards that can effectively block imports from developing countries. The test is to demonstrate that these standards are actually supportive of environmental goals and are not simply protectionist measures. A key issue in this context is whether the precautionary principle can be an acceptable tool for determining the appropriateness of environmental measures.

It has been shown that while on the one hand, developing countries' exports are reduced in volume by 64 percent by SPS measures and technical barriers to trade (TBT) measures, on the other hand, dispute settlement in this field is increasing and thus requires close attention as a tool to challenge unjustified standards or to defend reasonable ones (World Bank, 2002). Therefore, developing countries, particularly those in Africa, should focus on S&DT proposals currently being considered as part of the SPS negotiations. In particular, proposals that a) include demands to introduce binding language allowing temporary exemptions for SPS measures for developing countries; b) make mandatory the provision of technical assistance to developing countries; c) require developed countries to undertake consultations with developing countries on SPS measures should the latter request it; and d) make it a duty for developed countries to encourage and facilitate the active participation of developing countries in international standard-setting organizations, such as Codex Alimentarius. Last, and most controversially, e) an African Group proposal should be created to require members either to withdraw measures that adversely affect developing countries or which developing countries find it difficult to comply with, or to provide the technical

and financial resources necessary for developing countries to comply with the measures. All of these measures would make SPS measures more transparent, thus enabling them to support genuine and necessary environment and safety goals without inhibiting imports from African countries that are necessary to the continents' economic growth.

The debate on S&DT on SPS measures is like a "silent revolution" taking place far from the clamor of the broader negotiations on special and differential treatment, far from the uncertainties of technical assistance, and with important implications for market access for developing countries' products. Developing country delegates at the WTO should place high priority on getting S&DT measures accepted as part of the SPS negotiations. Most notably, delegates should focus on issues such as the presentation of the notifications of SPS measures affecting developing countries exports; multilateral monitoring of these measures; transitional periods for implementation; resolving problems raised by these measures, in particular if a developing country has an interest in the export of the targeted products; and well-targeted technical assistance, in particular to take into account the special needs of developing countries.

Finally, special attention should be paid to the effective monitoring of the Standards and Trade Development Facility (STDF). This is a joint initiative of the World Bank, the WTO, the Food and Agriculture Organization (FAO), the World Health Organization (WHO), and the World Organization for Animal Health (OIE). This initiative is intended to help developing countries increase their capacities to comply with SPS norms and measures and to improve market access for products, which are often affected by export prohibitions and regulations. The originality of the STDF is its integrated approach to treating SPS measures as a barrier to market access in developing countries.

Liberalization of the Services Sector

Within the framework of the Trade in Services negotiations mandated by the Doha Declaration, developing countries have a new opportunity to face developed countries' excessive demands to further liberalize parts of their service sector that are connected with the environment and other social services. Positions are divergent on the question of the "services element" of sustainable development. Certain countries consider that given the similarity between articles XIV(b) of the General Agreement on Trade in Services (GATS) and XX(b) of GATT, progress should be first made on the latter, especially as there is no equivalent to Article XX(g) of GATT on the measures of exceptions for environmental purposes. In short, this involves determining whether Article XIV(b) of GATS allows developing countries to defend their environmental services sectors.

But GATS Article XIX paragraph 2 confers special and differentiated treatment to developing countries to open fewer sectors and gives them the right to adopt domestic policies while liberalizing their service sector. It puts to the forefront their economic status and their development level in order to protect them from having to fully and/or unduly liberalize their service sector, including those services connected with the environment. Respect for the environment fits well under these conditions. GATS Article XIX paragraph 3 gives further “super” S&DT to least developed countries (LDCs) through flexibility to further decide about the liberalization process of their domestic service sector. All developing countries need to seize the opportunity of the current phase of the GATS negotiations and avail themselves of these relevant clauses.

Fisheries Subsidies

It is worth noting that the first dispute settlement case linked to the environment under GATT involved a dispute about tuna fishing methods and their impact on the survival of dolphins. Fisheries issues have always been contentious, and strong divergences exist in current negotiations on fisheries subsidies at the WTO. The current position advanced by the United States presents the matter as a win-win-win opportunity that could benefit trade, environment, *and* development. New disciplines at the WTO in this field could have quantifiably positive effects on preservation efforts on a worldwide scale and could be an excellent example of how the WTO and MEAs, particularly those that tackled the questions of management, could mutually support each other.

Developing countries, in particular the West African countries, have an particular interest in fishing and could adopt negotiating positions focused on the implementation of special and differential treatment recognized since Doha, in particular on clarification of the relevant regulations governing fisheries subsidies. Whatever disciplines are agreed upon, however, they should distinguish between financial subsidies and subsidies used for infrastructure development, and the latter should be included in the “green box” of non-actionable subsidies. In addition, the negotiations should not include access fees paid by foreign fleets on fishing licenses in their scope. These revenues constitute a considerable share of African governments’ income: In Senegal, for example, these access rights account for 30 percent of export earnings (ENDA/IISD/ICTSD, 2003). The “green box” of permitted subsidies should also include capacity building programs for traditional fishing and in particular tax incentives for traditional and artisanal fishing.

Technical Assistance

Technical assistance (TA) in the field of trade and environment is crucial in order to allow developing countries to face the challenges of sustainable

development. All agreements within the scope of this study have relevant rules on technical assistance, and these have to be implemented accordingly. In order to do so, coordination and coherence with relevant international organizations and developed countries are necessary, as is a prioritization of the needs of African countries. As a study by the World Bank indicates, the costs generated by modernization and the upgrading of necessary infrastructure to implement the commitments arising from the WTO Agreements on market access exceeds the total development budget in many of the least advanced member countries of the WTO (World Bank, 2000). In order to offset these costs, technical assistance or “aid for trade” must be an integral part of the WTO’s development agenda. Furthermore, African countries should use all the resources available in order to evaluate and understand their international environmental and trade obligations.

Finally, the role of international organizations and of MEA secretariats has to be highlighted. The WTO, UNEP, the UN Conference on Trade and Development (UNCTAD), and other organizations could collaborate not only in defining incentives and increasing the capacity of West African countries to promote their exports in an environmentally friendly manner, but also to increase the capacities of negotiators in the fields of international trade and environment.

Environmentally oriented technical assistance, however, is markedly different from that provided for other WTO agreements, in that it must be flexible and address country needs and conditions. How? Three elements should be considered. First, technical assistance in regards to the environment has to seek to identify relevant topics, raise environmental awareness, and report on MEAs and, in particular, on their trade implications. Second, innovative technical assistance must go beyond traditional formats of meetings and have a strong practical approach that will facilitate the immersion of policy makers in the realities of sustainable development. Last, it should target a broad variety of actors, including public and private sectors, civil society, NGOs, and relevant international organizations.

Regional Trade Agreements

In what way can Article XXIV of GATT, on regional trade agreements (RTAs), contribute to sustainable development? Given the limits of the General Systems of Preference (GSP) as defined by the Appellate Body of the WTO, RTAs could offer a viable alternative to further promote the concept of sustainable development in the multilateral trading system. The term “RTA Plus” usually refers to provisions in RTAs that include intellectual property and/or investment provisions that go beyond WTO requirements, and is a much talked about subject. Therefore, why not transform the “Plus Element” in RTAs into provisions in favor of sustainable development, and

thus transform the vicious circle into a “virtuous circle”? The Cotonou Agreement and, in a more general manner, aspects of the GSP that are designed in favor of developing countries, provide many opportunities in this respect.

Seeking Funding from Environmental Protection Programs

Developing countries could make use of the funding earmarked for environmental protection programs to provide subsidies for environmental purposes. The provisions of Article 8.2(c) of the Agreement on Subsidies and Countervailing Measures (SCM), however, have recently expired, and their application has not been renewed. For the developing countries, the consequences of the expiry of Article 8.2(c) are ambivalent: on the one hand, they are negative, in that capital expenditure for environmental protection that was available under this article is no longer permissible. On the other hand, they are also positive, because developing countries, while requesting an extension, could at the same time demand a rebalancing of the rights and obligations evoked in the text. Certain developing countries have claimed that it was not easy to make use of environmental subsidies exemption due to resource constraints and, therefore, the article was never an effective policy tool for the South.

Since the end of 1999, there has been a “new environmental approach” that has perhaps made developing countries *demandeurs* in regard to sustainable development (Najam, 2000). This approach has been largely and qualitatively fed by the events that have occurred since, most importantly by the adoption of the MDGs, the Doha Ministerial Conference, the WSSD in Johannesburg, regional initiatives, and the results of NGO action.

Paragraph 51

Paragraph 51 of the WTO Doha Declaration instructs the Committee on Trade and Environment (CTE), along with the Committee on Trade and Development (CTD), to “act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.” The WTO Secretariat has since begun to disseminate information on environmental aspects of the current negotiations, but this process is moving very slowly. The importance of the work under Paragraph 51 is unpredictable, but Paragraph 51 constitutes the only crosscutting element for measuring sustainable development within the WTO. If all the WTO agreements had to pass this test, this would be a relevant indicator showing that development really is at the heart of the multilateral trading system and that trade plays its role as an instrument of development, and is not an end in itself.

The African countries could, for example, propose that the CTD carry out a technical analysis of the problems arising from the barriers to trade liberalization, such as the erosion of preferences, the reduction in the customs revenues for the developing countries, and market access. Close attention could be devoted to the negotiations concerning subsidies to fisheries, because this is a sector where elimination or reduction of trade distortions would be beneficial to trade, the environment, and development. The important point here is that if sustainable development is to thrive within the WTO, it will do so across all parts of the organization, and importantly, within the links that are established between CTE and CTD (Najam, 2002).

Toward an African Agenda for Trade and Sustainable Development

Incoherence, both between countries in Africa and at the national level between governments and civil society, must be addressed in order to create a unified position. This will involve working to consolidate regional, intra-regional, and relevant international treaties, but also to harmonize negotiating positions that African countries should take at multilateral forums. Africa should speak with a single voice and define a single agenda for trade and environment in the context of sustainable development.

Given the low levels of participation by Western African countries in WTO activities, and given that environmental awareness has come late to these countries, policies adopted by the WTO and in MEAs have rarely benefited from extensive domestic consultation processes in African countries. This has resulted in low levels of domestic ownership of the global liberalization and environmental conservation agendas. Things are beginning to change, however, and after successful collaboration between governments and NGOs on access to medicines and on the cotton dossier, the next frontier of cooperation could be trade and environment. Citizen mobilization and media exposure in favor of the economic, environmental and social goals of sustainable development will follow only as a result of NGO involvement.

Elements of a West African Agenda

In terms of developing a practical and proactive agenda on trade and environment for West Africa, there is a simple and essential guiding principal to follow: coherence, coherence, and coherence—between the internal and international levels, within the negotiation mandates, and among key actors. The degree of coherence that can be reached among the various fields and the negotiation disciplines, among the various policies, among the multilateral institutions, and between the latter and the national and regional strategies and initiatives, is of essential importance if one wants the Doha Work Program to be truly centered on development, in particular on sustainable development.

The negotiating agenda would comprise at least two types of elements. First, elements that are compulsory for the region as a whole and elements for which common positions must be commonly crafted and commonly pursued. Second, elements that can be optional or discretionary and left to the best judgment of individual countries to pursue, or not, depending on their own interests and situations. The details of these elements (in both categories) have been discussed above. Here, we summarize the key directions that are being suggested.

The **compulsory elements** of a West African agenda for trade and environment could build upon the following ideas:

- **Coherence:** The overall goal of the West African agenda should be to increase coherence. In particular, West African countries should seek coherence in the various instruments that impact access to genetic resources, including the African Model Law, the RBA, and WTO provisions. In addition, the coherence program should seek to integrate environmental impact studies into the WTO review mechanism on trade policies. Increased policy coherence is also critical within the region.
- **Defensive Negotiating Strategies:** In some areas, the South—and West Africa in particular—needs to adopt a defensive but constructive negotiation approach. These include, for example, a) continuing but improving coordination and participation in negotiations on the complementarity between international instruments (TRIPs, CBD, and MEAs); b) demanding environmental impact studies as part of the WTO trade policy review; and c) opposing detrimental regional agreements (TRIPs/UPOV-plus).
- **Offensive Negotiating Strategies:** In other areas, however, West Africa needs to adopt a more proactive, even offensive, approach to negotiations. These areas include a) the need to “clean up” the contradictions on the instruments used in Africa, for example, in terms of the multiple and contradictory intellectual property rights regimes that the region is party to (Model Law, RBA, UPOV, and CDB); b) the use of Paragraph 51 of the WTO Doha Declaration to demand deeper integration of sustainable development into WTO provisions; and c) using the WTO dispute settlement mechanism to the region’s advantage in cases of obvious violations by the North.
- **Technical assistance:** Significant capacity constraints are faced by West Africa and technical assistance is urgently needed to overcome these constraints in the area of trade and environment. The technical assistance program that West Africa should seek, however, should be built upon the following priorities: a) broadening the base of participation to include all concerned relevant actors including governments, NGOs,

the private sector, and civil society at large; b) targeting technical assistance on relevant and practical themes, especially including themes related to MEAs and trade; and c) identifying all the specific trade obligations in MEAs and their links to trade policy in both the negotiation and implementation phases.

On a number of other issues, however, one can only identify **optional elements** of a West African agenda for trade and environment and individual countries will need to mould these to their own specific conditions and requirements. These include:

- strengthening eco-compatible technology and better environment management methods
- broadening the possibilities of trading environmentally friendly goods and service, given the fact that consumers from developed countries are increasingly concerned about environmental protection
- establishing an electronic database on trade and the environment
- carrying out environmental assessment studies in order to measure the impact on the sustainability of trade negotiations

Conclusion

The “environmental exception” exists well and truly in the institutional architecture of the WTO, even if its guidelines are scattered in the various WTO agreements. However, it is up to the concerned countries to make use of them to their benefit. This effort goes beyond the capacities of African countries alone, and requires the creation of a broad based internal, regional, and international partnership, which will include all relevant stakeholders. The very fact that the environment constitutes an international public good implies the need for a multifaceted and multidisciplinary management. There are clear signs that elements of sustainable development are already making inroads into the multilateral trading system, especially due to the Doha Development Agenda.

Recent development in the debate on the link between trade and the environment shows the need to continue work in the area of capacity building as well as the need to continue to strengthen cooperation and coordination between the WTO, UNCTAD, UNEP, and other organizations. The comparative advantage of the WTO—and perhaps also the fears that are associated to it—comes partly from the fact that it is one of the very few international bodies that has the means of enforcement at its command. While it is recognized that WTO is not an organization for environmental protection, by virtue of its impact and influence on policy arena's beyond

trade, the WTO has to also assume the responsibility of promoting trade liberalization while ensuring that environmental measures do not obstruct trade and also that trade rules do not harm the natural environment or inhibit countries from enacting reasonable domestic environmental policies. This implies the necessity for increased attention by WTO negotiators to environmental problems linked to trade and in trade problems linked to the environment outside of the WTO framework.

It also is important to strengthen policy coordination at the national level with cooperation at regional and international levels. To move toward sustainable development, African countries must make full use of the opportunities for support that are already available at the WTO. This will require strengthening negotiating capacities and forging deeper links with, and greater involvement of, African civil society.

In formulating a new generation of trade and environment policies, the three following areas require close attention and constant monitoring: a) the need to find a synergy and a fair compromise among the capacities of developing countries, the level of obligations which are imposed upon them, the costs of implementation, and the financial and technical resources that are provided to them; b) the positive links that exist between trade and the financial, monetary, and technological policies of developed countries; and c) the impact of multilateral trade negotiations and of the multilateral trading system on questions that are at the heart of development, namely, the elimination of poverty, employment, food security and rural development, the environment, health, culture, gender equality, technology, and the development of enterprises. These are the many reference points that will be used in the future to measure the progress achieved in ensuring the inclusion of the development dimension in the Doha mandate.

Winning on three fronts—trade, environment, and development—is the challenge of sustainable development. No other approach offers as suitable a platform for African countries to take advantage of the opportunities of international trade without compromising the environment. However, African countries must make combined internal and external efforts in order to succeed in promoting their interests. The initial conditions exist for this to happen. But the drive to turn sustainable development into a reality has to come from developing countries themselves.

Notes

1. The views expressed in this study are the author's own opinion and do not imply any institutional positions. This chapter originally was written in French; it was translated into English by Amanda Sunassee. Sarah Mohan of the International Centre for Trade and Sustainable Development (ICTSD) made a significant contribution in editing the translated version, as did Hyun Jung Choi of the Fletcher School of Law and Diplomacy, Tufts University. The author is grateful for all their efforts.

CHAPTER 6

An Alternative Environment and Development Vision for Southern and Eastern Africa

*Yash Tandon*¹

This essay seeks to offer an alternative vision for the Southern and Eastern African countries on a strategy to follow regarding development and environment. The difference between *vision* and *dream* is that vision must be grounded in reality; it must be a bold look into the future, but a look that is “doable.” On the other hand, the “doability” aspect must not be such that, in the name of pragmatism, the future is trapped in a hole out of which it cannot escape.

So, we must begin with reality and learn from history.

The Shattered Dream of Stockholm

It is generally imprudent to make broad, sweeping statements about history, but one dares to say that in the last three decades (since the 1972 Stockholm Conference) in the battle between the environmental idealists (environmentalists, for short) who sought to create a world where nature and humanity intertwined in harmony, and the profit-seeking world of business (marketees, for short), the latter has triumphed. The environmentalists reached their lowest point at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002, where, for example, public-private partnerships (PPP) reigned supreme, and the environmentalists were pointedly sidelined. It is ironic that present-day environmentalists nostalgically look back to the “good old vision” of the 1992 Rio Summit as a landmark conference, whereas at the time it was already regarded by many as a compromise between the high ideals of the Stockholm Conference and the mercantile interests of the rich countries.

From the Idealism of Stockholm to the Compromise of the Brundtland Commission

The high point of global vision on the issue of the environment, it is important to remember, was not the Rio Conference of 1992, but the Stockholm Conference of 1972. In Stockholm, the evidence of the toll that the present system of consumption and production had taken on the environment, gathered by decades of scholar-activist-agitator writings and activities, pushed the issue onto the agenda of the United Nations (see, for example, Carson, 1962; Chisholm, 1974; Meadows et al., 1972; Shiva, 1988, 1991; United Nations Conference of the Human Environment [UNCHE], 1972). However, it took fifteen years from Stockholm for the debate between environmentalists and marketeers to crystallize into a compromise, giving birth to the Brundtland Report in 1987.

In the interim, Prime Minister Thatcher and President Reagan came to power in the United Kingdom and the United States, respectively. The impact of these historic figures cannot be discounted, for with them began the present phase of “globalization.” Thatcherism-Reaganism boosted the falling fortunes of the world of business. Faced with the threat of recession in the 1980s, they deregulated and liberalized the economy as an act of conscious state policy, in order to expand the economic domain into the social, natural resource, and environmental spheres. Paradoxically, the first act of “deregulation” was to regulate the unions in order to lower the pressure for wage demands, and give corporate capital a free rein to recuperate their depressed profits. Gradually, the economy was deregulated so that there was minimum state interference (giving rise to the concept of the minimalist state), creating conditions for the private sector to slowly but surely assume control over the economy, and expand into spheres of society that were earlier regarded as outside the purely economic sphere. Simultaneously came, especially in the UK, measures of privatization of the social and infrastructural sectors such as transport, energy, and, later, health and education. The liberal pro-corporate taxation policies of the 1980s followed, then, in the 1990s, the shifting of still more public assets (such as pension funds) to the private sector. Then, financial liberalization and the convergence of national stock exchanges opened the door to round-the-clock transactions in the burgeoning financial and speculative markets. This, in essence, is globalization, now described by its apologists as if it is something neutral, a “natural” evolution of history driven by the force of technology.

The late 1980s is also when, at the international level, the Uruguay Round of trade negotiations were on the ramp (1987–1994), culminating in the expansion of the General Agreement on Tariffs and Trade (GATT)

to the World Trade Organization (WTO). The WTO set a regime of global trade liberalization, bringing within its ambit not only agriculture (hitherto outside of the GATT), but also diverse matters including (under the General Agreement on Trade in Services) transport, communications, potentially everything else under the sun (education, energy, water, and waste collection), and the Trade-Related Intellectual Property Rights (TRIPs), which effectively monopolized control over intellectual property (patents, copyrights, etc.) in the hands of transnational corporations without acknowledging the related provisions of the Convention on Biological diversity (CBD). Only these corporations had the capital clout to undertake and apply research and development in areas as far afield as pharmaceuticals, agricultural seeds, pest control, and fertilizers.

The WTO also set up a sanctions-wielding trade disputes-settlement mechanism and a consensus-based decision-making system that effectively put leverage in the hands of those countries (mainly the United States and the European Union) that could engineer a “consensus” by using carrot-and-stick measures against smaller countries, especially those in Africa and Latin America. The big players (the U.S., the EU, and Japan) moved quickly from trade liberalization in goods and services toward demanding the liberalization of public procurement, the removal of all restrictions on the movement of capital, and “national treatment” for the owners of capital. In other words, the big players demanded that they be given the same, or better, conditions of operation as nationals in the host countries, including equal or better borrowing facilities from banks and the freedom to move capital in or out of the country and invest where and when they wanted. As one deft observer noted, it was a “freedom charter” for big capital to move around the world unhindered and uninhibited.

Some of these developments were still in the future when the Brundtland Report appeared (World Commission on Environment and Development [WCED], 1987). To what extent the WCED was influenced by the undercurrents of Thatcherite-Reaganite neoliberalism, and the then ongoing trade negotiations is difficult to say. The choice of Gro Harlem Brundtland, a former Prime Minister of Norway and a former Director General of the World Health Organization, to head the commission was not accidental. Her worldview epitomized a generally acceptable compromise (within the dominant ideology) between the environmentalists’ idealism and the marketeers’ realism. History chooses its own timely agents: The principal significance of the Brundtland Report is this compromise. Some dreamers among the environmentalists hailed the report as “victory.” It was, in fact, a backward step, a regression, from Stockholm, a watered-down version of Stockholm (although, on the positive side, it included the element of civil society participation). It introduced the hard realism of the market into the

idealism of Stockholm. From the hindsight of Stockholm, the Brundtland Report was a compromise in favor of the market.

Agenda 21 in the Context of the Emerging Geopolitical Environment

From the Brundtland Report to the United Nations Conference on Environment and Development (UNCED) in Rio, it took the relatively short period of five years. By that time, the neoliberal marketeers were having a heyday, the trade unions were having a hard time, and the Uruguay Round of trade negotiations was coming to a close. The Uruguay Round had begun in 1987 and were primarily negotiated between the United States, Europe, Japan, and Canada, and toward the end, the Australian-led consortium of food-exporting countries (the Cairns Group). The developing countries counted among them a few big countries, such as India and Brazil, but they had very little influence over the final outcome. Indeed, they were led to believe that by compromising on matters such as TRIPs, for example, they would gain market access for agricultural and textile products, for example, a “concession” that proved to be illusory. Africa did not matter; it was hardly even physically present during the negotiations (one important exception was when Ethiopia participated in the TRIPs negotiations, but negotiation’s outcome was not satisfactory, and Ethiopia did not join the WTO). The Uruguay Agreements were signed nonetheless, in mocking irony, in the African city of Marrakech in 1994.

The 1980s was the decade when the European Economic Community gained strength as a customs union leading, haltingly but surely, toward the formation of the European Union (EU) with its common economic, trade, and, later, monetary policy. In the Uruguay Round the future EU negotiated as a bloc, giving its members a clout that each member, singly, did not have when negotiating with a giant such as the United States. Soon, under the WTO, the EU was to put on the agenda the dismantling of the “preferences” that it had “given” to the African, the Caribbean, and the Pacific (ACP) countries under the Yaoundé and, later, the Lomé Conventions.

Until the 1990s, Europe was mainly interested in cheap African raw materials, and the Lomé-Lomé Conventions provided for that. After the 1990s, the issue of market access loomed large. The EU now sought to dismantle all barriers to trade liberalization in the ACP countries. Lomé was replaced by the Cotonou Agreement, based on “reciprocity” in conformity with, the EU argued, the “WTO principles.” The special and differential treatment (S&DT) clauses in the Uruguay Agreements soon became matters of further negotiation. In effect, this meant that the industrialized countries demanded further concessions from the developing countries in return for an effective application of the S&DT principles. These principles now

lie in a closed box of the WTO as parts of the so-called “implementation issues.” Developing countries made a great effort to get these implemented at the Fourth WTO Conference in Seattle in 1999, at Doha in 2001, and, yet again, in Hong Kong in 2005, but their attempts were effectively rebuffed. (The S&DT received only ritual mention in the Doha Ministerial Declaration, for instance.) For all practical purposes, the S&DT and the implementation issues are dead, though not yet cremated. In the meantime, larger issues with profound consequences for the developing countries (such as the four Singapore issues of Competition Policy, Investment Policy, Government Procurement, and Trade Facilitation) came to the fore. The developing countries have little time, energy, skill, or capacity to remain united to fight off the burgeoning agenda of the WTO, let alone defend ignored principles such as S&DT and the now all-but-forgotten “best endeavor” development provisions of Chapter VII of GATT (Das, 1998, 1999).

The 1980s was also the decade when, at another level, the Soviet Union was in disarray and close to collapsing. Already, five years earlier, the Berlin Wall had fallen, the Soviet Empire had collapsed, and neoliberalism, already triumphant at the economic level, was now reigning supreme also at the global political level in the name of “liberal democracy.” The rest of the world (including the new Russia) was being asked not only to trim its economic sails to the winds of neoliberal economics, but also to mimic the Western representative (as opposed to participatory or communal) style of governance. There was now no counter to the power of the West, led and directed by a single hegemon. 9/11 had not happened yet, and the hubris of the West, especially the U.S., was intact and reaching the skies.

The Rio Conference took place in 1992 before some of the above had happened. But in the long movement of history, events become connected in an uneven chronological order; or in a parallel motion; or one after the other, one overshadowing and influencing the other. It is noteworthy that Rio took place in 1992, the WTO came into being in 1994 (after negotiations leading to it had begun in 1987), the EU took shape in 1995, and the USSR collapsed in 1989. The 1990s was also the decade when, with the Cold War behind it, the West felt it no longer had any obligation to kowtow to Third World countries, especially those in Asia, for fear of communism. When Thailand, followed by Indonesia and South Korea, faced a serious economic crisis in the wake of financial meltdown in the speculative market in 1997–98, the West quickly moved in to “restore stability.” Among other measures, the West forced deregulation on the Asian countries, and opened their assets to foreign ownership. The effects of these measures were most remarkable in South Korea, where thousands of workers were put out on the street, and assets were stripped and practically handed over at hugely discounted prices to corporations and banks from the U.S., the EU, and Japan.

The full impact of the changes that were to come later was not yet felt on the UNCED process. And yet, Rio was a further concession to the marketeers. Ironically, once again, some optimist environmentalists hailed Rio, like the Brundtland Report, as a “victory.” In sympathy with them, one could at least say that the principles they espoused—the polluter pays principle, the precautionary principle, the participation principle, and the principle of common but differentiated responsibility—were duly acknowledged at Rio. The real thrust of *Agenda 21*, however, was its Chapter 2. After ritual incantations about sustainable development, the need for debt relief, commodity price stabilization, development aid of 0.7 percent of GDPs, technical assistance, addressing supply-side constraints of the LDCs, diversification of small country economies, and other such well-worn platitudes, the chapter endorsed what really mattered as far as the West was concerned, namely:

2.10. Accordingly, the international community should: (a) Halt and reverse protectionism in order to bring about further liberalization and expansion of world trade, to the benefit of all countries, in particular the developing countries; (b) Provide for an equitable, secure, non-discriminatory and predictable international trading system; (c) Facilitate, in a timely way, the integration of all countries into the world economy and the international trading system; (d) Ensure that environment and trade policies are mutually supportive, with a view to achieving sustainable development; (e) Strengthen the international trade policies system through an early, balanced, comprehensive and successful outcome of the Uruguay Round of multilateral trade negotiations. (UNCED, 1992)

Rio endorsed a fuller integration of all countries into the world economy and the international trading system within the framework of the anticipated Uruguay Round Agreements. From these trade agreements, however, were excluded, for all practical purposes, the countries of the South, even as they were meeting in Rio. Nothing mocks the past as much as a truth revealed about it from hindsight. Even as the South and the environmentalists were rejoicing at the triumph of Rio, the real flags of victory were flying on the masts of the marketeers. The high idealism of Stockholm, already watered down by the Brundtland Report, was now at the mercy of the marketeers, as a few years into the WTO would soon reveal.

Post-Rio Shift from Environmentalism to Justice in Trade

Thus came the era of the WTO and another decade of battle between environmentalists and marketeers. It was, however, a strange battle. The uneasy alliance at Rio between Third World governments and global

environmentalists, now fell apart. During the next five years, from the first WTO Ministerial in Singapore in 1994 to the fifth in Doha in 2001, Northern NGOs made an alliance with their governments to get the environment under the sanctions regime of the WTO. Insecure about the implementability of the multilateral environmental agreements (MEAs), the environmentalists sought the aid of the sanctions apparatus of the WTO to “give teeth” to the MEAs. They proposed, among other things, that the processes by which things are produced should be a matter of concern for the WTO. If they were produced using environmentally damaging methods, then these must be subjects of action within the WTO, and if necessary, of disputes settlement. These process and production methods (PPMs) became a matter of heated debate between the environmentalists and Third World governments. The latter smelled danger in the extension of the remit of the WTO to the processes of production as these could become weapons in the hands of protectionists in the West to close their doors to exports from developing countries on grounds that these goods were produced using environmentally unsound methods.

During this period, the Southern governments moved closer to their developmental NGOs and distanced themselves from their environmental NGOs. The latter, interestingly, were generally on the side of their Northern partners, from whom they took their cues (as well as funds). In the same vein, most labor unions in the South, especially those in Africa, took their cue from the International Confederation of Free Trade Unions (ICFTU), insisting that their governments abide by their commitment to the core labor standards, or face the wrath of the WTO. While the debate on labor standards is still smoldering, the environmental debate has matured into incorporating the development imperative.

It was not too long before the truth of what the Southern governments and the developmental NGOs were saying began to dawn on the justice- and fairness-minded NGOs and peoples’ movements in the North. And soon, “justice” in trade *linked* with an environmental perspective (rather than the environment in and for itself) became the call from many Northern as well as Southern NGOs. This newly formed alliance made some impact at the third WTO Ministerial meeting in Seattle in 1999, when the combined forces of developing countries governments inside the ministerial and antiglobalizing protestors outside blocked the Western countries’ efforts to impose a fast-track trade and investment liberalization program on the South. Following the debacle of Seattle there was a period of intensified conflict between, on the one hand, Western governments (aided by the WTO Secretariat), and, on the other hand, Southern governments (aided by a number of fair-trade- and environment-based NGOs, both Northern and Southern). Environmental NGOs now argue that the WTO should be accountable to

environmental concerns as, for example, expressed in the MEAs, rather than apply the WTO sanctions to disputes arising out of these concerns.

Seattle, however, was reversed at Doha two years later. At the fourth WTO Ministerial, Western governments and the marketeers reestablished their control over its outcome. The South was forced (against the background of 9/11 and the U.S. war on terror) to agree to put on the agenda a number of issues (such as the four Singapore issues), as well as the issue of environmental goods.

This was done largely under pressure from Europe, which wanted market access on environmental goods to placate its own industrialists. Paragraph 31 endorsed the “mutual supportiveness of trade and environment,” and without extending the remit of the WTO on the MEA, it asked the MEA secretariats and the relevant WTO committees to work out “procedures for regular information exchange” and “the criteria for the granting of observer status” to each other. Underlying these seemingly friendly homilies, however, lay the cruel fact that the spirit of Stockholm was now truly dead and buried. Whatever was left of it was placed in the commodity sphere with paragraph 31 clearing the deck for “the reduction or, as appropriate, elimination of tariff and nontariff barriers to environmental goods and services”—potentially a market of billions of dollars of all sorts of undefined items. The environment was finally commoditized at a time when the environmental goods were facing decreasing returns in the North and increasing returns in the South. With this the marketeers, who had the power of capital and big state power behind them, firmly reestablished their hegemony over the environment. After Doha, the fate of the 2002 WSSD in Johannesburg was more or less sealed. Although the environmentalists fought a hard battle there, the net outcome was none too satisfactory. With PPP the co-optation of the state into the commodification of the environment was officially sealed.

This is not to say that all was lost. The environment movement has had a definite impact on some aspects of life in some countries (see Rifkin, 1991; Repetto, 1994; Shiva, 1995; Grove, 1995; Wapner, 1996). At least in the West, for instance, there are political parties that call themselves “green” parties. Whether they have changed the nature and content of politics is a moot point. Most of the Green parties in Europe appear, in the name of pragmatism, to have succumbed to the market ideology. The market has proven to be stronger than the Green vision. Similarly, some of the processes, for example, in the World Bank and other institutions, appear to at least pay respect to the Green ideology and have built environment impact assessments into their project feasibility and operational guidelines (see World Bank, 1994).

Whether this has transformed the way Northern countries and corporations have continued to commoditize nature is, again, a moot point. It would appear that their ritual bowing down to the environment is more lip service than real change. The signing of the Kyoto Protocol on the Climate Change by Russia has finally cleared the road for its implementation, but this is unlikely to change the world's pattern of consumption and commodification of energy. The market for energy credits is designed to enable the rich countries to continue to consume energy as before, while the poor countries are now at the mercy of the rich on the price they secure for selling their energy "surplus" on the "free energy market." By this mechanism, the carbon cycle—forest, wetlands, and arguably air—is also now commoditized. There have been real gains in some parts of the industrialized world in terms of cleaner air, water, and habitat, but the South continues to wallow in poverty and squalor, and the American have lived up to the hubris of Reagan—they continue to consume oil and other products of nature at twice the quantity and speed of the Europeans and twenty times those of the average African.

This is where matters stand at this point in time.

Lessons from the Environmental and Broader Experience

One is obliged to conclude that from the Stockholm Conference in 1972 to the WSSD in 2002, the tables have been turned against the environmentalists' vision, and that by the end of the Doha WTO Ministerial and the WSSD, the marketeers were almost completely victorious. Instead of working toward mutually harmonious interaction of nature and the human system of production and consumption, we are back to *before* Stockholm, back to the unmitigated, even callous, exploitation of nature to satisfy the profit drive of corporations and the greed of rich consumers—of whom the vast majority live in the North. The neoliberal ideology seems globally triumphant. It has put the global market at the center of all things—of trade, finance, development, water, health, education, energy consumption, the atmosphere, the hydrosphere, the biosphere, and the environment generally. The capitalist market is a formidable force: Instead of changing, it changes everything it encounters in its path.

The lesson to learn from the last thirty years' experience is that the globalized market does not function on its own: It functions because there are powerful interests behind it. These are, on the one hand, the transnational corporations (TNCs) at the top of the hierarchy to the smallest retailer driven by the profit incentive, and, on the other hand, the power—military as well as political—of some of the mightiest countries the world has ever

seen. These are backed by well-resourced, mainstream academic institutions. As Western economies sink into deeper and deeper quagmires, however (with, now, speculative capital overshadowing productive capital), they need to expand beyond their borders to maintain their profitability. This is the Empire—the Empire of the transnationals backed by the power of the U.S., Europe, and Japan, and by institutions such as the World Bank, the International Monetary Fund (IMF), and the WTO (Amin, 2004).

History, however, teaches us that no social system lasts forever. Given the triumph of the capitalist market over the socialist model offered by the now-defunct Soviet Union, one could be forgiven for thinking that capitalism must be the most “natural” way of organizing society. But this is part of the ideology of the market—its claim to universality and permanence, and its challenge to anybody who comes up with alternative visions. “There is no other extant political-economic system, ergo, there cannot be one”—this is the argument of the triumphalists. But even today, under the shadow of the dominant capitalist system, there is the extant example of Cuba, which by its very presence discredits the view that the capitalist system is the only natural order of organizing the affairs of humankind.

Alternative visions to capital-led globalization will not come from the West/North. This is not to say that there are no visionary people there. The reality is that ordinary people in the North, however unhappy they might be with their private lives, are afraid, by and large, to experiment with change. Workers and women in the West may struggle, but they live relatively better material lives than their brothers and sisters in the South. Ordinary people are protected from the worst aspects of capitalism by their states, such as, for example, subsidies to small farmers in Europe and America. People in the North are therefore vulnerable to manipulation by their states, the dominant ideologies, and the media. A simple invocation of threat of the “impending invasion” by the Mexicans from across the Rio Grande, or the Turks or Africans from across the Mediterranean, shuts them up into “Fortress Europe,” or “Fortress America.”

Nonetheless, there are many peoples’ movements and NGOs in the North that regularly challenge the ruling orthodoxy of the market and pull down the security scarecrows raised by their governments. An ironic but positive outcome of the last three decades of struggle in the area of sustainable development is that many Northern NGOs are coming down from their moral high-ground environmentalism. They have, now, a better understanding of the nature of the system they are up against and are seeking alliances in the South. Many have shifted ground from environmental purity to values such as equity and justice in the global trading system. Thus, despite the collapse of the Stockholm spirit, we now have a better and more common globalist perspective of what can be done to challenge the hegemony of capital-led globalization (Mallhotra, 2003).

An alternative Vision for Southern and Eastern Africa

It is relatively easy to see the past putting its weight on the present, but the true test of analysis is to be able to see the past and the present project their light (or shadow) into the future. The challenge is to be able to talk to the generation(s) unborn, sensibly and realistically. The future is, of course, inscrutable. But while it is practically impossible to predict actual events, it is not impossible to discern broad trends and thus to make educated predictions about the future. This part of the essay tries to do so as it lays out the elements of an alternative vision of sustainable and democratic development for Southern and Eastern Africa.

Why Capital-Led Globalization Offers No Hope for the Poor of Africa

One would have to be blind not to acknowledge that the capitalist system is inherently polarizing—the rich become richer and the poor, poorer. The biblical insight that unto every one which hath shall be given, and from him that hath not, even that he hath shall be taken away from him (Luke 19:26) is more true of the capitalist epoch than of any previous production system.

In developed capitalist countries this polarizing tendency is countered by state intervention through the provision of, for example, welfare support and state subsidies. In African (and other Third World) countries, these safety valves do not exist or cannot reach the masses. A recent tragic example of this was the horrendous death and devastation caused by tsunami waves in the Indian Ocean region on December 27, 2004. Clearly, governments in the region had given low priority to investment in early warning systems and response mechanisms. Small farmers all over the world are hard pressed by the cereal and food corporations that control seeds, fertilizers, technology, market, and credit. But whereas a French or an American farmer receives protection from the state in the form of subsidies (even direct cash handouts), there is no protection for the African small farmer. So the inherently polarizing tendency of capitalism makes the poor farmer in Africa poorer, the poor farmer in Europe or America rescued by the state—and corporations such as Cargill richer. There is no mystery about the United Nations Development Programme's (UNDP's) finding that there is a widening gap between the rich and poor nations, and between the rich and poor within nations, and that there is a real transfer of wealth from the South to the North (see UNDP's 1992 Human Development Report, pp. 95, 97, and 105–106). It is the law of capitalism.

Capital-led globalization is not a neutral expansion of a system of technological development and economic growth that will “eventually” reach Africa. Superficially, the extensive reach of the Internet and the mobile

phone, among other things, gives the impression that Africa is becoming a part of the global village. The reality, however, is more complex. These instruments of communication and outreach are simply the extended arms of global capital to improve the system of Africa's continued exploitation. In colonial times the Empire had to build ports and develop the banking system, for example, so that the resources from Africa could be exploited and externalized more efficiently and expeditiously. Then, when unknown diseases spread to humans and cattle in Africa, the West brought their medicines to cure them. It is the same today with the mobile phone, the improved banking system, automated technology, and AIDS medications. For Africa, globalization is not, as some people say, a "mix of good and bad"; it is simply catastrophic. Africa will not get out of the poverty trap under capital-led globalization. Instead, its poverty will broaden and deepen.

The Colonial Template Casts a Dark Shadow into the Future

The colonial system hangs like a millstone around the neck of Africa. Touch property rights, for example, and the wrath of the Empire (Anglo-America and Europe) is unleashed with fury and vengeance. All hell breaks loose—targeted sanctions; one-sided global reporting by Western press and Western-controlled-and-financed African media; fuelling of internal dissension in the name of human rights; charges of corruption as prelude to imposing conditions of good governance; withholding of aid, capital flows, fuel, and technology; incessant pressure from the IMF, the World Bank, and the donor community to liberalize and open the markets; and so on.

South Africa, the biggest and the richest country in the region, has disappointed the poor who had thought that liberation from apartheid would put them on the other side of poverty. The reality, as always, is one step this side of wishful thinking. The transfer of power did not change the essential character of the economy or the state. On the contrary, among other things, it entrenched property rights within the Constitution. The African National Congress government had promised to transfer 20 percent of the lands to the poor landless within the first five years. After ten years, barely 2–3 percent of the land has been transferred. The fear of "sending the wrong signals" to foreign capital is arguably the main reason preventing South Africa from carrying out land reform, just as it did in Zimbabwe for twenty years. The landless in South Africa now look enviously at Zimbabwe. Here, land reform did take place, though belatedly, violently, and haphazardly. Nonetheless, an additional 130,000 small-holders now possess land (a fact not well publicized), and an additional 3,000 black commercial farmers now hold land in place of the former 4,000 white farmers (creating the racket about corruption), who, on average, cultivated only 30 percent of the land.

The current appalling state of the South African economy is a combined result of the IMF-inspired Economic Structural Adjustment Program imposed in 1990, premature trade liberalization that deindustrialized the country and threw thousands out of work, poor management of the economy, poorer implementation of the much delayed land reform, and an undeclared war of sanctions by the Empire (Tandon, 2000).

Botswana is often cited as a model of democratic development. Few, however, know the side effects of capital-led development. One of these is that cattle have vastly increased at the cost of wildlife—beef is a major export product. There is an “enclosure movement” that drives wildlife out of their habitat to make space for cattle. Wildlife migrates in search for water only to find their path obstructed by 8 feet fences. Under threat is also one of the world’s largest wetlands in the world—the Okavango Delta. Eco-tourism has been proposed as a means to save wildlife, but it is a major threat to the local people. Cattle are concentrated in the hands of a few wealthy families (about 5,000). Meanwhile, the San and Bushmen in the north scrounge for water and grazing for their diminishing cattle (Good, 1993).

At the regional level, South Africa has signed a free trade agreement with the EU that allows the latter to export subsidized beef to it. This beef finds its way into Botswana (as well as Namibia, Lesotho, and Swaziland), disrupting the local market and the cattle industry. Botswana is lucky that it has diamonds. But the diamonds are for the rich. of course: The poor are getting poorer, Botswana has one of the highest rates of AIDS, and the environment is being devastated.

Zambia, to take another example, faces a deeper crisis. Before colonialism, the Northern Province was part of the Bemba Kingdom. The Bemba practiced shifting cultivation called *chitemene*. They also fished, hunted, and engaged in blacksmithery, skilled handicrafts, and environmental conservation. They used amply endowed local resources: wildlife, skins, iron, ivory, forest wood, tree roots, clay, grass, etc. When colonialism “integrated” the Bemba into the global economy, it killed the local economy; it deliberately discouraged agriculture to release labor for the copper mines. Thus, Zambia became a mono-commodity producer. Copper, however, was a diabolic gift of capital-led globalization. In 1968, when copper prices plummeted, the Zambian economy also plummeted (Moore and Vaughan, 1994).

The African state is sometimes described as authoritarian. This is true only with respect to the local population. When it comes to dealing with the IMF, the World Bank, and the donors, it is weak. Under unrelenting pressure from these agencies, the African state has systematically disowned practically all its economic functions. Under structural adjustment programs, the African state has withdrawn price controls, closed marketing boards, liberalized trade and capital flows, privatized public assets, removed subsidies for health

and education, and left people defenseless against the juggernaut of capital-led globalization. Left without state help, the people have descended into a morass of poverty, which unthinking people in the West blame on one thing—corruption.

Major land reform and the national repossession of the mineral wealth are precluded by the power and interest of the landowning oligarchy and global corporate capital. To attract the elusive foreign direct investment (FDI) African governments are racing to the bottom of environmental and labor standards. The result is that African countries in the region are in deep economic crisis—unchanged structure of mineral and raw materials exports with diminishing returns; declining terms of trade; a debt overhang that negates aid transfers; and net reversed capital flow out of Africa to the industrialized countries. To cap it all, at the social level, the poor are getting poorer, and in strongly patriarchal societies, impoverished women find themselves at the bottom of the pile, struggling to survive in an increasingly harsh environment.

Resistance as a Form of Sustainable Development

The dispossessed and disempowered have discovered that when governments fail them, they have no option but self-help. Here are a few examples (see Tandon, 1995).

The first is from Botswana. In the outskirts of Gaborone a group of women, facing the perennial problem of food shortage, got together in 1984 and formed a club—Thusano *Lefatsheng* (*Lefatsheng* means land, and *Thusano*, to help each other). On their small farm, they began testing veld crops, such as the Morula fruit, Morula kernels, Morama tubers, and Morama beans, for farming viability. The Kalahari Devil's Claw plant, a naturally growing medicinal botanical, is cultivated and processed to provide a self-reliant means of treating some common ailments. The women keep small animals, especially goats, who feed on the remains of these crops and provide manure for the soil in return. The group organized the cultivation, harvesting, purchasing, processing, and marketing of these indigenous veld plants, providing employment for women—by 1989, 1,500 harvesters and 10 processors—mostly from very poor areas. All group activities are collective. The products are marketed through local markets in Gaborone and nearby areas.

The second example is from Zambia. In early 1991, in the village of Ngulula in the north, a group of about twenty women started a “research club” to find practical ways to increase their food production. The first crop they tried was potatoes. This may seem surprising to those who don't know what copper did to agriculture in Zambia. The women had to learn agriculture, starting

with almost no knowledge of this complex subject. Their grandmothers had this knowledge; they didn't. The women began making natural compost out of the remains of their crops, chicken manure, and earthworms. They saved and tested the seeds from the previous crop. "We place them in water, those which sink are fertile and those which float are infertile." They mixed stored seeds with ashes to increase the seeds' life span.

When I first visited the Ngulula farm in June 1993, the women had started researching soybeans. They also had begun building water canals from a nearby perennial river to their vegetable gardens. First, the women cleared an old primary canal of weed and silt using their own labor and hoes and buckets. Then they cut secondary canals, sometimes through hard terrain of rock and bush. Once the canals were dug, they opened the sluice connecting the canals to the main canal. They said they had already dug some twenty kilometers of such canals, and were digging more as new members, excited by the prospect of running water, joined them. A water committee regulated the flow of water and organized labor to keep the canals clear of weeds and silt. The women now raise fish, feeding it a variety of nutrients from their gardens and chicken manure. Their example is spreading to neighboring villages through which the river passes.

The group is now propagating the virtues of the traditional *chitemene* agriculture. This system was caricatured in Western scientific journals as "slash and burn" agriculture. Africans were accused of being irresponsible and wasteful of resources. This was not so, the Ngulula members explain. It was a carefully regulated system of the four-year rotation of crops over land that was then left fallow for seven years to allow for the natural regeneration of indigenous forestry and restoration of soil fertility. "And we didn't burn trees indiscriminately," the women protested, "we saved the *Mukwa* trees which gave us the hard wood out of which our men made the moulds for pounding millet and drums for themselves; we saved the fruit trees—*Masuku*, the *Mafungo*, and the *Mupundu*—and we saved medicinal trees and shrubs. The settlers criticized our system only because they wanted to take our land."

The third example is from Zimbabwe. In the Dande Valley, close to the borders of Zambia and Mozambique, live the descendants of the great Mutapa dynasty who, under the legendary Nyatsimba Mutota, migrated from Great Zimbabwe northward in search of salt some 500 years ago. Colonial laws had deprived the people access to their natural resources—wildlife, forests, and fish. The animals were put into game reserves; the forests were given as concessions to companies based in Harare; and fishing was reserved for tourists. Zimbabweans' traditional activities of livelihood were criminalized; harsh punishments were meted out to those caught "poaching" (called "hunting for sport" when the colonialists engaged in it). Thus deprived of their basic means of sustenance, most able-bodied people

in the valley were forced to flee from it and become migrant laborers in the neighboring white commercial farms and mines. In the valley, when the drought strikes (a frequent phenomenon), the poorer people compete with monkeys for roots and fruits.

In the mid-1980s, a group of men and women went to the spirit media for guidance. The daily lives of the people continue to be influenced by their spiritual origins, especially in respect of production rituals, rain-making, and witchcraft. Like the gods of classical Greece, the *mhondoro* spirits intervene in the destinies of the living, taking sides on important issues of the day, guiding the people in many subtle ways. The spirits advised the people of the valley to resist the ways of the white man (even if these were now enforced by black rulers), to avoid using chemical fertilizers that kill the soil, and to look for traditional foods. Among the foods the women rediscovered were *mupama*, *guruhwu*, and *mhanda* (substitutes for maize); *manyanya* (substitute for onions); *musangwi* (seeds boiled for relish); *kareberembe* (baobab leaves cooked with okra) and *mawuyu* (baobab fruit porridge); *masawu* (like berries to make alcoholic drink); and *musiga*, *hakwa*, *katunguru*, and *bwabwa* (traditional fruits). The men began to defy laws that prohibit hunting and fishing: They fished secretly using the traditional methods and hunted animals at night. If caught, they become criminals by law. But the people do not think they were doing anything wrong. The whole psychology, the whole being, of Zimbabweans is in revolt. What they do is not simply a manifestation of a survival strategy that sociologists write about; more than that it is also a manifestation of the spirit of resistance against unjust laws.

In another part of Zimbabwe, in Masvingo, one such spirit medium, Lydia Chabata, founded the Association of Zimbabwe Traditional Ecologists (AZTREC). Its members protect sacred mountains (especially the High God cult of the Matopo Hills, which Cecil Rhodes had profanely desecrated), water resources, marshlands, and wildlife. They preserve *Rambakutemwa* (sacred forests where spirits reside) and grow indigenous trees (baobab, mahogany, *muzeze*, *mukamba*, *muchecheni*, and *mutondo*) and fruits. Over the years, AZTREC has planted 700,000 seedlings of indigenous trees and distributed these to widely scattered rural communities (much like Nobel Peace Prize laureate Wangari Maathai has been doing in Kenya).

Why the Economists Have Got It All Wrong

Western-inspired economists and political leaders say that Africa will get out of the poverty trap only if its governments follow IMF advice to restructure their economies and become competitive in the globalizing markets, as some countries in Asia apparently have. More recent evidence contradicts this view. One view now holds that those Asian countries that did break the

poverty trap did so by following policies opposite to those suggested to them (and to Africa) by the IMF experts.

Another group of advisers argue that Western countries should give Africa aid (financial handouts), relieve their debt burden, and improve their terms of trade. They argue that African governments should control corruption, democratize their governance, and create better conditions to attract FDI that will help build African supply side, so that Africa can compete in the globalizing market. All this sounds sensible. But the last fifty years of experience shows that this is a grotesque illusion. The 0.7 percent of rich countries' GDP as aid for Africa is a target set by the West, not by Africa. This was done decades ago, and endorsed at Rio in 1992. This self-pledge has never been fulfilled (except by a handful of donors). In any case, aid will not and cannot be the salvation for Africa. It is essentially an instrument of control in the hands of the donors. As for debt relief, whenever it occasionally takes place, it is an exercise in public relations. The only way is collective unilateral debt abrogation, for no individual African country can do it on its own without facing sanctions from the West.

Trade, on the other hand, can be, theoretically, a means for Africa to earn from its exports. The terms of trade are terribly skewed against Africa, however, and they are not likely to get better under globalization. Indeed, why should the West improve the terms of trade for Africa? Capitalism, after all, is not based on charity. As for FDI, it is the biggest hoax of the contemporary era. Foreign direct investments are exactly what they say they are—namely, a means to transfer domestic or national assets to ownership by foreign corporations. The odd thing is that Africa's land and resources (fuel, minerals, etc.) are already more or less owned (or controlled) by foreign enterprises or individuals. The task of the moment for Africa is to turn these foreign assets into democratically or publicly managed national assets, rather than hand over what little is left in national hands over to foreign companies.

Development is more than economics. It incorporates human rights, community rights, and the right to national or regional self-determination, and it seeks to address issues of equity and fairness in the distribution of resources at the national, regional, and global levels. At the national and regional levels, the provision of social services—such as water, energy, health, transportation, and education—should be the responsibility of the state and other legitimate stakeholders, and not left to market forces. Social services are not matters to be privatized or commoditized; they are parts of the basic human rights of the people. In other words, the state has to be not only a *development* state, but also an *ethical, accountable, and responsible* state.

Development, as the spirit medium Lydia Chabata told me in an interview, means empowerment of the people (Tandon, 1995). You cannot accomplish this without restoring the wholeness of the community and integrating the

life of the people with their natural environment. The environment has been destroyed or profaned by decades of colonial rule; it must be restored so that the spirits of the ancestors are at peace. Otherwise, there can be no development. Development does not come with Western experts or with foreign science and technology. Development must be created by the people in the process of living in harmony with nature. This means interpreting traditional responsibility (stewardship) toward nature and ancestral spirits in the present context, and the mobilization of rural communities to develop self-reliant and self-resourced projects.

Resistance and Selective Disengagement from Capital-Led Globalization

The time has come for Africa to resist and to selectively and systematically disengage itself from capital-led globalization. It is the only route left for Africa. This does not entail a permanent break or a break with all facets of the global village. It is, rather, a vision that seeks to strategically resist the dominant economic system (including the IMF, World Bank, and WTO) while remaining engaged in the political and sociocultural processes and institutions, such as the UN and its various agencies.

Creating people-driven regional blocs, such as the Southern African Development Community (SADC) of approximately 120 million people, and the East African Community (EAC) of approximately 96 million people, is the starting point of the strategy of resistance and selective disengagement. Within these regional blocs there must be a free flow of people, goods, and services. Externally, there must be a common tariff in relation to the rest of the world.

Presently, the SADC, the EAC, and the Common Market for Eastern and Southern Africa (COMESA) are under threat through the combined pressure and manipulation of the EU and the U.S. Under current ACP-EU negotiations for what is called Economic Partnership Agreements, these regional efforts have been put aside, and, instead, the region is reconfigured along two meaningless negotiating blocs—the “ESA” (Eastern and Southern Africa, which excludes Tanzania) and the “SADC” (which excludes four of its original members). The U.S., for its part, has offered tariff-free access to its market under the African Growth and Opportunities Act (AGOA) to a selected number of African countries that abide by the conditions unilaterally set by it. Naturally, dissident Zimbabwe does not qualify. What we are witnessing is a reenactment of the 1884 Berlin Conference, when Africa was divided among imperial European nations. Now, it is the turn of the U.S. and the expanded Europe to carve up Africa according to their designs.

So the first step of the African nations in this region of almost 250 million people is to resist being redivided by the imperial powers. This is, of course,

easier said than done. There are many groups and individuals within the region who profit from Africa's redivision and recolonization. They are in the minority, however, and with the mobilization of the people (and with support from sympathetic organizations and NGOs in the North), this redivision of Africa can be stopped.

The second essential step of such a strategy is the adoption of a human rights approach to development. There is much discussion on the relative importance of political or civil rights, economic rights, and social and cultural rights, for example, whether democratic rights precede economic rights, or vice versa. This is a false and abstract debate. All rights must be viewed holistically, as interdependent. A human rights approach on its own, however, will not be effective; there are powerful vested interests and a certain power configuration at national and global levels that abuse the ideology of human rights for their own ends. Besides, while a human rights approach is a useful starting point, it does not comprehensively address important issues of distribution of welfare and economic well-being within and between nations. It is important, furthermore, to take a livelihood approach to human rights, because human rights are not simply individual rights, but also community and national rights. An important ingredient of this is the right to national self-determination, enshrined in the UN Charter. Also important is the right of communities at the local level to determine their own lifestyles and destinies, and control over the technology and norms of production and reproduction central to their livelihoods. A people-oriented strategy must address issues of concern to the people (such as land reform, food security, protection of biodiversity, and issues of sustaining livelihood) village by village.

A third critical step in an alternative strategy is the production primarily for the domestic market (defined, as above, in regional terms) and only secondarily for export. An export-led strategy is seriously flawed. It distorts development priorities, diverts resources away from satisfying the needs of the population, creates the wrong kinds of skills, and makes the economy precariously vulnerable to the hazards of international trade and capital movements. Furthermore, in the present global division of labor and production, Africa can compete neither with the advanced industrialized countries in the capital-intensive exports nor with China or India in the labor-intensive exports. Its best bet is to concentrate on developing and protecting the domestic market, at a level which functions optimally for the fulfillment of the region's needs. These are primarily food security based on regional food self-sufficiency, and industrialization to satisfy the basic material needs of the entire population (and not just an elite) based on agro-mineral processing and indigenous technological development. Thus, education must be linked with production, and with improving

the technical, managerial, and research and development skills of workers and those directly in control of matters of production and governance (as opposed to education for a bureaucratic and academic elite).

An essential element of this strategy is that the resources (land, forests, minerals, etc.) must be owned domestically through the public sector and open to the private sector under public control/contracts/concessions. Furthermore, they must be managed by structures of participation such that the benefits (products, upward and downward links, and knowledge) are shared with the communities living around these resources. The so-called informal sector must be integrated on the basis of rights and a redistribution of the wealth and opportunities, as opposed to the present system of misallocation of resources, with the informal sectors providing cheap inputs and a reservoir of semi-employed labor. And last, but not least, lessons must be learnt from the alternative self-help strategies people have developed, an essential component of which is that women own, and not just work on, the means of production, especially land, seeds, water, and technology.

Conclusion

Early environmentalists have been overwhelmed by the marketeers. Even self-confessed “green” parties have turned into ideologists for liberalization at the behest of their profit-seeking corporations and the IMF/World Bank. The neoliberals have not only absorbed the environment within their paradigm, skillfully co-opting its concepts in their vocabulary, but they also have successfully sold the globalization project as if it was good both for the South and the North, and good both for development as well as the environment.

This, despite the fact that the neoliberal “developmental” impact on two-thirds of humanity and all the earth’s surface and ecosystems has been catastrophic.

Africa is the weakest link in the global system’s chain, and therefore best placed to lead alternative thinking. Here, most governments are more or less under the control of the IMF, the World Bank, and/or the donors and institutions controlled by the big powers. Most governments are aware of their weaknesses and vulnerabilities, but they are either too weak to take action or they have a vested interest in maintaining the status quo. They are diffident and apprehensive of the consequences of challenging the system; they fear retaliation and sanctions.

On the other hand, the ordinary people in Africa are not only resisting the system, but also are trying practical alternatives to it at community levels. At the global level, too, people are waking up to the inequities of globalization. Civil society organizations have begun not only to challenge the hegemony

of the mercantile ethos, but also to take concrete steps (as in the WTO) to support governments in the South that otherwise feel too weak. This is one of the positive outcomes of the last decade of action against capital-led globalization and the WTO.

African governments are caught between the rock and the hard place. On the one side, is the pressure of the IMF, the World Bank, and the donors. On the other, the people. On their own, governments will not break with the system. When pressed by the people and their allies among organized sections of civil society, however, governments take courage to challenge the system, as happened at Seattle and Cancún during recent WTO ministerials. These still are early days. Some of the gains made by people will be lost under the power of corporate capital and the military might of the U.S. But as people gain experience in the struggle against the might of capital, and press democratic demands on their governments, the latter will learn how to resist and systematically and selectively disengage from capital-led globalization, build regional blocs, create large domestic markets, and make production for local needs and using local resources (including indigenous knowledge systems) as the basis of alternative systems of production. In 2004, the Southern African trade union movement shifted toward such a step by laying out a similar alternative strategy to neoliberalism in Southern Africa (Tandon, 2004).

It is a gradually unfolding process, like a curtain rising on the stage. The full potential of the movement that started with challenging the capital-led mercantilist globalization has yet to be realized. But if some of the actions contemplated in this chapter are implemented, they could embolden the forces of history that are moving towards a world that is fair and just to the bulk of humanity, and caring and nurturing towards the environment. What is required is the spirit of the will, and the audacity to challenge all reigning orthodoxies and institutions. This is no longer a mere dream; it is a realizable vision of the future.

Notes

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CHAPTER 7

Trade and Environment Negotiations: A South American Perspective

Pedro da Motta Veiga

During the 1990s, few topics provoked as much controversy in the area of trade negotiations as the convenience, or inconvenience, of expanding the multilateral agenda to include the relationship between international trade, on the one hand, and environmental and labor norms, on the other. This controversy took the form of a strong North-South polarization that placed in opposition the governments of developed and developing countries and also has heavily involved civil society in both the North and the South.

During the 1990s, the “trade and environment” and “trade and labor” issues were treated differently in institutional terms. The labor theme remained outside the World Trade Organization (WTO) but was developed intensely in the International Labour Organization (ILO), a non-trade multilateral institution. The link between trade and labor norms was made mostly by means of regional and bilateral agreements and the trade policies of developed nations, especially through the national Generalized Systems of Preference (GSP).

As for the environmental theme, multilateral agreements that provided trade-restriction measures were negotiated in non-trade fora. The issue appears specifically in provisions of the General Agreement on Tariffs and Trade (GATT), especially Article XX, and in several agreements signed at the end of the Uruguay Round, including the Agreement on Technical Barriers to Trade (TBT), the Agreement on the Application of Sanitary and Phytosanitary Standards (SPS), the Agreement on Subsidies and Countervailing Measures, the Agreement on Agriculture (AoA), and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Then, as the Uruguay Round ended, the WTO instituted the Committee on Trade and Environment (CTE), and since the launching of the Doha Round, the

trade-environment link has been the object of multilateral negotiations, albeit still with a limited agenda. Additionally, and similarly to what happened with the labor norms issue, the relation between trade and environmental norms was included in the agenda of public and private actors of different countries through preferential trade agreements, trade-policy measures adopted by the developed countries, and non-mandatory initiatives involving governments, companies, workers' trade unions, and NGOs.

In this way, and despite the resistance of developing countries, the relation between trade and environment became the focus of concern for a wide array of actors in the North and South. This led to multiple initiatives with the potential of conditioning trade flows to environmental norms. These initiatives arose in various decision-making instances at the multilateral, regional, bilateral, and unilateral levels. The formal introduction of the theme into the WTO agenda completes a cycle and sets new challenges for the developing countries.

In fact, one result of different public and private initiatives adopted unilaterally in the North is that the Southern exporters are now dealing with the trade and environment link in circumstances characterized by uncertainty and concrete risks of losing competitiveness. They may suddenly be confronted with new environmental requirements that are defined unilaterally by the importing country and involve additional "internalization" costs, especially when these requirements vary from one country to another.

The traditional defensive position of Southern countries in this debate is based on the assessment that once the establishment of the link between trade and environment is admitted, the South would be the main, and perhaps the only, target of trade actions meant to sanction "incorrect" environmental practices. From this perspective, environmental norms would quickly turn into nontariff barriers, replacing, particularly in sectors such as agriculture, broader trade barriers that tend to be reduced through multilateral negotiations.

Without challenging the rationale behind the defensive posture of the Southern countries—which played an important role by preventing the trade-and-environment theme from entering the trade-negotiations agenda too early—the negotiating strategy of these countries can no longer be limited to just saying "no." The trade-and-environment theme clearly is now on trade-negotiations agendas, including the multilateral ones, and there is good reason to suppose that developing countries can act as *demandeurs* of rules to protect them, as well as the multilateral system, from the risks of a status quo that is characterized by the proliferation of unilateral initiatives.

This chapter aims to present the elements of a negotiating agenda with which the trade-environment theme can be dealt at the multilateral level, and to explore the links of the trade-environment theme to the labor issue. It takes as its starting point the presupposition that a merely negative attitude

is no longer sustainable and that, furthermore, such an attitude is no longer in the interests of the developing countries (Najam, 2004). In order to develop this theme, this chapter first synthesizes some recent developments that are bringing the issues of environment and trade closer. We then present a set of stylized facts on how the trade-environment theme is approached in the adoption of rules and the policy-making process. In particular, we focus on domestic factors that condition the negotiating posture of South American countries, based on some empirical studies carried out in Brazil. Finally, this chapter outlines the elements of a proposed agenda for negotiations on a theme that might correspond more closely to the interests of Southern countries, and particularly South American countries.

Trade Negotiations in the 1990s

Bringing trade disciplines closer to the question of complying with environmental norms is a feature characteristic of the 1990s, but the origin of this process can be traced back to the 1980s. In fact, the 1980s were marked by the signing of multilateral environmental agreements (MEAs) that contemplated using trade measures as mechanisms to enforce environmental rules agreed upon in the international arena. In the early 1990s, this trend was legitimized by the growing intervention of GATT and trade negotiations in policy issues that previously were seen as domestic issues and, therefore, not liable to international scrutiny. This “intrusion” was based on the widespread perception that the increasing interdependence between national economies called for rules to prevent trade flows from being distorted by national policies not specifically related to trade. As a consequence, multilateral and regional institutions engaged in a broad debate on the relations between trade liberalization and divergences among national policies in areas that were deemed capable of having an impact on trade flows. Until the mid-1990s, this debate was dominated by the defenders of the harmonization agenda, or less ambitiously, of convergence of policies as a prerequisite for making trade liberalization and international integration work.

So the hegemony of the “convergence paradigm” in trade negotiations lies at the root of the importation of the environmental issue into the trade agenda. But the second half of the 1990s witnessed a significant political change in the atmosphere surrounding trade negotiations. These changes have led to the negotiations scenarios prevailing today. Initiatives of trade liberalization and international integration are evolving in this new scenario strictly conditioned by non-trade objectives, generally of a domestic nature: the policy convergence agenda lost its impulse and was replaced by an agenda closely conditioned by the priority given to non-trade concerns.

Non-trade concerns condition the negotiations agenda more and more: for the countries of the North, these concerns are mainly related to

environmental, labor, and human-rights issues, and are invoked to justify trade-protection or trade-distorting measures. For Southern countries, non-trade concerns materialize as a new priority granted to the development dimension, to be pursued even at the cost of trade liberalization and international integration objectives.

The agenda that emerges in the second half of the 1990s is the fruit of a defensive concern, especially deep in the developed countries, related to the risks that international integration might lead to policies converging on low standards and minimum criteria, thereby threatening social norms and cultural values revered in those countries. This view emphasizes the “divergences of collective preferences . . . that are reflected in the development of the regulation systems or economic instruments” of the various countries (Jacquet et al., 1999). Such divergences of preferences “can derive from different perceptions of quality, a different acceptability of risks . . . as regards natural resources and climatic conditions, but also ethical and religious criteria or even different legal traditions” (Jacquet et al., 1999).

The failure of the negotiations on the Organisation for Economic Co-operation and Development’s (OECD’s) Multilateral Agreement on Investments and the two WTO Ministerial Meetings held in Seattle (1999) and Cancún (2003) illustrates well the resistance shown by developed and developing countries toward new initiatives of trade liberalization and harmonization of policies. As a result of these developments, the consensus on the benefits of trade liberalization that sustained the action of the GATT over the last fifty years has lost much of its force. In the new situation, rationalities other than trade—the environment, for example—tend more and more to condition the efforts toward liberalizing and harmonizing policies. The link between trade and environment has gained legitimacy in the Northern countries, but at the same time the sensibility of Southern countries has grown in relation to any measures and initiatives on the part of the North that the South may perceive as possible obstacles to their development. Therefore, the relevance attributed by both North and South countries to non-trade concerns at the turn of this century, instead of producing some kind of convergence between them, has tended to create new conflicts and divergences with respect to agendas and priorities.

The objective of international harmonization—if not of policies, at least of their results—will always be present on the trade and environment agenda, as many of the environmental problems are, by definition, transborder and require the coordinated action of different countries. Yet, the logic of non-trade concerns will also always necessarily be present in the treatment to be given to this issue as a legitimizing requirement of national states vis-à-vis their domestic constituencies and their demands for protection of human, animal, and vegetal welfare.

Critical Questions Concerning Trade and Environment Negotiations

It is beyond the scope of this chapter to present a detailed assessment of how the “trade and environment” theme is dealt with in the various instances that produce rules and policies. An initial effort in this direction was made by me in a recent paper that concerns not only the issue that interests us here, but also the broader subject of trade and labor norms (Motta Veiga, 2002). Instead, this section presents some stylized facts to help readers synthesize how the theme has evolved over the last few years. In addition, a summary is offered of the principal positions held (including by South American countries), the characteristics of the gradual insertion of the environmental variable in the GATT agenda, and the main regulatory initiatives put in practice by means of unilateral policy measures, negotiated agreements, and mechanisms (including voluntary ones) for setting international standards and norms.

The Debate Matures but the North-South Polarization Remains

The evolution of the trade and environmental link suggests that the debate has undergone a “maturing process” (Sutherland et al., 2001). It now stands at some distance from maximalist proposals, while conjunctural concerns and the search for quick solutions have lost force. At the same time, various studies have brought technical-economic elements to the discussions, and the debate has begun to focus on themes whose priority is becoming a matter of consensus among the relevant actors (Motta Veiga, 1994; OECD, 2002).

A similar process of maturation has taken place with the issue of trade and labor norms. The idea of making the trade-labor link initially generated intense controversy—actually, a North-South polarization. Developing countries’ refusal to deal with the topic in multilateral negotiations was so strong it prevented the issue from being addressed in the WTO. Instead, the debate matured in a non-trade multilateral forum, the ILO, where it evolved toward a more focused—and hence less “dangerous” for developing countries—definition of labor norms. Actually, the ILO and its conventions played a crucial role in the definition of a set of core labor standards and increasingly became the focus of multilateral negotiating efforts, at the expense of initiatives seeking to bring the issue to the WTO.

This did not mean, however, that the trade-labor issue remained outside the boundaries of the trade agenda. Actually, the issue is being addressed through preferential trade agreements, unilateral measures adopted by developed countries, noncompulsory initiatives involving governments, firms, labor unions, NGOs from both North and South, and even multilateral organizations. At the same time, the improvement of labor standards was addressed in non-trade

fora and the issue moved forward significantly through a continuous and decentralized rule-making process that unevenly mobilizes firms, worker organizations, NGOs, and consumer movements, and cuts across local, national, and international dimensions.

In terms of the trade-environment link, this maturation is manifest, for example, in the gradual acceptance of the need to differentiate between standards related to goods and those related to process and production methods (PPMs), as well as in the Doha negotiating mandate focus on the relations between the trade provisions of MEAs and the multilateral rules on trade. A recent study from the OECD (2002) evaluates the impacts of environmental measures adopted by OECD members on exports from developing countries and concluded that the older measures paid less attention to the impacts on the exports of developing countries. In other words, the older measures had a greater potential for discriminating against developing countries. This conclusion strengthens the argument concerning the “maturing” of the treatment of the theme.

This process of maturation seems to be particularly important in the case of negotiations that polarize countries and face many difficulties in building basic consensuses. The attitude of resistance on the part of the Southern countries toward both environment and labor issues on the trade agenda certainly contributed to this evolution. Despite this development, the North-South polarization remains a key element of the ongoing debate in this area and of the way it has evolved. Indeed, from the beginning, the countries of the North have presented themselves as *demandeurs* of deeper trade and environment integration, postulating the need to deal with the theme in the negotiating spheres and adopting policy initiatives with real or potential impacts on trade flows. Developing countries, on the other hand, have been defensive and have generally resisted the introduction of the issue in the WTO agenda because they view themselves as priority targets for actual and potential trade restrictions based on environmental reasons. The creation of the CTE at the close of the Uruguay Round, and the inclusion of the environmental clauses in the Doha negotiating agenda, were direct consequences of the pressures imposed by the countries of the North but were also structured by Southern concerns.

More recently, the converging positions of the Southern countries in this area underwent some setbacks, while some developing countries began to adopt a less skeptical attitude toward the issue. This revision has so far been guided by one of two perspectives. The first is an (offensive) assessment that new opportunities to export and attract investments can result from linking trade and environment. The second is a (defensive) perception that in the face of the trade dynamism displayed by China and some other Asian countries, it might be in the interest of some Southern countries to resort to the environmental argument as a protection device against imports from these new

“Asian tigers.” In spite of these developments, however, the North-South polarization undeniably continues to dominate the debates on trade and environment, even those held within the sphere of the Doha Round negotiations.

Once the trade-environment theme was included, even if only partially, in the WTO agenda, the overall attitude of the developed countries has been to defend laying down rules that consolidate “environmental exceptions” to multilateral disciplines. At most, this exception (which could take the form of a waiver) would guarantee the status of “non-actionable measures” to national environmental measures for members who felt jeopardized by them. A similar stance has been adopted by several developed countries in respect to the status of the trade measures included in the multilateral environment agreements vis-à-vis the multilateral trade rules: an *ex ante* compatibility between these measures and the trade rules laid down by the WTO would be admitted, and the measures would then be held to be non-actionable. As for the developing countries, they refuse the hypothesis of the “environmental exception,” essentially in order to prevent it from being invoked to annul access rights to markets negotiated in the GATT. In keeping with the blocking strategy that characterizes the negotiating approaches of the most active representatives of the South, the developing countries claim that the current GATT rules are adequate for coping with environmental issues.

In the present situation, the demand for new rules remains North-induced and is virtually limited to the demand for an “exception” for things that, if adopted, would actually limit the application of multilateral trade rules. The Southern strategy is still widely dominated by defensive attitudes that ignore the risks of maintaining a status quo marked by proliferation of non-negotiated norms and rules.

The Growing Risks and Uncertainties Associated with the Multilateral Status Quo

The risks associated with maintaining the regulatory status quo in the area of trade and the environment do not derive exclusively from proliferation of non-negotiated rules. The prevailing situation at the level of multilaterally negotiated rules also breeds uncertainty, which is precisely why the Doha Round included negotiations on the compatibility of the MEAs’ trade provisions with WTO rules. The environmental rationale is explicitly used within the text of GATT, either for the purpose of legitimizing unilateral trade restrictions or the unilateral imposition of more stringent norms than international standards, or of rendering domestic-support mechanisms (subsidies) non-actionable.

These references can be found, for example, both in the actual text of the GATT (Article XX) and in a wide array of agreements signed at the close of the Uruguay Round: Agreement on Agriculture, General Agreement on

Trade in Services (GATS), TBT Agreement, SPS Agreement, Agreement on Subsidies and Countervailing Measures, and the TRIPs Agreement. Article XX admits more stringent trade restrictions or national standards than the international ones based on protection of natural resources, provided the fundamental principles of multilateralism are respected. Table 7.1 below presents a synthesis of the environment-related themes referred to either in WTO norms or in the negotiations underway.

The common objective of the TBT and SPS agreements is to minimize the extent of the negative trade effects of standards and regulations, while allowing the members to adopt or maintain standards that they hold to be necessary to protect human, animal, and vegetal welfare and security. The measures liable to the TBT provisions are mandatory regulations and voluntary standards, including those meant for environmental protection. Both agreements contain the national-treatment obligation and proof of necessity so as to minimize the negative trade effects of the domestic measure—in other words, to make sure that the measure is not, in fact, commercially more restrictive than necessary to reach a legitimate objective. Each agreement contains modest harmonization provisions that encourage the use of international norms as a basis for national standards and impose a certain amount of conditions for the use of higher standards and regulations (Uimonen, 1998).

Through such agreements, the WTO has become increasingly involved in specifying rules and procedures to make norms and standards consistent with maintaining market-access rights. The WTO harmonization rules for

Table 7.1 Environment-Related Issues in the Multilateral Trade Agenda

<i>Themes</i>	<i>Environment-related provisions or negotiations</i>
Access to markets of nonagricultural products	<i>Article XX (heading and paragraphs [b], [d], and [g])</i>
Agriculture: domestic subsidies	<i>Liberalization of environmental goods</i>
Agriculture: SPS	<i>Preamble and “green box” provisions</i>
Technical barriers	<i>References to products and PPMs</i>
	<i>References to products and PPM-product-related barriers</i>
Subsidies and countervailing duties	<i>Non-actionable subsidies and sectoral subsidies to fisheries</i>
The TRIPs Agreement	<i>Article 27.3; relationship between TRIPs and CBD</i>
Services	<i>Liberalization of environmental services</i>
	<i>Environmental impacts of liberalization in services sectors/domestic regulation</i>
Trade and environment	<i>Relationship between specific trade obligations of MEAs and WTO rules</i>

norms are generally “negative,” that is, the members do not necessarily have to adopt the same norms, but if they are adopted, certain principles and rules must be followed to minimize negative trade effects and prevent disguised protectionism. The TBT Agreement defines technical regulations as “characteristics of the product and its respective methods of production” (PPMs), going one step beyond the provisions set forth in Article XX (Tussie and Vasquez, 2000). The trade measures permitted by the SPS Agreement refer to characteristics of the production processes and the Agreement also introduces the precautionary principle. Compared with the TBT Agreement, the SPS Agreement grants countries more flexibility to deviate from international standards and adds new uncertainties about the relationship between trade rules and national norms that potentially affect trade flows.

In the Agreement on Agriculture, the need to protect the environment constitutes one of the non-trade concerns explicitly mentioned in the preamble. Moreover, subsidies for environment-related research and direct payments to rural producers in the framework of environmental programs that meet certain conditions were included in the agreement’s so-called “green box.” These subsidies are thus completely excluded from the commitments made by the parties to reduce domestic support. The issue of dealing with subsidies included in the green box was one of the most heated themes in the Doha Round negotiations: developing countries wanted a significant reduction of this type of subsidy, which is widely utilized by the developed nations. The latter wanted to include new categories of domestic support—payments to compensate producers for extra costs accruing from higher production standards in the green box relating mainly to animal welfare—thereby exempting them from commitments to reduce domestic support.

Article 8 of the Agreement on Subsidies and Countervailing Measures defines certain subsidies to adapt companies to new environmental standards as non-actionable. This provision, and the other non-actionable subsidy provisions, lapsed at the end of 1999 due to the absence of consensus among members to extend them. In the negotiations underway at the WTO, the reintroduction of this category of subsidy is being discussed, but it remains unclear whether the environmental reference would belong to this category in its new version.

On the other hand, the Doha mandate refers to the need to “clarify and improve WTO disciplines on fisheries subsidies,” a topic that has polarized developed countries that are intensive users of this type of subsidies and the other countries. The Member States that act as *demandeurs* of disciplines argue that the basic environmental problem in the context of trade and environment involves stock depletion due to subsidization, which at the same time would constitute a trade distortion not dealt with in the existing rules. It would therefore be necessary to extend the scope of the agreement to

discipline the use of this type of subsidy, which affects not only trade, but also the production and prices of fishing products.

Article 27(3) of the TRIPs Agreement refers, among other things, to the possibility that the signatories may “provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.” These provisions should be reviewed four years after the Agreement comes into effect, and the discussions concerning this revision constitute another front where North-South polarization is evident. The developing countries defend the possibility of resorting to different alternatives for the implementation of effective *sui generis* systems and refuse the proposals of the developed countries, which do not recognize rights that emanate from traditional knowledge (Ministério do Meio Ambiente/Brazil, 2001).

These discussions become all the more complex due to the fact that intellectual property rights have a direct bearing on a number of issues under discussion in the framework of a multilateral environment agreement, the Convention on Biological Diversity (CBD). The CBD Conference of Parties recognized in its third meeting the necessity of further work on the relationship between intellectual property rights (IPRs) and the relevant provisions of WTO’s Agreement on TRIPs and the CBD, especially “on issues relating to technology transfer, conservation, and sustainable use of biological diversity, and the fair and equitable sharing of benefits arising from the use of genetic resources, including the protection of knowledge, innovations, and practices of indigenous and local communities” (WTO, 2002).

The Doha Ministerial Declaration, in paragraph 32(ii), instructed the Committee on Trade and Environment (CTE) to give particular attention to “the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.” In the CTE discussions, developing countries tended to share the view that an *amendment* of the TRIPs Agreement to accommodate some essential elements of the CBD was necessary. Such an amendment could require an applicant for a patent relating to biological materials or to traditional knowledge to 1) disclose the source and country of origin of the biological resource and/or of the traditional knowledge used in the invention; 2) give evidence of prior informed consent through approval of authorities; and 3) give evidence of fair and equitable benefit-sharing.

This set of references—and especially the “exception” of Article XX of the GATT and paragraphs (b), (d), and (g)—was invoked in dispute settlement processes in the WTO. In the last few years, several dispute-settlement panels have dealt with controversies arising from the implementation of national environmental legislations, and their results have contributed to the increasing uncertainty concerning the compatibility of the contested national measures with multilateral trade rules. In other words, operating within a framework of rules that are incomplete and not always consistent with one

another, the dispute-settlement mechanism merely produces ad hoc rules, thereby adding a new element of uncertainty to the current framework.

The Doha agenda added new risks to this scenario: The mandate expressed in paragraph 31 is unclear, and developing countries fear that the trade and environment agenda might spiral out of control under pressure from developed countries (Najam, 2004). The Northern countries would like to consolidate the idea that specific trade obligations of the MEAs—including the so-called *obligations de résultat*, whose implementation is left by an MEA in the hands of the parties—should be considered as automatically compatible with WTO rules. As far as paragraph 31(iii) is concerned, developed countries should define environmental goods in a way that implicitly refers to PPMs, and these goods should be candidates to a zero-for-zero sectoral negotiation in the Market Access group.

In short, the creeping of various environmental provisions into WTO rules and norms has often compounded the confusion rather than streamlined action.

Proliferation of Regulatory Initiatives with Potential Impacts on Trade

The link between trade and environment is not established only by some MEAs and different WTO agreements. Developing countries' resistance to dealing with the issue in the WTO has led some developed countries to try to establish the link in specific provisions of preferential trade agreements and in the implementation of some unilateral mechanisms that grant trade preferences to individual developing countries.

In the case of trade agreements, the United States has been a particularly active player since the signing of an environmental side agreement in the North American Free Trade Agreement (NAFTA). In this side agreement, the countries explicitly pledge not to use environmental measures as nontariff barriers and to comply in their own territories with domestic environmental legislation. A supranational Committee of Environmental Cooperation is set up among the signatory countries, and its board is comprised of their Ministers of the Environment. Similar to the agreement on cooperation in the labor area, provision is made for a fine to be levied for repeated violations, rather than just a single isolated violation, of domestic regulations, and in extreme cases, trade sanctions (suspension of tariff preferences). The environment theme is also dealt with in the bilateral free trade agreement signed by Chile and the United States in 2003. This, the first trade agreement concluded by the United States since the approval of the Trade Promotion Authority (TPA) in 2002, reflects the increasing weight attributed to both environment and labor issues in the trade strategy of the United States.

The documents presented formally by the United States in the Free Trade Agreement of the Americas (FTAA) negotiations are clearly part of this recent importance being given to the environmental issue in trade agreements signed by the United States. The tracking of these agreements confirms that the issue is being more and more incorporated into the scope of the agreements: In NAFTA, the environmental agreement is a side document to the principal agreement, but in the cases of the United States-Chile agreement and the proposal presented at the FTAA, a chapter on environment is an integral part of the agreement. Furthermore, its disciplines with regard to compliance with national norms may be liable to trade actions on the part of allegedly jeopardized members.

The European Union carries out assessments of the environmental impacts of the free trade agreements that it negotiates. Within this bloc, one of the strongest tendencies in the environmental area is the diffusion of eco-labels, non-mandatory economic instruments for the purpose of encouraging companies to upgrade their environmental performance. Although complying with these standards is a voluntary matter, eco-labeling systems can give rise to new forms of trade discrimination: the costs of compliance tend to be greater for foreign producers; the definition of the criteria and parameters of product environmental assessment and even the product selection for inclusion in the certification systems are subject to the pressures of the interests that compete with imports; and the standards, which are often based on an analysis of product life cycle, can refer to PPMs (Motta Veiga, 2000).

The importance of market access issues arising from the imposition of national environmental requirements was taken into account in the negotiations to launch the Doha Round, and the theme was explicitly included in paragraphs 32(i) and (iii) of the Ministerial Declaration. Paragraph 32(i) instructed the CTE to give particular attention to “the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development,” while paragraph 32(iii) asked the CTE to focus on labeling for environmental purposes. The CTE has since been discussing the two aspects of paragraph 32(i) separately (WTO, 2003): a) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them; and b) those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment, and development.

Several WTO members have been stressing the importance of involving developing countries in the design and development of environmental measures as a way of mitigating negative trade effects. Similarly, the facilitation of effective participation of developing countries in the early stages of the international standard-setting process has been emphasized. Once developed,

flexibility in the application of environmental measures was seen as key and several developing countries have mentioned longer time frames as an example of this; the inclusion of exceptions was also raised in the debates. Developing countries see information dissemination on new environmental requirements, technical assistance, and capacity building as key in helping their exporters meet environmental requirements (WTO, 2003).

On paragraph 32 (iii), regarding eco-labeling, in order to minimize the potential discriminatory nature of these instruments, developing countries argue that their production should at least be considered by the TBT Committee's Decision on the "Principles for the Development of International Standards" set in 2000. This decision contained principles for the development of standards, including environmental labeling standards. These were: transparency, inclusiveness or openness (that all stakeholders be involved in the development of the standard), impartiality and consensus, effectiveness and relevance, coherence, and, wherever possible, responsiveness to the needs and interests of developing countries.

Domestic Factors Shaping the Negotiating Position of the South

Southern countries have traditionally opposed including the environmental theme in the agenda of multilateral and regional trade negotiations. The rationale behind this stance was explained in the introduction to this chapter. It is based on the concern that environmental logic might be used by the developed countries to sanction trade restrictions on developing countries export products. To admit the link between trade and environment in the multilateral normative would imply "opening the door" to allow the developed countries to introduce new and sophisticated modalities of protectionism.

But the defensive position of these countries also derives from the assessment that they would be especially vulnerable to this new form of protectionism on account of the structural characteristics of their own export lists. In the case of Brazil, for example, at least two studies (Motta Veiga et al., 1994; Young et al., 2001) identified in the pattern of specialization of Brazilian exports an expressive amount of potentially polluting products that are intensive in natural resources. As a matter of fact, since the 1980s, Brazil's export list has specialized in sectors and products that are intensive in natural resources and emission of gases. In principle, this makes the international competitiveness of the Brazilian economy vulnerable to the establishment of high environmental standards that can translate into higher production costs.

A similar pattern of export specialization has been identified for other South American countries, where trade liberalization and other economic trends drove "a number of countries to exploit their natural resources" and led to an improvement in the economic performance of "natural resource-based branches of manufacturing, producing highly standardized intermediate

industrial goods such as iron and steel, petrochemicals, non-ferrous minerals, pulp and paper, copper, and aluminum” in sectors that are categorized by the World Bank as “environmentally sensitive” (Borregaard, 2003).

On the other hand, the participation in the sub-regional exports of natural resource-based products—in the agro-food and forestry chains, for instance—creates new export opportunities related to the development of environmentally friendly markets in the developed countries. But there is no doubt that the dominant perception among policy makers and the business sector in South American countries is one in which the risks associated with environmental requirements largely outweigh the opportunities. This fact explains why the “entry point for a trade-environment agenda (in the subregion) has, more than anything, been the economic effect of certain environmental requirements or, on the other hand, the opportunities implied in the trade of environmentally friendly products” (Borregaard, 2003).

A recent study (Young et al., 2001) evaluated the potential impacts of the cost of removing pollutants in Brazil’s exports and concluded that the rise in costs would not be significant in aggregate terms (less than 3 percent). Nevertheless, for certain export sectors, the rise in costs could determine significant losses in volumes of exports. Young et al. (2001) find that “the most important cases are the manufacture of shoes, metallurgy of nonferrous, and other metallurgic products.” Similarly, Motta Veiga et al. (1994) concluded that Brazilian exports tend to be vulnerable to environmental rules for three reasons:

- First, besides the fact that exports’ competitiveness is to a large degree related to the intensive use of energy and natural resources, many external environmental requirements that are based on typical criteria and parameters of the importing country do not take into consideration the domestic endowment of environmental resources and consequently can impose hefty onuses on exports’ competitiveness.
- Second, a significant portion of the exports that are intensive in natural resources and energy is directed to markets that are demanding in environmental terms.
- Third, a considerable part of Brazil’s exports is concentrated on homogeneous products of low aggregate value that compete in overseas markets exclusively on a price basis. In this case, there are serious limitations to the possibility of differentiating products and thereby using differentiation strategies to recuperate the costs faced by companies in meeting environmental requirements.

In addition to being affected by sectoral characteristics, the intensity of the potential impact of environmental norms on Brazilian exports also depends on the size of the exporting firms. Large companies with a strong

exporting coefficient lend more importance to the environmental question and are more open to the introduction of innovations in this area, “tending to assume a more active attitude as regards control of gas emission and other forms of environmental degradation” (Young et al., 2001). As a result, the more dynamic export sectors, albeit pollution-intensive, are also responsible for high rates of reduction of the polluting charge, which suggests that there is some association between participating in international markets and improving environmental management. The problems are all the greater in less dynamic sectors and in those with a higher share of small- and medium-size exporting companies.

A Southern Trade and Environment Agenda: Elements of a Necessary Review

Although the trade and environment issue is only partially included in the WTO’s negotiating agenda, the attitude of the developing countries is still essentially defensive. Furthermore, the Doha mandate is viewed as ambiguous, and there is some concern about the risk of the negotiations agenda in the area of trade and environment becoming enlarged beyond control. At the same time, although the “emerging sense of opportunity about turning the ‘trade and environment’ enterprise into an agenda of ‘trade and sustainable development’” (Najam, 2004) is a promising trend, its practical consequences, in terms of negotiations, are unlikely to be made concrete in the current round.

Thus, it seems correct to suppose that defensive preoccupations will continue to dominate the agenda of the South in the area of trade and environment during the Doha Round (which is ongoing at the time of this writing). This is an important reference for any contribution that is going towards setting a proactive agenda for the developing countries. Such an agenda should be innovative and realistic. This realism, however, should not be mistaken for a blocking strategy, which is why the proposals presented below are “positive” and designed to make the development dimension operational in this area of negotiation.

It is not necessary to abandon realism in order to sustain the view that the agenda of the Southern countries in the Doha Round of negotiations should not be exclusively defensive. This holds especially true in reference to the themes of paragraph 32, where the developing countries could begin to elaborate an offensive attitude as *demandeurs* of rules.

The studies quoted earlier (Motta Veiga et al., 1994; Young et al., 2001) suggest that although the introduction of environmental concerns in the trade agenda may represent a real risk for many South American countries, the risks associated with the regulatory status quo in this area are equally serious—maybe even more so. The current scenario is characterized by an imbalance between, on the one hand, the multiplication of rules and initiatives

that actually or potentially link trade to environment, and, on the other, the limited development of multilateral disciplines that prevent the environmental rationale from being used to restrict trade.

This being so, if the defensive stance adopted by countries like the South American ones in their approach to the trade and environment issue appears to be justified, then it is time to add another component to their negotiating strategy—of an offensive nature—to make these countries *demandeurs* of rules at the multilateral level. Disciplining the proliferation of unilateral environmental rules that can impact trade, especially exports from the developing countries, and regulating the use of the environmental rationale to sanction trade measures would be the objectives of this new component of the Southern agenda.

This affirmation, along with the fact that the environmental rationale is specifically invoked in the GATT text, as well as in several agreements of the Uruguay Round, is sufficient reason to recommend revising the paradigms that are behind the positions of the Southern countries in their trade and environment negotiations thus far. The following paragraphs seek to identify the main elements of the agenda that would emerge from such a revision.

A first approach of a South American agenda for trade and environment is provided by Borregaard (2003), who reviews the debate on the issue in the subregion, focusing in research papers and position papers produced in different countries in the last years. The areas reviewed and presented below were selected according “to negotiation issues that are considered most relevant to the countries in the trade and environment debate”:

- Agriculture: market access, subsidies, SPS
- Services, including environmental services
- Investment: rules of protection, sustainability impacts, corporate social responsibility
- Intellectual property rights, biodiversity, and biosafety
- Market access and environmental requirements, including environmental goods and eco-labeling

This agenda puts together issues that are being dealt with in multilateral negotiations, in bilateral/regional talks or in both. An approach focused on the WTO negotiations should begin to include as its first element issues that are not yet formally part of the multilateral negotiations: the themes of paragraph 32 of the Doha Declaration. In discussing these issues, the countries of the South would push ahead an agenda for elaborating rules to diminish risks and uncertainties springing from a process of setting up rules and standards that is currently biased in favor of unilateralism and the interests of the countries of the North. Table 7.2 below summarizes the main elements of the agenda presented.

Table 7.2 Issues and Positions of a Southern Agenda on Trade and Environment

<i>Themes</i>	<i>Positions</i>
Article XX of the GATT	<i>Rejection of the waiver for unilateral measures</i>
Access to markets of nonagricultural products	<i>Environmental products: concept of the end-product and rejection of zero-for-zero sectoral negotiation</i>
Agriculture	<i>Limit for direct payments of the green box and scheme for reducing these subsidies</i> <i>Conservation programs in the South: non-actionable</i>
TBT and SPS agreements	<i>Strengthen disciplines that limit references to PPMs</i>
Services	<i>Environmental services: presentation of commitments to liberalization</i> <i>Impacts of liberalization: caution in offering commitments in environmentally sensitive sectors or negotiation of “environmental safeguard” for developing countries</i>
Subsidies	<i>Reintroduction of the concept of a non-actionable subsidy, with more favorable treatment for developing countries (including programs associated with exploration of biodiversity)</i> <i>Fishing: disciplining the use of subsidies, but restricting expansion of the concept of the GATT subsidy</i>
TRIPs	<i>Protection of intellectual property rights for traditional knowledge and access to the benefits associated with the use of the genetic resources of developing countries</i>
The relation between MEAs and WTO rules	<i>Concentration of the negotiations in a few MEAs</i> <i>Rejection of the WTO waiver for the specific trade obligations of the MEAs</i> <i>Inclusion of the obligation results in the negotiations: the need to discipline use of such</i>
Paragraphs 32(i) and (iii) of the Doha Declaration	<i>Action as demandeurs of rules to demand measures that can affect access for the export markets of the Southern countries</i>

With regards to the themes of paragraph 31(i), the rejection of the a priori presumption that the specific trade obligations of the MEAs conform to the WTO rules is appropriate to the interests of the South, as is the concentration of negotiations on a limited number of MEAs. The issue that remains unclear is the advisability of excluding, from the concept of specific trade obligations, the so-called “*obligations of de résultat*,” that is, those whose implementation is not defined by the agreement itself, but rather remains the criterion of the parties. Because this category of obligation leaves some leeway for the parties

to enforce trade-restriction measures that they deem necessary to meet the objectives of the MEA, leaving them out of the negotiations could generate new risks and uncertainties for developing countries.

The matters dealt with in paragraph 31(iii) should be assessed with the utmost attention. Concerning environmental goods, a precise definition of the products thus characterized should be based on end-products, excluding those singled out by PPMs. In addition, the negotiations on liberalizing these products should be understood as part of the package of commitments on access to product markets, excluding the hypothesis of environmental products being the object of sectoral negotiations based on the zero-for-zero methodology.

In agriculture, where developed countries try to preserve their domestic-subsidies schemes under the shelter of the environmental program, the use of the instruments included in the green box should be subjected to stricter disciplines. An attempt should also be made to set not only a “ceiling” for the direct payments defined in paragraphs 5 to 13 of Annex 2 of the Agreement on Agriculture, but also to define criteria and mechanisms designed to reduce this type of subsidy. Conservation programs practiced by developing countries would not be submitted to these same criteria and would instead be considered non-actionable subsidies, albeit still observing certain rules and limits.

With regards to the agreements concerning WTO standards and norms—the TBT and SPS agreements—an effort to clarify certain concepts seems necessary to prevent the developed countries from abusively resorting to certain breaches in these agreements that permit reference to PPMs or that give developed countries too much freedom in defining more stringent standards than those practiced at the international level. In this debate, the attitude of developing countries would be offensive in their endeavor to lay down more rigorous disciplines to limit the risks of this type of abuse.

Still, with reference to market access for goods, the countries of the South have solid interests in preventing the hypothesis that unilateral environmental measures—in defense of natural resources or human, animal, and vegetal health and security—be considered a priori compatible with GATT rules. In other words, the hypothesis that the provisions of Article XX may grant a waiver to that type of measure should be rejected.

In the services area, two questions are relevant for developing countries: on the one hand, the commitments to liberalize the sector of environmental services, and on the other hand, the issue of the environmental impact of liberalization of trade in services. In principle, new liberalization commitments in the area of environmental services on the part of the developing countries may produce positive results for the populations of these countries, especially if these commitments are made in mode 3 (commercial presence). This, then, is an area in which the countries of the South can and should

make important concessions in the negotiations, especially as the flexible structure of the GATS liberalization commitments enables countries to keep maneuvering leeway to exercise their domestic regulatory functions. The necessary counterpart, so that the benefits allowed by liberalization become concrete, is that the countries of the South adopt domestic regulation applicable to the provision of environmental services by private companies aimed at preserving the public interest.

In services, sectors whose liberalization can bring about negative environmental impacts for the developing countries (such as tourism, transportation, energy, and so on), South American countries, and the South countries in general, should moderate their additional offers of liberalization. Alternatively, the better option would be to negotiate the possibility of an 'environmental safeguard' that enables them to make broader and more consistent offers in those sectors, once again especially in mode 3 relating to commercial presence.

In the subsidies area, reintroducing the concept of non-actionable subsidies (Article 8) may be in the interest of developing countries as long as they can obtain differentiated and more favorable conditions—that is, less restrictive than those imposed on the developed countries—for the use of subsidies of an environmental nature, and especially for promoting activities that allow them to explore their biodiversity. On the other hand, the negotiations on fishing subsidies are of direct interest to the developing countries. Fishing is widely practiced in the South, frequently on an artisan basis, but some developing countries could act industrially in an environment less distorted by subsidies. Therefore, efforts should be encouraged to discipline the fishing subsidies currently practiced extensively by developed countries, while at the same time preventing this sectoral discussion from "opening the door" for a broadening of the concept of subsidy, a trend that could in the future have a negative impact on the South eventually using subsidies for purposes of development.

Finally, with regard to TRIPs, the almost obvious interest of developing countries involves protecting traditional knowledge and guaranteeing that this will receive fair and equitable sharing of the benefits arising from the use of their genetic resources. This is particularly relevant to South American countries. This is an area in which the concretization of the potential benefits of any revision of the TRIPs Agreement to accommodate Southern interests will depend very much on the capacity of the Southern countries to qualify institutionally and adopt proper domestic regulations.

Conclusion

The trade-environment issue is now part of the agenda of multilateral trade negotiations. This was surely not desired by the South, which tenaciously opposed linking these facets of negotiation. The attitude of these countries

in the negotiations that are underway remains essentially defensive: it is a matter of preventing the agenda from enlarging and mitigating the risks associated with this enlargement.

It has been argued here that it is not realistic to suppose that the countries of the South will deviate from this attitude of mitigating risks. However, their negotiating strategy cannot be limited merely to this attitude. For the South, the risks of maintaining the international status quo in this area are significant and perhaps greater than the risks in a cautious and negotiated expansion of the trade and environment agenda in the WTO.

Two movements are necessary to update the strategy of the South in trade and environment negotiations. On the one hand, it is necessary for the South to formulate negotiating positions that express the priority given to the development dimension in all the themes where the environmental reference is present in the text of the different agreements of the Uruguay Round. On the other hand, Southern countries must gradually develop an attitude of becoming *demandeurs* of rules that discipline the use of unilateral measures motivated by environmental reasons and that can produce negative impacts on the exports of the developing countries.

CHAPTER 8

Redesigning the World Trading System for Sustainable Development: A View from Central America

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In a relatively short time, human activity has brought the world to the brink of a major ecological disaster. One manifestation of this is a massive biotic crisis (Elredge, 1998; Myers and Knoll, 2001; Wilson, 1993). Another is the anthropogenic impact on global average temperatures, with consequences such as rising oceans, disruption of rainfall patterns, and extreme climate variability.

At the same time, social disparities and inequality mark the world's social and economic landscape, both on national and international levels (UNFPA, 2002; GPM, 2004). The powerful forces leading the integration of the world economy have also caused deep financial and economic crises. Furthermore, the world is now witness to more armed conflicts at the regional level than ever in the past thirty years and world military expenditures continue to increase dramatically (SIPRI, 2004).

Economic performance in the past thirty years was marked by slower growth rates for higher- and middle-income countries, and modest growth rates for lower income economies. Social disparities continue to exist, and the Millennium Development Goal of halving the number of hungry people by 2015 will not be met. The ecological footprint of the richest countries is still unduly large. Although greenhouse gas emissions rates have been going down, absolute levels of emissions continue to increase. The absolute volume of natural resources used by developed countries continues to increase and material flows' analyses reveal the presence of environmental cost-shifting. Estimates of embodied pollution in trade of eighteen industrialized nations show total imports entail larger air pollutant emissions than total exports (see Muradian, O'Connor, and Alier, 2001; Muradian and Alier, 2001).

During the past two decades, the world's multilateral organizations redefined the architecture of the global economy. Financial and capital account deregulation was promoted in the 1980s, and the Uruguay Round increased trade liberalization and led to the creation of the World Trade Organization (WTO). New dimensions, ranging from investment to intellectual property rules, were integrated into the multilateral trading system restricting the capacity of governments to deal with development issues and limiting the availability of policy instruments.

The WTO is now more than ten years old and lies at the crossroads of a critical debate. On the one hand, there are countries and a trade-policy community that demand more trade liberalization at a faster rate and in more sectors of economic activity. On the other hand, there are countries and large sectors of civil society demanding a slower pace for future negotiations, as well as a thorough assessment of what is working and what is wrong with the past record of trade liberalization.

The structure of world trade provides a sobering backdrop for the assessment of WTO performance. Although developing countries' exports have increased, world trade remains heavily lopsided. Average trade deficits for all developing countries during the nineties were higher than those in the seventies by three percentage points of GDP while growth rates were lower by two percentage points (UN Conference on Trade and Development, 2003). This has serious negative implications for developing countries' current accounts and indebtedness, consolidating a disturbing trend towards greater disparities between rich and poor countries. Greater international disparity is not a temporary adjustment to liberalization and it will not correct itself automatically.

The main thrust of my argument is that reducing barriers to free trade is not an end in and of itself. The goal should be sustainable development, which is based on a healthy combination of environmental stewardship and economic and social responsibility. So, before the world embarks on a new round of multilateral trade negotiations, existing trade agreements should be carefully evaluated. Implementation problems persist and they need to be solved before starting new negotiations. Developing countries should carry out their own assessment with the support of the international community. The central message of this paper is that the WTO should be subordinated to the overarching objectives of sustainable development.

This chapter concentrates on reforms needed in the world's trading system in order to enhance its contribution to sustainable development. This paper is broken down into three sections. The first section presents five themes that need to be reexamined when assessing the world's trading system. The second section discusses the relation between macroeconomic and trade policies. The third section begins to outline the types of fundamental reforms needed, particularly in relation to agriculture, international commodity agreements, intellectual property, and investment rights. While this

paper focuses primarily on the global trading system, some of the issues we raise here are illustrated with examples from Central American economies.

Perspectives for Reform

The Myth of the Market

Any reflection on how economic, social and environmental affairs have been managed in the past twenty years cannot leave out the fact that this period is dominated by the consolidation of the myth of the market. The notion of the “invisible hand” as a process leading to efficient resource-allocation became the unquestioned paradigm for economic policy. It is the foundation of the “one-size-fits-all” approach to economic policy favored by the International Monetary Fund (IMF) and World Bank. And yet, when one asks for evidence to back up this contention, there is no reply.

A casual observer might note that economic history confirms the idea that free markets bring economic prosperity. But it is virtually impossible to discern where the market stops and where state intervention begins in the realm of economic history. Subsidies of all types, protectionism, and strict regulations on capital and labor mobility are inseparable from the operation of market forces over the past 200 years (Habbakuk, 1962; Landes, 1969; David, 1975). Historic records cannot support the notion that free markets alone brought about prosperity and welfare gains. This does not mean that markets and prices are unimportant, but they do not alone explain prosperity in Europe or the United States. The experience of Japan, South Korea, and Taiwan is frequently, and erroneously, mentioned as an example of how trade liberalization and market-friendly policies lead to higher living standards (World Bank, 1993). In fact, these economies maintained a vigorous export-oriented strategy together with tight controls over investment and technology transfer.

Does theory prove markets are the best system for resource allocation? We know that general equilibrium allocations are Pareto-optimal. Unfortunately, there is no satisfactory theory explaining just how general equilibrium prices (for which supply equals demand in every market) are attained.² In addition, general equilibrium theory is unable to integrate monetary theory with price theory and even its proof of existence of equilibrium is not without problems (Benetti, 2004). In short, there is no rational foundation for the belief that the market is the best system for the allocation of resources.

Trade theory is not a scientific truth that comes out in favor of free trade (as authors such as Bhagwati, 2003, pretend). It is marked by the flaws of general equilibrium theory. The simplicity of international trade models is also misleading. Proofs of the basic theorems depend critically on initial assumptions, and when relaxed, conclusions are quite different (Ackerman, 2004).

Protesters against deeper neo-liberal globalization and more trade liberalization are not mystical fanatics shrouded in obscurantism.

Thus, the “invisible hand” is just a metaphor, without robust empirical or theoretical underpinnings. The triumph of the market ideology is in stark contrast with the scientific bankruptcy of general equilibrium theory. From the perspective of applied economics and policy, we must start thinking in new and more rigorous terms if sustainability is to be a priority. The market cannot redress social inequalities, nor can it be the sole mechanism in charge of environmental stewardship. It is vital to understand this if we want to improve our handling of economic, social, and environmental affairs.

Given the deficiencies of trade liberalization and deregulation, the role of the state needs to be reconsidered. At the macroeconomic level, state intervention is critical in enforcing prudent supervision, implementing adequate risk-management practices as well as in enforcing loan and investment policies for the banking and financial sectors. At the sector level, active state intervention is often important for industrial and agricultural policies. In industry, policies are needed to generate dynamic competitive advantages that are skill and technology driven. As these competitive advantages are not automatically transferred by foreign direct investment, a proactive role for state agencies is often required to do the job (UNCTAD, 2003a).

Big differences exist between the objectives and the nature of those who craft global trade agreements (i.e., governments) and those who engage in trading operations (i.e., firms and corporations). Today, more than 66 percent of world trade takes place through transnational corporations, and 40 percent of this takes place within companies (United Nations Industrial Development Organization [UNIDO], 2003). Originally, the mandate of the United Nations Conference on Trade and Development (UNCTAD) was to monitor markets and market concentration, but developed countries changed this in the 1980s. Today, there is a serious conflict of interest between the overarching WTO objective of reducing or eliminating market distortions and the presence of intense market power in the corridors of trade policy.

Market distortions frequently arise from market concentration. Perhaps the most significant omission in WTO agreements is the lack of reference to market concentration, oligopolies, and antitrust enforcement measures. The WTO has nothing to offer when it comes to solutions to the real impacts that collusion, unfair business practices, and market concentration have on international market prices. In fact, its promotion of trade liberalization in the context of imperfect competition often leads to further concentration and intensified oligopolistic structures. Leaving these problems to the obscure workings of international commerce arbitration boards is not the solution because their purview does not include mandatory antitrust measures applicable to general cases. This problem is screaming for attention and has not been addressed by WTO.

Vertical and horizontal integration in global commodity markets is a primary cause of market distortion. Possible policy responses include an international review mechanism on international mergers and acquisitions (M&A). Transparency requirements should be imposed on transactions between agents that have more than 20 percent of a regional or global market. Similarly, M&As and joint ventures involving cross-licensing and capitalization of patent rights should receive better scrutiny. These operations can be used to engage in serious business malpractices, unfair competition and can significantly distort market operations.

Macroeconomic Policy and Trade

The last three decades have witnessed the separation of financial flows from international trade: short term transactions in the world's currency markets are fifty times greater than trade flows. Any assessment of the performance of the world's trading system and its relation to social and environmental sustainability needs to take into account growth of international monetary and financial relations.

In general, however, trade policy analysts have been focusing too narrowly on their subject, without giving adequate consideration to the fact that trade liberalization is part of a bigger macroeconomic policy package. Thus, they may have inadvertently left outside of their analysis the critical relationship between trade, monetary and fiscal policies. The relationship goes beyond the simple references to exchange rate over- or undervaluation, and involves the wider issues surrounding finance, capital flows, and the policy space in the context of capital account deregulation.

The UN Conference on Trade and Development (UNCTAD) has recognized the importance of reinforcing policy coherence between the international trading system and the international monetary and financial system (2004). But reforming the world's trading system must go hand in hand with changes in the role and operations of the IMF. The role, nature, and mission of the IMF must be clearly redefined given changes in the world's economy. For one thing, it must stop imposing conditionality and stop seeking deeper and faster financial liberalization. The IMF must learn from the recent financial crises, prevent bailouts that promote moral hazard, transform its decision-making process, and start playing a responsible role as lender of last resort.

The false dichotomy between monetary aggregates and real sector variables needs to be abandoned. A new type of economic analysis, integrating both dimensions, will be more policy-relevant. This implies redefining the contents of macroeconomic policy for developing countries, in both its monetary and fiscal components. Without this, there will be few benefits accruing to developing countries from reforms in the trading system.

Special and Differential Treatment

Special and differential treatment (S&DT) is based on the idea that fairness should be an important guiding principle in international economic relations. It is also linked to the recognition of existing international asymmetries between rich and poor nations. In the context of WTO, it is linked to the idea that developing countries should not reciprocate to trade concessions because they need more time to adjust to the economic forces unleashed by trade liberalization. S&DT should also include different policy options, although this contradicts the mantra of a one-size-fits-all approach to economic policy-making.

Special and differential treatment is recognized originally in the General Agreement on Tariffs and Trade (GATT) in several of its articles and these principles were picked up in various rounds of multilateral negotiations and in several WTO agreements. The actual implementation of S&DT relies on various types of mechanisms: limited time derogations, exceptions and preferences in disciplines, lower commitments in tariff reductions, technical assistance commitments, etc. In practice, however, S&DT has not provided the conditions needed by developing countries to adjust. A few extra years in certain transition periods, or a few tariff points below developed countries' concessions, have not been able to redress asymmetries that took decades or even centuries to crystallize. In addition, the scope of available economic policy instruments has shrunk as a result of structural adjustment policies, WTO, and several regional agreements. It would seem that developed countries have kicked the ladder that might have enabled developing nations to climb to levels of higher living standards.

The lopsided structure of world trade indicates that S&DT has failed to establish a level playing field. The irony of this is that precisely at a point in time when economic theory recognized asymmetric market configurations as the source of market failure (Stiglitz, 2000), the world trading system has essentially turned its back on the notion of S&DT as a tool to eliminate asymmetries.

A new S&DT framework should recognize developing countries need more room for policy-making. In particular, the world's trading system must allow developing countries to access the industrial policy instruments developed countries used in the past. These are especially important to attain dynamic competitive advantages that are skill- and technology-based. In a communication to the WTO in 2002, Brazil and India argued for substantial changes in the Trade-Related Investment Measures (TRIMs) Agreement in order to incorporate provisions that would allow developing countries to promote domestic manufacturing capabilities in high value-added and technology-intensive sectors (WTO Document G/C/W/428, October 2002). Without this, developing countries run the risk of remaining in the low-productivity trap of natural resource exporters.

Central American countries are a good example of this, and the regional trade agreement currently being negotiated will not change this because its objective is to take advantage of the static comparative advantages in the region. Hence, exports from the region will remain vulnerable to the long-term trend of declining prices for primary products (Ocampo and Parra, 2003) and the region's exports will continue to originate in low-productivity sectors close to the natural resource base. For countries such as Honduras, Nicaragua, and Guatemala, the share of primary products in total exports is close to 80 percent, indicating that the natural resource base is, and will remain, under heavy pressure (see Figure 8.1). The most important components included here are cattle, shrimp, fish products, bananas, coffee, and other horticultural goods. All of these primary products are "environment-intensive" and have suffered from price volatility and a declining long-term trend.

In Central American countries, trade has not become an engine for growth. In the aftermath of the debt crisis of the eighties, growth returned timidly to Central America. Countries that chose to attract *maquiladora* industries (such as El Salvador) show higher growth rates. Others, such as Nicaragua, got on the bandwagon of the *maquiladora* investment boom later. All of these countries suffered from the syndrome of concentrating exports in the United States market. Thus, when the U.S. economy went into the recession of 2000, exports and growth rates dropped significantly. The presence and consolidation of China in the U.S. market, as well as the attraction that it exerted on many *maquiladora* investments, puts the Central American export sector at great risk. Figure 8.2 highlights the deteriorating trade balance for countries in the region.

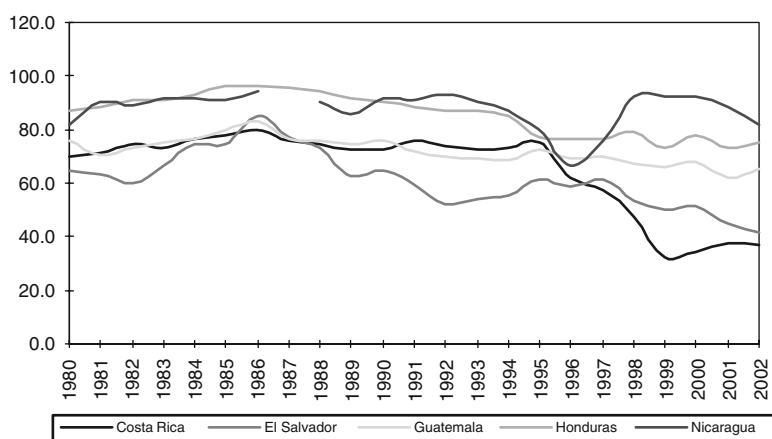


Figure 8.1 Exports of Primary Products, Central America, 1980–2002.

(Source: CEPAL, 2004)

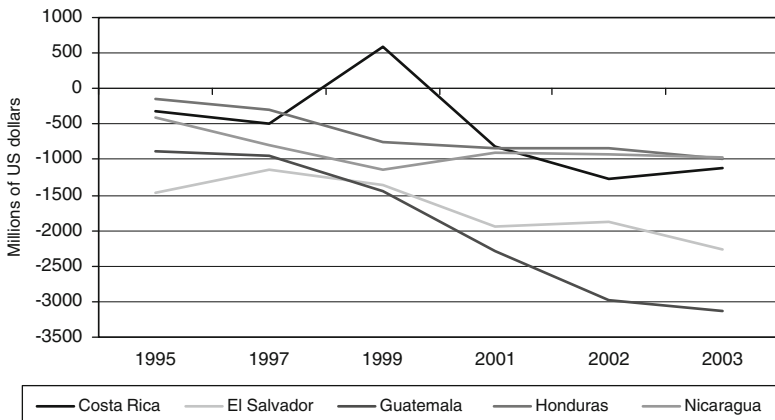


Figure 8.2 Trade Balance for Central American Countries, 1995–2003.

(Source: CEPAL, 2004)

The Central American Free Trade Agreement (CAFTA) will ban performance requirements on these industries, preventing the establishment of forward and backward industrial linkages between the maquiladora sector and the rest of the economy and limiting their capacity to act as an engine for growth. It also will impose the same level of protection for direct foreign investments that the North American Free Trade Agreement (NAFTA) established in its Chapter 11 provisions, subordinating environmental policies to the priorities of trade and foreign investment (Suppan, 2004). Although performance requirements are a hotly debated issue, it is true that in some cases they have helped developing countries enlarge their export and manufacturing capabilities (see UNCTAD, 2003a).

The second component of S&DT is that financial assistance to developing countries is essential for a level playing field. It is sometimes argued that foreign direct investment (FDI) flows have picked up and that they are preferable to aid. But FDI is heavily concentrated in a few developing countries. In addition, up to 30 percent of total FDI is made up of M&As of already existing companies, not investments in new productive assets. Financial assistance is a different instrument from FDI with a rationale of its own, oriented toward long-term investments under preferential conditions and should be part and parcel of trade agreements.

Process and Production Methods

The governments of most developing countries are hostile to the notion of using environment-related process and production methods (PPMs) within

the WTO system. They argue that this leads to eco-protectionism, not to adequate environmental defense. The problem, however, is not with PPMs but with unilateral imposition of regulations and standards (Nadal, 1994).

The 1998 Appellate Body decision on the U.S. ban on shrimp imports when adequate protection for sea turtles had not been used is seen with distrust by developing countries. It implies that developed countries' use of PPM-based trade sanctions is WTO-consistent. This is, of course, unfortunate, because issues that should be the object of negotiations should not be left to the vagaries of dispute settlement and adjudication. To prevent this, WTO members should start a program of consultations with organizations such as the United Nations Environmental Program (UNEP) to determine whether and how PPM-based trade restrictions can be used and under what types of circumstances they can be invoked. Defining criteria and accompanying disciplinary actions should be the outcome of multilateral negotiations and not unilateral imposition. This is the only manner in which PPMs can be incorporated into the trade and environment agenda without fears that it will lead to unjustified protectionism.

Production processes that are liable to have global or transboundary effects, for example, could be separated from those with purely domestic effects. The first could be candidates for trade regulations and even restrictions under certain circumstances and disciplines. But the most important point here is that all parties should engage in a process of multilateral negotiations that would tackle three important issues: sectors and products, disciplines, and financial mechanisms to assist developing countries. Special and differential treatment should be the cornerstone of these negotiations.

The important precedent of the Montreal Protocol on ozone-depleting substances is of critical relevance here. This international environmental agreement is hailed as a success story and it is based on a multilateral approach to regulations on PPMs. The regulatory regime of the Montreal Protocol was based on the phasing out and banning of certain chemical agents used in production processes (refrigerants, foaming agents, and active agents in pesticides). This phasing out and banning was done through multilateral negotiations and the explicit recognition of asymmetries between members. Thus, developing countries were given longer phase-out periods. In addition, and more importantly, a financial and technical support mechanism was established to deal with this set of asymmetries.

Precautionary Principle

The precautionary principle is defined in the Rio Declaration as follows: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective

measures to prevent environmental degradation.” The Principle recognizes the existence of critical ecological thresholds and seeks to prevent the breaching of those thresholds. The cost of preventive anticipation should not be unduly high and the *onus probandi* rests squarely with those who propose change. The application of the precautionary principle requires weighing the risks of inaction with the costs of preventive actions. It is an important and necessary guiding principle in the relations between economic affairs and the environment.

The precautionary principle is also a response to the commodification of science. Today, more basic and applied research is being funded by private companies and this raises serious questions about the objectivity and independence of scientists. But the precautionary principle has generated a major controversy due to fears that it might serve neo-protectionism or that it can stifle technological innovations that could be good for the environment.

Part of the problem arises from the ambiguities that surround the implementation of the principle, because when using this principle, it is difficult to determine where reasonable doubt stops and where uncertainty and risks begin. If improperly managed, the use of this principle could lead to arbitrary and abusive decisions. For example, there are no easy answers to the question of how to deal with “exaggerated claims of hazard.” Although science by consensus does not necessarily lead to the best policy advice, it seems that dialogue and ventilation of differing viewpoints is unavoidable in the presence of disputes. The recent decision of the WTO to uphold the request by the European Union to hear the opinion of scientists in its dispute with the United States over genetically modified organisms is a good example of this.

The problem with this principle is not in its uncertainty, as has been claimed by many of its critics. After all, uncertainty and ambiguity is inherent in the WTO system. Consider, for example, the provision in Article 27.3(b) of the Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement related to patents on life forms. The article refers to “essentially biological processes,” but does this mean processes that occur naturally or carried out by organisms? In reality, that provision, along with many other provisions, is vague and is designed to allow for the greatest amount of patents in the field of genetic engineering. This is a policy choice, but its vagueness is a deliberate component. The precautionary principle does not hold a monopoly over vagueness. But vagueness and uncertainty is precisely what it is designed to deal with. In order to use this principle adequately without transforming it into an instrument of discrimination, it must be accompanied by legitimacy. This is only brought into the system through intensive and protracted multilateral bona fide negotiations. If we look at examples

where the precautionary principle has been successfully used, this is the salient feature.

Macroeconomics and Trade

Globalization and the expansion of trade could not have taken place without financial deregulation. Capital flows underpin the expansion of trade and trade liberalization relies heavily on the elimination of cumbersome controls that enforce capital account restrictions. Also, if capital flows are restricted while trade liberalization takes place, under- or overpricing is used to cover capital movements and profitability remittances. Deregulating the capital account was supposed to bring about better resource allocation and lower cost of capital. Savings from developed countries would flow to developing countries, spurring growth and productivity. Deregulation in financial and banking systems would also allow for better services through greater competition, lower interest rates, and greater rates of investment.³

Treating money and financial instruments as products that can be exchanged in a marketplace, just like any other commodity, however, is a fallacy. As Keynes pointed out, money and financial instruments lack intrinsic value; they are extremely sensitive to swings in confidence as to the future evolution of their value. Thus, although financial liberalization did benefit some countries and several sectors (banking and finance, brokerage firms, insurance, and real estate), it also increased market volatility, opened new avenues for speculative investments to the private sector and led to lower investment rates. The result was slower growth and rising unemployment rates in most countries.

In Latin America, this pattern of restrictive macroeconomic policy led to a long period of sluggish economic performance (see Table 8.1). For Central American countries, this is illustrated by falling growth rates, low fiscal revenues, unemployment, and social inequality. Macroeconomic policies have

Table 8.1 Growth Rates for Five Countries in Central America

	1981–1985	1985–1990	1990–1995	1995–2000	2000–2003
Costa Rica	0.31	3.8	4.9	4.6	3
El Salvador	–2.6	1.8	5.5	3.5	1.9
Guatemala	–1.1	2.3	4.1	4.1	2.7
Honduras	1.5	3.3	3.8	3.2	3.6
Nicaragua	0.6	–3.4	1.5	5.1	2.7

(Source: CEPAL, 2004)

lost the capacity to act in a countercyclical manner and the signature of the Central American Free Trade Agreement (CAFTA) will further restrict the region's degree of autonomy.

In interdependent financial markets, capital flows are conditioned by domestic, as well as external factors. Domestic factors include the real interest rate and expectations about the future evolution of macroeconomic aggregates and the performance of the current account. External factors include the international rate of interest, the state of other markets, and changes in the regulatory framework in other economies (Shinji and Esaka, 2001). Recognizing this single fact is of utmost importance for its theoretical and policy implications.

The Mundell-Fleming model promoted by the IMF is marked by serious contradictions (Nadal, 2004), but the IMF thinks that crises only arise from oversight, errors in policy implementation, and a deficient "early warning" system that prevents timely adoption of corrective measures.⁴ The IMF is already proposing changes along these lines, but the really controversial decisions concern the type of macroeconomic policy package that it will recommend to the countries that seek its help. At the very least, the IMF should start by not condemning policies that can shield countries from the effects of speculative capital flows. The IMF should encourage countries to use Chilean-style holding-period taxes to discourage excessive short-term capital inflows.

Perhaps the most important contradiction of the IMF model is that although a flexible exchange rate is critical for adjusting trade imbalances, capital mobility and anti-inflation policies impose severe rigidities to this adjustment causing over-valuation of exchange rates and block the role of the exchange rate as an adjustment variable.⁵ In addition, floating exchange rates are not determined by market balances influenced by the fundamental characteristics of an economy.

Capital inflows without public intervention expand the domestic money supply as demand for assets denominated in the domestic currency increases. This leads to a surplus in the capital account, an appreciating exchange rate, and a drop in the interest rate. This gradually reduces the flow of incoming capital and equilibrium is restored in the balance of payments. But the expansion in the money supply can bring about inflationary pressures and an even greater deterioration of the trade balance. This can be curtailed by sterilizing capital inflows, but this keeps the interest rate at a higher level than the international rate and capital continues to be attracted.

The contradiction is defined in terms of two processes in the model. On one hand, the model requires the interest rate to fall in order to restore equilibrium in the money market in the face of incoming capital flows. On the other, sterilization maintains the money supply constant and a higher interest rate. In practice, the contradiction is resolved through intervention with

sterilization, a higher interest rate, a chronic currency overvaluation, and a distorted adjustment process.

Capital controls contribute to smooth cycles in the capital account, reducing overall economic vulnerability (Furman and Stiglitz, 1998; Ocampo, 2003). In Chile, unremunerated reserve requirements shielded the economy from overabundance of short-term capital and helped attain higher growth rates (Ffrench-Davis and Tapia, 2004). They also protected the economy from contagion at a time of great volatility caused by the Mexican financial crisis of 1994–1995. In Colombia, capital controls also allowed for better handling of maturity periods of external debt (Ocampo and Tovar, 2003). In both cases, capital controls allowed policy makers to regain some autonomy for a counter-cyclical monetary policy.

This use of capital controls is also consistent with the historical record of developed countries which shows long periods of capital controls and only gradual liberalization for capital flows (Eichengreen, 1996). The experience of the past twenty years demonstrates that premature and abrupt liberalization of the capital account is inappropriate for developing countries. Even when strong regulatory regimes continued to exist, most developing countries have found it difficult to adapt to the volatile environment of international capital flows. A flexible approach in this domain of capital controls can play a key role in bringing about stability with adequate foreign investment levels.

Adroit use of capital controls can smooth the cycles of the capital account, enhance stability, and allow for greater independence of monetary policy. This objective can also be attained with the use of balance of payments provisions within the WTO framework. Although these measures were reaffirmed in Marrakesh, they have been left in the backwaters of policy-making thanks to opposition from dogmatic quarters in the WTO, the IMF, and the U.S. Treasury. These provisions can provide a constructive response to external accounts' crises (Nadal, 1996) and should be reconsidered as an important tool in the intersection between trade and financial flows.

Fiscal policy also needs to go beyond the shortsighted objectives of providing strong primary surpluses. In Central America, for example, fiscal policy is used to transfer resources from the real sectors of the economy to the sphere of financial services. This is done not by increasing fiscal revenues, but by cutting expenditures. Data on six Central American countries for the primary and economic balances reveals a clear pattern over the past eight years: the primary balance exhibits either a surplus or a small deficit and the economic balance always shows a deficit (see Table 8.2). On the other hand, public debt service becomes one of the single most important components of public expenditure, with interest payments reaching the equivalent of 12 percent of total fiscal revenues. The transfer of resources from the real to the financial sector has a cost for sectors that are critical for social and environmental long-term sustainability.

Table 8.2 Central American Fiscal Accounts, 1995–2003

	<i>Costa Rica</i>	<i>El Salvador</i>	<i>Guatemala</i>	<i>Honduras</i>	<i>Nicaragua</i>	<i>Panamá</i>
Primary						
Balance (a)	1.9	−0.6	−0.3	−0.2	0.5	2.4
Economic						
Balance (a)	−2.0	−2.1	−1.5	−0.7	−2.2	−0.2
Interest						
Payments (b)	18	12	11	7.2	13.6	11.8

(a) Average percentage of GDP 1995–2003; (b) Average percentage of total fiscal revenues 1995–2003.
(Source: CEPAL, 2004)

Reforming the System

This section will lay out a series of proposals outlining the type of structural reform that is needed in the world trading system to align it meaningfully to the goal of sustainable development. In particular, this section will explore the needed reform in the areas of agriculture, commodity agreements, intellectual property rights, and investment.

Agriculture

The urgent task of reforming the world's agricultural system lies at the crossroads of trade, social responsibility, and the environment. What we do today to the agricultural system of the world will determine the history of our future as a species. Yet, the world has been unable to reconcile adequate food production and distribution systems, improving living standards, and environmental sustainability of the agricultural system. Although global agricultural production has continued to outstrip total population, the rate of growth of yields has been slowing down and today it is one-third that of twenty years ago (Food and Agriculture Organization, 2003). On the other hand, per capita cultivated surface has begun to contract indicating that we have reached the limits of the agricultural frontier in many key areas of the world. Usage consumption rates of irrigation have resulted in overexploitation of aquifers, and heavy use of chemical agricultural aids continues to pollute underground and surface water bodies. And all of this coincides with a situation in which approximately a billion human beings suffers from malnutrition.

The strategic objectives of the Uruguay Round's Agreement on Agriculture (AoA) were to open up the markets of several highly populated countries to exports from the United States and Europe, and to maintain a façade of discipline in the relations between these two giant agricultural producers. It envisaged the reduction of subsidies, but it kept direct production reducing

payments and allowed payments that are decoupled from production. It preserved the capacity of developed countries to maintain highly deleterious export subsidies. According to the World Bank, total subsidies for agriculture in rich countries are close to 300 billion dollars per year (Stern, 2002). Thus, the AoA helped sanctify these subsidies and failed to open market access for developing countries' products while global agricultural commodity prices suffered severe reductions and volatility increased. The URAA left unsolved the complex questions of food rights, economic development, social responsibility, and environmental stewardship.

All of this ignored the fact that the 'invisible hand' metaphor does not work in agriculture. Income elasticity for food doesn't allow for expansion of demand as prices drop. On the supply side, aggregate crop output changes little with price because farmers use all their productive capacity all of the time and cannot influence prices. This is why acreage in the United States has remained constant in spite of price reductions. Summarizing, the current policy based on the false premise that we need to let markets operate freely is unsustainable and should be replaced by adequate supply management policies (Ray, Ugarte, and Tiller, 2003).

In spite of this, the United States abandoned the policy package that sought to stabilize prices at levels adequate for consumers and producers, guaranteeing adequate farm incomes. Instead, it opted for trade liberalization and payment schemes that are decoupled from technology and output decisions. Policy-makers believed this was needed to enable exports to drive agricultural growth, but inducing export expansion through price reductions backfired. Since 1996, world prices for America's chief farm exports have plunged more than 40 percent, but U.S. crop exports did not increase (Ray, 2004). This led to dramatic losses in farm income and increases in government payments to farmers. This spelled trouble for small producers in developing countries as dumping practices destroyed markets, impoverished rural communities throughout the world, and benefited vertically integrated agribusinesses. This is why the difference between consumer prices and the price that producers receive is out of proportion.

The system that the AoA helped enshrine must be drastically redesigned. First of all, developing countries must have the right to use quantitative restrictions as a protection from dumping practices and to de-link their key strategic sectors from the paradigm of the AoA. These quantitative restrictions are compatible with WTO and are recognized by Article XVIII of the original GATT. Safeguards should also be made available to developing countries.

The solution to the global trend of low prices does not rest solely with the elimination of subsidies. Recent studies show that cutting subsidies will not increase agricultural prices and provide farmers with adequate income. At most, it would bring about minor changes in several key crops and small

acreage adjustments (Tiller and Schaffer, 2004). Because global agricultural trade is in disarray, a radically new approach is required. We must replace the old system based on the AoA's naïve illusion concerning free markets with a sound institutional and legal framework that blends sound supply-management policy measures with adequate support mechanisms in all countries. The world needs adequate crop prices that contribute to a healthy and vigorous worldwide agricultural sector (Ray, Ugarte, and Tiller, 2003).

A new institutional arrangement, perhaps a new framework convention, needs to tackle the issues of sustainable agriculture, biodiversity, food security, and access to genetic resources, not on a piecemeal basis, but in one single undertaking in order to reconcile the objectives of food security and responsible environmental stewardship. The new convention should restate the fundamental right of nations to defend themselves from dumping practices and from the market distortions brought about by the concentration of corporate power. Countries would be allowed to determine the level of support to their domestic producers and be subjected to trade-distorting disciplines explicitly defined in this agreement. Support systems should not be considered as a priori market distorting. The new framework should incorporate multinational supply management if durable results are desired.

Commodity Agreements

Over the past century, real prices of primary products experienced a significant declining trend (Ocampo and Parra, 2003). The vulnerability of many countries relying on one or a few basic products for exports puts undue pressure on people and the environment. International commodity agreements (ICAs) can help revert this trend and increase market transparency in agricultural trade. In the past, UNCTAD's mandate was to use ICAs to arrest the deterioration of terms of trade and to stabilize markets whenever there were large fluctuations. Several agreements were set up (coffee, cocoa, rubber, sugar, tin, and tropical timber), but this role was destroyed in the 1980s in the aftermath of the debt crisis and was never restored.

In addition, ICAs can reduce market distortions through the supervision of operations where giant corporations control more than 20 percent of the market. They can stabilize prices at levels that are fair for consumers and producers and dovetail certification and other resource management schemes with commercial trends. Producers that receive a fairer deal through ICAs can be more easily persuaded to improve quality and adopt cleaner process and production methods without exacerbating tensions between trade partners.

ICAs also can blend trade concerns with technical and financial assistance that improve standards while restoring the notion of special and differential treatment. The example of the International Tropical Timber Agreement

(ITTA), currently being renegotiated, is encouraging as an example that helps promote fair trade with sustainable use and conservation of tropical forests. New agreements should learn from the experiences of the ITTA, enhancing its virtues and mitigating its errors. New multilateral agreements should combine sustainable management of resources and the recognition of the legitimate rights of indigenous peoples and other local communities.

A new generation of international commodity agreements could explore ways and means to increase value added raw commodities, providing developing countries assistance to take advantage of new economic opportunities, from processing to packaging. Adding value to these commodities will create forward and backward industrial linkages that generate employment opportunities and have healthy multiplier effects in commodity production chains.

Intellectual Property Rights

The Uruguay Round incorporated intellectual property rights in trade negotiations. Although there may be some genuine questions in the intersection between these two domains, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) imposes unfair institutional arrangements on developing countries. In addition, TRIPs involves an extraordinary distortion of the rationality of the patent system, carrying significant risks for social welfare and the environment.

Original patent protection treaties only required members to set up a patent system. Those legal instruments accepted restrictions in areas such as public health, the environment, and on moral grounds. There was no uniform standard regarding patent life. All of this changed during the Uruguay Round. The TRIPs Agreement imposed on WTO member countries the obligation to grant patents for a wide variety of items, including life forms (Article 27.3[b]). It also imposed twenty-year terms for patents and almost eliminated compulsory licensing. For countries investing very little in R&D, as most developing countries, the TRIPs Agreement spelled bad news.

Already the patent system is plagued with abuses and distortions. For example, a high percentage of patent applications and patents do not involve anything “new,” nor do they imply an “inventive step”; two elements required by every patent system. In biotech industries, many patents simply involve minor changes in molecules of existing products whose patents are about to expire. Many changes do not even have any therapeutic value, violating the “utility” requisite for patents.

Contrary to the views of trade policy analysts, the objectives of free trade clash violently with those of intellectual property rights. The first require competition to attain efficient allocations of resources. The second creates monopoly rights that may entail loss of welfare. This is especially

important in the case of patents, which are statutory monopolies. Patents reward inventors with monopoly rights in return for disclosure of their inventions. In this bargain, society benefits from inventive activity and inventors reap the corresponding monopoly rents. Patent attorneys agreed that this monopoly protection should only be available where demonstrable benefits to society outweighed adverse effects of monopolies. But economists readily embraced the idea that patents act as incentives for inventive activity and research and development. This is inaccurate. Intercapitalist competition is the main engine for innovations (Baumol, 2002). Therein lies the capacity of capitalism to outperform other economic systems when it comes to technical innovations. Patents, on the other hand, serve as important instruments in corporate strategies, rewarding rent-seeking behavior and increasing entry barriers for potential competitors (Baker and Chitani, 2002).

The vast majority of inventions protected by patents never make it to the production stage. This is because patents primarily serve the purpose of segmenting markets in order to extend monopoly rents. They are tools for inter-industry competition. This is why many patents are related to marginal modifications of previously existing products whose protection is about to expire.

Strengthening intellectual property rights (IPRs) in developing countries will not necessarily increase research and development investment (Kumar, 1996). In addition, industrial policy instruments that could be used to enhance assimilation of technological capabilities have been curtailed by the WTO system. This makes technological development very difficult and a strong patent system will not modify this. On the contrary, it may block technological acquisition and may delay innovation and dissemination of information.

The TRIPs Agreement blurs the critical separation between invention and discovery. Granting patents on life forms is the foremost example of this distortion. Already, the number of biotechnology patent applications surpasses the capacity of patent examiners to fulfill their responsibilities. This is a dangerous precedent that was to be reviewed according to Article 27.3(b) of the TRIPs Agreement, but the review has not taken place yet.

Returning to a more rational IPR system requires de-linking intellectual property rights from trade agreements. This is needed in order to redefine a global patent system that is not market-distorting and fulfills its mission to protect inventors' rights. It should not impose wide patentability and long duration for patents and it should abolish patents on life forms, a major element distorting the patent system that has negative effects on human health and access to genetic resources. The notion that this would throw the biotech industry in disarray is preposterous. The real trouble for biotech firms comes

from the irresponsible use of molecular biotechnology and the reprobation of this by the market.

Other areas that need urgent attention include the granting of patents in health and environmental goods. As patents do create barriers to entry, these sectors can be negatively affected by an all-encompassing IPR system. The recent battle over supply of medicines to treat HIV/AIDS patients underscores this. In the future, other patents may block clean technology diffusion in developing countries. Restoring elements of rationality in the international patent system should be accompanied by restoring the capacity of developing countries to design and implement industrial policies.

Investment and Trade

The best example of how the special and differential treatment (S&DT) clauses in the WTO agreements have been betrayed is the agreement on Trade-related Investment Measures (TRIMs). Through this agreement, developing countries have been forced to forego the use of important industrial policy instruments. Policies aimed at increasing local content in value added, or limiting imports to a certain proportion of exports, are not allowed under the current version of TRIMs. As if this was not already damaging enough, developed countries want to strengthen these provisions through investment agreements.

Thus, instead of protecting developing countries against the effects of market concentration, TRIMs shields powerful multinational corporations against public policies in host countries. Some of the policy instruments eliminated by TRIMs are important in the context of industrial policy. Some of them are critical in order to obtain technological capabilities and go into higher value added exports. They are essential to building forward-and-backward interindustry links, and those links carry economy-wide multiplier effects (UNCTAD, 2003a).

Chapter 11 of the NAFTA is an example of unprecedented rights bestowed on private firms against government decisions perceived as detrimental to investors' rights. Firms can start a binding dispute resolution process in special arbitration courts that can lead to compensations paid with taxpayers' money. Panels do not offer the standard transparency guarantees of standard national courts. In a twist of priorities, special and differential treatment is accorded to private multinational firms to the detriment of public interest in host countries. This needs to be reformed, allowing developing countries more policy space. Also, a revision of the TRIMS is required to incorporate the need for greater market transparency through the monitoring of operations of multinational corporations.

Conclusion

The international trading system is not leading to greater prosperity and economic justice. Empirical evidence shows rapid trade liberalization co-exists with slower GDP growth rates and a very large number of poor people across the world. It also co-exists with rapid and severe environmental degradation. Evidently, something is not working as standard economic models of free trade predict (lower prices and greater welfare). The trading system has concentrated on the elimination of barriers to trade and has ignored the task of building up development capabilities of poor countries. In addition, trade agreements are not focused on building a regime for stable prices and fair terms of trade.

Free trade *per se* should not be the top priority of the world's trading system. It is just a tool to further integrate the world's economy into a single entity. But in this process, it is urgent to recognize social and environmental responsibility as the central priorities of the international agenda. Profit-making should stop being the leitmotif around which the world's trading system revolves. If the world's most powerful countries do not shift the balance towards sustainability, the negative consequences of today's irresponsibility will come to haunt us. The question of the survival of our species is involved here.

Notes

1. The author wishes to acknowledge support from the John D. and Catherine T. MacArthur Foundation for his broader research program on alternative development strategies.
2. For a deeper discussion on this point, see Fisher (1983), Sonnenschein (1973), Debreu (1974), and Mantel (1973). A critique of the proof of existence can be found in Benetti, Nadal, and Salas (2004).
3. Financial liberalization was forced upon the world's economy in order to hedge against risk of fluctuating exchange rates after 1973. It was also driven by the symptoms of a global recession at the end of the seventies and a fall in productivity and profit rates in most developed countries. By the time macroeconomic policy started to be conditioned by financial and trade liberalization, macroeconomic stability became the number one priority in the 1980s, leaving behind the commitment to full employment of the Bretton Woods era.
4. See Fleming (1962) and Mundell (1964). The Mundell-Fleming model assumes that markets always clear and that trade liberalization is the best way to organize production and consumption. The close association between the Mundell-Fleming open economy model and general equilibrium theory was acknowledged by its authors (Mundell, 1968) and has been recognized in more recent work (Geanakoplos and Tsomocos, 2001). The linchpin of the connection between the Mundell-Fleming and general equilibrium models is the market clearing

assumption, which, in turn, depends on the postulates of perfect competition and flexible prices.

5. Strictly speaking, the trade balance will deteriorate when the domestic currency becomes overvalued if the Marshall-Lerner conditions are met, i.e. if the absolute value of the sum of the exchange-rate elasticities of imports and exports is greater than one. Whether these conditions are met is irrelevant if the exchange rate is impeded to act as an adjustment variable.

CHAPTER 9

The Caribbean Community in Trade and Environment Negotiations

Taimoon Stewart

This chapter addresses the current issues in the trade and environment debate and the ongoing negotiations in the Doha Development agenda from the point of view of the small vulnerable economies of the Caribbean Community (CARICOM).¹ Trade-related environmental issues are of extreme importance to these countries, but there has been little regional research or policy dialogue about these issues. This is primarily because this region, in its interface with the global community, has to grapple with so many complex issues that technical resources are stretched to the limit and priority is given to areas such as services and agriculture, the most important economic sectors. Erosion of trade preferences has led to serious contraction in many of these economies, and spaces for alternative development strategies through insertion into the globalization process are limited by structural rigidities and resource constraints.

CARICOM economies are briefly profiled to demonstrate the “smallness” and “vulnerability” that are the defining features of these economies, and to illustrate the effects of these features on policy response. The importance of environmental issues for both economic development and sheer survival of these states is underscored. The chapter then examines the major issues addressed in the global arena on trade and environment, including the World Trade Organization (WTO), for impact on these economies, and offers recommendations that could assist policy makers and negotiators on these issues.

Characteristics of Small Vulnerable Economies

Confusion about what constitutes smallness, which economies could be classified as small, and the usage of multiple terms to describe these economies has resulted in the erosion of credibility of the debate on special and

differential treatment (S&DT) (UN Conference on Trade and Development, 2004a, p. 12). The use of land area, the size of population, national income, and the share of world trade, among others, have been advanced as criteria for defining smallness. It is the view here, however, that no single criterion captures the essence of smallness, because several characteristics interact with each other to create the special conditions of “smallness.” These include limited human, financial, and natural resources and small size of market that limits the number of business actors, scale production, and development options. These constraints are compounded by economic vulnerability as a result of insertion into the global economy at a low level of the global product value chain, and with reliance on only a few commodity products. Particularly in the case of CARICOM, vulnerability to natural disasters is another major constraint to development since infrastructure and crops have been repeatedly destroyed in the same territories by volcanoes and hurricanes.

CARICOM countries are heavily reliant on tourism, primary agricultural products traded under preferential agreements, and mineral export (bauxite from Jamaica and Guyana, petroleum and petrochemicals from Trinidad and Tobago, and gold from Guyana). These are all traded at internationally fixed prices. The Bahamas is a major offshore financial center, but other CARICOM countries that have tried to emulate this development option have been limited by the Organisation for Economic Co-operation and Development’s (OECD’s) directives against tax havens. The fishing industry has been significant for provision of food in the domestic market and for export. While some light manufacturing is done, primarily in Trinidad and Tobago, it is mainly capital-intensive assembly production. Trinidad and Tobago is the most industrialized of the economies, having access to cheap energy through its abundance of natural gas and reserves of petroleum. Transnational corporations (TNCs) produce steel, ammonia, methanol, and urea, and they explore and drill for oil.

Trinidad and Tobago has the region’s highest annual GDP at US\$ 8.9 billion, followed by Jamaica at US\$ 6.9 billion and the Bahamas at US\$ 5.2 billion. The rest are all under US\$ 1 billion, ranging from US\$ 835 million in Belize to as low as US\$ 348 million for St. Vincent and the Grenadines. The annual income of most TNCs operating in these economies is more than each country’s GDP. With the exception of Trinidad and Tobago (given oil rents at present), all these countries have a negative balance of payments. (Stewart, 2004; 2001 figures).

The structure of each of these economies was shaped by the processes of colonization to produce for export and to meet consumption needs through imports. As such, sugar cane production defined the physical landscape of these territories, as well as the racial composition and cultural mix of the societies. The Caribbean was the first region of the non-European world to be incorporated into the capitalist world economy in the sixteenth century,

and remains most intensively incorporated into the global economy. There are no hinterlands, or residual indigenous populations, or autonomous local production, except on the mainland territories of Guyana and Suriname. In the case of Belize, the lumber industry was the sole economic activity until migrant indigenous Indians started agricultural production in the mid-nineteenth century. Belize is the only CARICOM country that is nearly self-sufficient in food.

Export specialization at the low end of the product chain was, and is, a defining feature of these economies. Prices of the major export products are fixed internationally. Because of dependence on a single commodity as the major export (and foreign currency) earner, a single negative change in trading arrangements has immediate negative impact on the entire economy. Specialization in commodity production has led to structural rigidities in these economies, with few backward-and-forward links in production systems and little value-added production at the higher end of the product chain. Despite producing and refining petroleum for more than half a century, even Trinidad and Tobago has not gone further upstream to produce higher value-added products, such as plastics.

There is a growing dependence in the region on the tourism to fill the shortfall created by the decline in the banana and sugar industries. The tourism is further limited, however, by the control exercised by international tour operators who, because of their purchasing power, are able to negotiate very cheap hotel rates, tie restaurants into the package at very low cost, and select hotels of their choice. Those businesses that are left out, particularly small hotels and guesthouses, which are usually locally owned, have difficulty getting customers. The tourist sector also is fraught with vulnerabilities because performance depends on trends in the economies of Europe and North America, from which tourist arrivals originate. Slow growth in these economies has a ripple negative effect on the tourism sector. For example, the 2001 terrorist attack on the United States resulted in a severe deterioration of the tourist economies, with immediate impact on employment. For instance, in the Bahamas, more than 40 percent of the hotel workforce was sent home in the immediate week after 9/11.² Loss of market can occur suddenly if a hurricane damages the tourism infrastructure, or if a Northern government were to issue a travel advisory against a country.

These sudden, unexpected blows from external sources have immediate impacts on the entire economy and make them vulnerable. Prone to natural disasters, Montserrat was rendered uninhabitable by volcanic eruption in 1997. Hurricanes are increasing in ferocity and frequency in this region, possibly as a result of climate change. In 2004, for example, Hurricane Ivan destroyed the leading sectors of Grenada's economy and caused an eight-foot rise in sea level that covered almost the entire island of Grand Cayman, while waterfront buildings were gutted by the storm surge, with waves of twenty

to twenty-five feet. The damages amounted to an estimated US\$ 3.4 billion, or 1.33 percent of annual GDP and 80 percent of the population was displaced (Economic Commission for Latin American and the Caribbean, 2005). This does not bode well for the future given the expected rise in sea level that could destroy coastal settlements, destroy airports and hotels in the region (which are on the coast in most islands), and increase the height of storm surges during hurricanes.

Apart from Trinidad and Tobago, whose export earnings have escalated with the phenomenal rise in the price of petroleum, the rest of the economies are in deep trouble. The Windward Islands depended largely on banana exports to the United Kingdom under the LOME Convention, and subsequently the Cotonou Agreement. The successful United States challenge of that regime in the WTO has led to serious erosion of the preferential trade regime and severe contraction of this sector. In St. Lucia, for instance, agriculture contributed 14.6 percent of GDP in 1990, but only 5.9 percent in 2001. In St. Vincent and the Grenadines, the decline was even steeper, dropping from 21.1 percent in 1990 to 8.75 percent in 2001 (ECLAC, 2002, p. 340).

Serious unemployment problems hobble all these economies, and only a few development options are available. Unfortunately, growing unemployment has been alleviated by drug trafficking, as the region has become the transit point for drugs from Colombia en route to the North American market. Concomitantly, crime and violence have escalated in the region, in some countries more than others, and threatens the very moral fabric of these societies.

The narrow tax base, resulting from limited economic activities and tax incentives to foreign direct investors, means that governments in most CARICOM countries have grown to rely on tariff revenue for their income. The reduction of tariffs as a result of liberalization undertakings, the dampening of trade, and the obligation to meet the Common External Tariff of the CARICOM Common Market have led to a serious decline in governments' revenues.

Another important feature of CARICOM's economies is the small size of firms, which are unable to have any impact on world trade. Limited market size imposes limits to growth of firms and their ability to achieve minimum efficient scale. Lack of sophistication of consumers and limited purchasing power dampen the urge to innovate or improve quality and variety of goods and services. For example, in the smaller territories, clients, mainly banana farmers, are reluctant to use ATM machines and insist on going to bank tellers. They also do not use credit cards as they have a great distrust of intangible money. This provides a serious disincentive to the introduction of new products in the banking sector (Stewart, 2004, p. 734).

Concentration of wealth in the hands of the descendants of the plantation aristocracy is still prevalent in CARICOM territories, and economic spaces for entrepreneurial development are limited by the dominance of entrenched

capital. The vast majority of firms is family owned, is technologically backward, is inefficient, is inflexible, and suffers from asymmetric information flows. Skilled human resources are seriously lacking, primarily because of a continuous brain drain from the region to North America. Levels of skills in information technologies are low and bureaucratic systems are archaic in many of the territories.

The uniqueness of the small vulnerable CARICOM states derives from this combination of features that define their economies, together with a lack of wider supportive environment to buffer the fall-out from economic and natural disasters. It is the immediate and pervasive impact on the whole society and economy of a single blow—a decline in commodity price, or loss of market, or a severe hurricane, and the inability to recoup, leading to serious socioeconomic problems—that is the defining feature of small vulnerable economies. The argument that even large economies experience these problems is spurious. They may experience some of the problems some of the times in small pockets of their economies, but affected areas have the rest of the economy to rely on and to help in the reconstruction. The point is that the small vulnerable economies of CARICOM encapsulate all of these weaknesses and vulnerabilities permanently and in concentrated form.

How then, should these economies respond to the policy issues that emerge out of the trade and environment debate and negotiations? One vital consideration that must be taken into account is the permanent nature of many of the features of smallness and vulnerability which negates the utility of “phase-in” periods and “transition time,” both of which presume that the economy could “develop” to come on par with the industrialized countries. That will never happen.

Issues in the Trade and Environment Debate

The drive to include trade-related environmental issues in the WTO and other trade negotiating fora came from the North. This drive has its genesis in the increased awareness of environmental pollution in the North, the growing demands from civil society for the problem to be addressed, and the emergence of consumer demand for higher environment standards. In time, issues such as transborder pollution and the effects of environmental regulation on competitiveness of firms vis-à-vis foreign competitors began to impact WTO discussions and negotiations.

As in other new areas of trade negotiations, such as intellectual property, it is the standards already developed in the North that were put on the table for negotiation, thus placing the burden of compliance on the Southern countries. Producers in the North want to level the playing field, because they fear that their competitors in the South would gain a competitive edge if they do not have to pay the additional costs to meet domestic environmental

standards. While much of the concerns are focused on the bigger countries of the South—China, India, and Brazil, among others—the general principles and policies in the North are applied universally, and small economies such as CARICOM’s are caught in the fallout even though they have no influence in world trade.

Technical Barriers to Trade and Questions of Market Access

Environmental requirements can seriously inhibit exports, particularly from developing countries. The problem lies both in the limited capacity of developing countries’ firms to adjust to the requirements, and the fact that Northern countries develop their standards and regulations with no reference to foreign firms which export to their economies (OECD, 2002; UNCTAD, 2002). Some positive impacts can also result from environmental requirements, such as developing country exporters being able to take advantage of emerging markets in organic food. In addition, people living in the exporting countries often benefit from a cleaner environment.

Developing countries have therefore been particularly concerned about the extent to which environmental regulations are technical barriers to trade (TBTs) that can inhibit market access with potentially trade distorting or protectionist implications. For example, this concern, and the demand to relate environmental standards to the specific situations of different countries, was articulated in Principle 11 emerging from the 1992 Rio Earth Summit, which states that: “environmental standards, objectives and priorities need to reflect the particular environmental and developmental context to which they applied. Standards applied by some countries could be inappropriate and unwarranted economic and social cost to others, particularly developing countries.” This is not to suggest that environmental protection is not a legitimate objective. Yet, at the same time, the emerging regimen of environmental requirements could seriously impact imports and impede market access for developing country exports.

Eco-labeling is a particularly important issue—the use of product labels to inform consumers whether a product is environmentally friendly, or “green.” This debate goes to the heart of national control over domestic policy-making since “environmental friendliness” tends to look at the characteristics of a product itself and also to analyze on the process and production methods (PPMs) involved: how much energy was consumed, whether trees were sustainably harvested, types and quantities of emissions and effluents, etc. The question, of course, is who decides which standards are appropriate and for whom? In this respect, the WTO Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) agreements seek to ensure that environmental measures do not unduly restrict exports and require notification to increase transparency.

To strike an appropriate balance between safeguarding market access and protecting the environment, importing countries need to design environmental measures, which, at a minimum, *ensure transparency and participation*. One way to tackle this long-standing source of conflict in the trade and environment realm is not to weaken standards, but to enable exporters to meet them. Hence the calls for *technical assistance* to help developing countries meet environmental requirements and participate in the standards-making process. Another element is to identify *green or environmentally friendly products* of export interest to developing countries. For example, in 1996, the United Nations Conference on Trade and Development (UNCTAD) launched the BIOTRADE Initiative during the Third Conference of the Parties of the Convention on Biological Diversity (CBD). This initiative is establishing partnerships with national and regional organizations to enhance the capacity of developing countries to produce value-added products and services derived from biodiversity.

The issue of the effects of environmental measures on market access is of greatest importance to CARICOM countries. Recent research findings by UNCTAD (2002) suggest that environmental (and health-related) technical requirements are becoming more stringent and complex. Such requirements include mandatory regulations, voluntary standards, labeling requirement (either mandatory or voluntary), packaging regulations, and certain SPS measures. Indeed, it was found that just to maintain market share with no price premium, firms in developing countries have to invest significantly to comply with voluntary environmental requirements and conformity assessment, including certification. In recent years, shipments of papaya and T-shirts were returned to CARICOM countries (Jamaica, Barbados, and Belize) because of unacceptable pesticide residue in the case of the papaya and the dyes used in the T-shirts. Take-back obligations for packaging of fruits and vegetables mean that exporters from the Windward Islands, for instance, have been paying for the return of boxes used to transport bananas and other fruits to Europe. The increased cost is significant for these small farmers.

Of particular concern, now, is the trend whereby the large supermarket chains in the European Union (EU) are imposing environment-related requirements on suppliers, particularly in the food sector. This protocol requires rigorous record keeping by producers and suppliers and the verification of minimum social, environmental, and food-safety standards throughout the supply chain for the production of fresh fruits, vegetables, and flowers (UNCTAD, 2002). It therefore includes traceability of the product back to the farm, record keeping and internal self-inspection, recording inputs to production, waste and pollution management, worker health, safety and welfare, and process and production methods. Since 2002, the EU has also begun requiring exporters of fish and fishery products to label consignments identifying species name, production method, and catch area (UNCTAD, 2004b).

Small family farms and artisan fishermen in CARICOM are hard-pressed to comply with these increasingly stringent technical and phytosanitary requirements. Most firms in CARICOM are too small and too unsophisticated to keep up with information on, and comply with, labeling requirements. Further, the cost of obtaining eco-labels in the export market is too high for most of these small firms.

The unilateral imposition of such restrictions on small countries, which do not have the means or ability to retaliate or challenge such restrictions, are often not only trade distorting but are often also without environmental merit. For example, in 1992, Trinidad and Tobago and Suriname were the first countries, together with French Guiana, to have a ban imposed on imports of their shrimp into the U.S. market because they were not using turtle excluder devices (TEDs) in their nets. This ban was repeated yearly until the fishing industry complied. However, investigations by this researcher revealed that the original requirement had been inappropriate for Trinidad and Tobago because shrimp is harvested on the west coast where turtles do not feed (because the water is brackish due to the outflow of the Orinoco River). Turtles are found on the east coast, but no harvesting of shrimp takes place there. The TEDs that were installed merely collected rubbish and reduced the shrimp catch. In addition, the opening in the TED was too small for the turtles found in the Trinidad waters, that is, the leather back turtles. Moreover, scarce resources were diverted by the government from a turtle protection program on the east coast, where turtles are under attack from human predators, in order to monitor compliance with the U.S. directive (Stewart, 1998).

This is a clear illustration of how PPMs from one country can be inappropriate for another. Trinidad and Tobago had no option but to comply with the requirement imposed by the U.S. because of clear power asymmetry and vulnerability (most of their petroleum is sold to the U.S., and most imports come from the U.S.). Simply shifting to another importer is also not possible for small economies with structural rigidities, since any disruption in the trade of their major export commodity or retaliation by the U.S. in other sectors of the economy would send the economies into a tailspin.

In essence, it is very difficult—and nearly impossible in some cases—for CARICOM's micro firms to comply with most of the emerging requirement on handling and labeling. Further, these small countries have little meaningful participation in standards-setting organizations at the international level. With the implementation of the CARICOM Single Market in January 2006 and the establishment of the CARICOM Regional Organization for Standards and Quality (CROSQ) in February 2002, it is hoped that the pooling of resources and regional representation in international standards-setting bodies would make a difference. The region will still need considerable capacity building and technical assistance, however, *to increase its*

participation in international standards-making process. It is important to point out, though, that all the capacity building and technical assistance in the world would not change some of the constraints experienced by small vulnerable economies in meeting external environment standards, and that consideration must be given to allow permanent concessions for such disadvantaged economies.

The Committee on Trade and Environment (CTE) has been instructed in the Doha Ministerial Declaration to give particular attention to “the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them.” Although this is part of the “non-negotiating agenda” of the CTE, various aspects of market access and trade liberalization discussed above are under negotiation in other WTO bodies: agriculture, fisheries, nontariff barriers, and environmental goods and services. CTE can help to develop common ground and build consensus in these areas. The key at this stage is to ensure that environmental requirements conform to the following criteria: a) they must be designed in a manner that is consistent with WTO rules; b) they must be inclusive; c) they must take into account capabilities of developing countries; and d) they must meet the legitimate objectives of the importing country.

Subsidies in Fisheries

The issue of fisheries subsidies is highly contentious and politicized. With global fish stocks seriously depleted, there is a need to put in place sustainable fisheries management in order to reduce fishing capacity and fisheries subsidies (UN Environmental Program, 2004). However, the best approach to do this remains unclear and the trends are disturbing.

The question of whether particular subsidies support or undermine efforts to manage a sustainable fishery depends on the type of management regime in place and the interactions between policies. Clearly, if fishing is unrestricted, subsidies that either boosts revenues or lower costs have a stimulating effect on effort, and hence encourage overfishing. If sustainable management regimes are in place, subsidies would in effect amount only to income redistribution to fishermen. If fisheries management is inadequate, however, subsidies tend to exacerbate the inherent market failure relating to the open or common access nature of fisheries. Moreover, this argument ignores the political economy considerations. If entry into the fishery is not restricted, along with the catch, subsidies will lead to more capacity than is needed to harvest the resource efficiently. This overcapacity will drive down incomes and lead to pressure being placed on fisheries managers to set fishing levels higher than desirable from a sustainability perspective.

The issue of fisheries subsidies is of vital importance to CARICOM countries. Artisan fishing is an important economic activity sustaining the

livelihoods of many families and contributing to foreign exchange earnings in these small islands or low lying coastal states. According to UNEP (2004) artisanal fisheries comprise 45 percent of global fisheries and 90 percent of fish workers worldwide. In CARICOM, it is an important source of food for the tourism industry and the local population and contributes in some measure to food security. A local supply of food that does not depend on foreign inputs and, therefore, foreign currency earnings, is of supreme importance to CARICOM countries that are otherwise heavily dependent on imported food products.

Most fisheries workers in the CARICOM countries are low income workers and government support contributes in no small measure to sustaining the livelihoods of this group. It is, therefore, important to distinguish between subsidies granted to large operators who use fishing methods that overfish indiscriminately and kill nonedible species, and the small fish workers in small economies who use artisan methods of fishing. While it is generally argued that removal of environmentally harmful subsidies is necessary to achieve sustainable fisheries management (Shaw and Schwartz, 2002; UNEP, 2004), circumstances in small vulnerable economies such as those in CARICOM deserve special and differential treatment, including provision of exceptions for artisanal fisheries.

Moreover, for the smaller, most vulnerable states in CARICOM, granting permission for charging a fee to foreign vessels to fish in their territorial waters is an important source of income. Given the desperate state of their economies and their lack of capacity to exploit the resources in their territorial waters, this is one of the few avenues available to them to earn foreign currency income. What is necessary is proper management of this activity to prevent indiscriminate overfishing and to protect fish stock. The current lack of good management is disturbing for the health of the fish stock and the livelihood of artisan fishers, but also in the larger context of sustainable development, including preserving the tourist product, that is, the coastal waters, reefs, and diving environment that is vital to the tourism industry in these otherwise impoverished economies. This is an area where technical assistance for capacity building is vital as there is awareness and the will, but not the capacity. In many CARICOM countries, particularly the smallest and most impoverished island states, human resources are so limited that in some cases just one or two technical persons in the Ministry of Trade is responsible for all WTO issues.

Trade in Services and the Environment

The CTE is mandated to examine the relationships among services, trade, and the environment. This issue is of importance to CARICOM because the major economic activity in all of these countries, with the exception of

Trinidad (but including Tobago), is the export of tourism services. Moreover, CARICOM countries are calling for liberalization in mode 4, which relates to the movement of people for temporary work, because of the need to alleviate pressure on the limited resources in these islands. Remittances from migrant workers are an extremely important source of income for many people in CARICOM countries and go a long way toward alleviating poverty; which, in turn, lessens poverty-related pressures on the environment. Current emigration policies in the North are creating a brain drain from CARICOM countries, resulting in severe shortages of human resources at the professional level.

The tourist product is based on the offering of a holiday experience premised on an unpolluted environment. The inherent contradiction is that in these small island states with fragile eco-systems, the influx of tourists—which exceeds the size of the local population threefold and more—puts unsustainable pressure on the environment. Disposal of sewage and solid waste is a major problem because the islands are so small and do not have the capacity to handle such large transient populations. Fragile marine ecosystems are threatened. Excessive protein in coastal waters, caused by sewage outflow from hotels, has caused algae growth, spoiling the pristine beauty of some of the most stunning beaches in the Caribbean. Yet, the sector is controlled by TNCs, which operate with impunity to extract profits and remit them out of the economy without internalizing the cost of environmental services or reinvesting to repair and ease pressure on the environment.

The environmental impact of the cruise ship industry is equally damaging, but with even less return to the host economy. The issue of waste disposal is particularly worrying. Although there are international rules governing disposal of waste in territorial waters or the high seas, incidents of dumping occur repeatedly in the regional waters. Solid waste discarded from cruise ships litters the beaches of the Caribbean. CARICOM countries should have leeway to demand rigorous record keeping of the place and time of sewage and solid waste disposal and have regular audits of their records for verification. Some of the Eastern Caribbean countries levy an environmental tax of US\$1.50 on each tourist entering the country. However, given the fragility of the ecosystems of these small islands, the tax should be increased. It is uncertain whether the sum was decided based on a calculation of the cost of cleanup and handling of waste or simply determined through negotiation with the TNCs controlling the cruise industry. There is a clear power asymmetry here whereby the developed countries are able to impose stringent regulations to protect their environment, but small economies are unable to discipline TNCs operating in their economies because they risk losing the single economic activity that underpins economic development. This issue urgently needs to be addressed in the interest of sustainable development in small vulnerable economies. In the services negotiations in the WTO, an

issue of importance is the classification of the cruise ship industry under tourism, and not marine transport, as is presently the case. Ironically, one way of doing this is by having an effective multilateral competition agreement that could promote cooperation between competition agencies. Developing countries, however, are not ready to entertain such an agreement in the WTO.

The Relevant Provisions of the TRIPs Agreement

Several developing countries—including India, Brazil, and African countries—have forwarded specific proposals to address the imbalance in the Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement with respect to access to genetic resources and the need for benefit-sharing with owners of such resources. Key issues in this regard include the origin of genetic materials and traditional knowledge; coherences between the TRIPs Agreement and CBD requirements; the patenting of life forms; the benefit-sharing of patent benefits; prior informed consent (PIC) from holders of genetic resources; and disclosure of genetic material used (Shaw and Schwartz, 2002, p. 139). These issues are also of importance to CARICOM countries, particularly access to genetic resources and traditional knowledge.

Countries such as Guyana, Suriname, and Belize are rich in genetic resources and traditional knowledge. The island states of CARICOM are rich in marine genetic resources. However, the custodians of such resources are, for the most part, unaware of the ulterior motives of “bio-hunters” and the issues surrounding biopiracy. They are naively willing to share their knowledge and information. This trait has its roots in the communal values found in the traditional sectors of these societies, as opposed to the individualism and self-interest that underpin values in Western civilization. It is worthwhile to remind ourselves of the EU requirements of traceability of a daunting list of inputs to production of fresh fruits, vegetables, flowers, and fish, and contrast that to the reluctance on the part of industrialized countries to accept traceability of genetic resources as mandatory. While it is not necessarily the same firms that are resisting compliance, it is the principle that matters. There is also the consideration, of course, that many inventions are not patented, and are protected by trade secrets within the firm and this gives even less opportunity to those who have nurtured traditional knowledge to benefit from its use.

Another issue of relevance for CARICOM countries is the uncertainty and risk associated with introducing genetically modified organisms (GMOs) into the natural environment and consumption of genetically modified foods by humans and animals. The vast majority of seeds for fruits and vegetables and embryo for poultry and other life stock are imported from the United States, and there is no screening for GMOs, which are now being freely

introduced into the CARICOM environment. Labeling of GMOs could go a long way toward controlling this risk to the environment. Interestingly, the issue of labeling of GMOs also reveals the expediency with which the United States guards its commercial interests. The U.S. insists on the rights of its consumers to demand eco-labeling of products, ignoring the complaints of developing countries of increased costs and difficulties of complying. Yet, the U.S. refuses to accept responsibility for labeling of GMOs and advances the argument that it would be too time-consuming, difficult, and costly.

The Relationship between WTO Rules and Multilateral Environmental Agreements

Multilateral environmental agreements (MEAs) have been negotiated to deal with global environmental concerns. Developing countries have generally been supportive of trade provisions in MEAs, including those related to bio-safety, the Montreal Protocol, trade in endangered species, and to include trade restrictions in MEAs that are compatible with WTO rules. According to one estimate, however, out of more than 240 MEAs in existence, only 25 include explicit trade restrictions (Tamiotti, 2003).

Developed countries have voiced concerns about the ambiguity of the relationship between trade restrictions in MEAs and WTO rules, and are advocating predictability and legal certainty to avoid unnecessary conflicts. Within the debate in the WTO, developed countries have expressed concerns at the growing number of disputes surrounding MEAs, such as the EU-Chile swordfish dispute that was taken to both the WTO Dispute Settlement Body and to the International Tribunal of the Law of the Sea (before being settled out of court), illustrating that there could be a conflict of jurisdiction. Developing countries, by contrast, are adamant that Article XX of GATT provides sufficient clarity in dealing with trade restrictions in MEAs and therefore needs no amendment. Their concern is to keep the balance of rights and obligations in the WTO intact, and they fear that any changes to Article XX could introduce loopholes for imposing protectionist measures.

For CARICOM countries, the main consideration is that there may not be adequate resources to meet the obligations of MEAs to which they are a party, and this could be a disincentive to joining an MEA. Trade measures could therefore be applied to them in unjustified circumstances. In this respect, providing technical and financial assistance and capacity building for compliance of MEAs are of critical importance to these countries and have been an important component of developing countries joining MEAs. For instance, though CARICOM countries are members of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and try to enforce its prohibitions, there are repeated instances of smuggling of wildlife from and into these countries because of a lack of enforcement capacity.

Based on the principle of “common but differentiated responsibilities” in dealing with global environmental concerns, it is critically important that technical and financial assistance and other capacity building modalities are included in MEAs so that small vulnerable economies such as those of the CARICOM countries could meet their obligations. Human resource limitations and a somewhat truncated approach to policy formulation lead to little or no consultation across Environmental Agencies and Ministries of Trade in many CARICOM countries. For many years, there was no representation of CARICOM countries in the WTO CTE, and while there is some representation now, their presence is so limited that they have no impact.

While CARICOM countries have gone a long way toward strengthening their negotiating capacity through the creation of the CARICOM Regional Negotiating Machinery (CRNM), there is extremely limited technical capacity within the CRNM and, as such, a necessary prioritization of subject areas for sustained focus and research. Only in 2006 has CRNM officer been assigned a dedicated Trade and Environment portfolio to cover EPA negotiations. This is largely because the subject has tended to be outside the realm of mainstream trade negotiations and has not been identified as a priority for CARICOM in its external trade negotiations.

Market Access for Environmental Goods and Services

According to *The Economist* (June 3, 1995), the market for environmental technologies in 1990 was estimated to be US\$ 200 billion. This had increased to over US\$ 350 billion in 1992, with an estimated increase in worldwide spending on environmental protection of US\$ 590 billion by 2000 (Trade Promotion Coordinating Committee, 1993). According to UNCTAD (2004b), trade in environmental goods and services was expected to exceed US\$ 600 billion in 2005, with environmental services exceeding goods.

A report to the U.S. Congress by the Trade Promotion Coordinating Committee (1993) indicated that the highest future growth is expected to be in developing and middle-income markets. The report recommended that the U.S. government exert pressure to force governments in Latin America and the Caribbean to reform their environmental monitoring and regulatory frameworks, as this would create demand for environmental goods and services. It explicitly points to the use of technical assistance programs developed by U.S. government agencies for the same purpose in potential export markets.

It is part of the cyclical pattern of growth and decline in a techno-economic paradigm that demand for environmental goods and services have peaked in industrialized countries and that there is excess capacity that could be utilized through export of these goods and services to the South. This is no different from earlier cycles of export of goods and services from the North to the South that utilized excess capacity in the prevailing techno-economic paradigm of

production techniques and accompanying human resource skills in the North (see Jenks, 1927). This explains the urgency of liberalization of markets for environmental goods and services, one of the fastest growing areas of international trade. It also, in part, explains the pressure to have developing countries adopt national environmental standards and regulations, since this creates a market for environmental goods and services. This is not to say that there is no value to CARICOM countries adopting environmental regulations and importing environmental goods and services. It is, rather, to make transparent the benefits accruing to the North, and the accompanying need for South countries to filter the “offerings” for what is useful and needed in their own economies.

UNCTAD (2002) research has shown that trade in environmental services is relatively free of restrictions. A problem arises, however, from firms’ need for a commercial presence, because some environmental services involve considerable investment, and ownership becomes an issue. Firms also need access to complementary services, such as engineering, legal, consulting, and analytical services. This necessarily involves widening the scope of the negotiations on services, including issues related to ownership by foreign companies, movement of people, etc. (WTO, 2002).

CARICOM countries have very liberal regimes for environmental services. Indeed, loans from international financial institutions and donor assistance coming into the region are generally tied to use of environmental services from donor countries. There is little capacity to provide environmental services in CARICOM countries to deal with more complex forms of pollution (end of pipe technology). There is little or no sophisticated preventive technologies produced locally, as these economies are import dependent.

CARICOM countries could adopt a proactive stance, however, by focusing on environmental goods and services for which they have the potential to develop local expertise. Discussions in the WTO are currently centered on lists produced by European, North American, and some East Asian countries. CARICOM countries are net importers in these lists and research is needed to identify goods and services where the CARICOM region might have advantages. There is also the danger that some multiple-use goods could secure market access under the guise of being environmental goods and thereby bypass existing tariff regimes. This is important for CARICOM countries given their dependence on tariffs for government revenue.

Domestically Prohibited Goods

A glaring omission in the WTO negotiations is the issue of export of domestically prohibited goods (DPGs) being exported from the North to the South. It is unethical, yet condoned by the world trading system. The issue of DPGs was first raised in 1982, and a working group on DPGs was formed in 1989.

The issue was eventually incorporated into the Group on Environmental Measures and International Trade in 1991, and then the CTE in 1995. While there is international agreement that prior informed consent must be obtained for export of DPGs, this agreement is inadequate, as many developing countries are not technically equipped with adequate testing equipment, knowledge, and information to evaluate the dangers of the product. Moreover, compliance with the agreement is voluntary and does not have the clout of a WTO agreement, which is backed by dispute settlement mechanisms and enforceable sanctions. Thus, it is a glaring example of the double standards of the Northern countries, which are imposing stringent environmental requirements on goods and services entering their countries, but are dumping environmentally harmful products in the South.

For example, a common problem is the export of products whose expiry dates have passed. CARICOM countries have not only been the recipients of such products, but have had the backlash of having shipments of agricultural products returned from the U.S. because of residue of banned chemicals which had been imported from the U.S. in the first place. More worrying still is the phenomenon of parcels turning up in St. Vincent and the Grenadines and Grenada, among other islands, addressed to unknown persons and containing materials that are suspicious and possibly hazardous. Without adequate testing facilities, officials were unable to even determine how to dispose of the materials. It is imperative that the industrialized countries be made to discontinue the export of DPGs and to stop the practice of dumping hazardous wastes in developing countries.

Conclusion

This chapter examined several issues of critical importance to CARICOM countries as these countries attempt to address trade and environment issues. The impact of environmental standards on market access is the most critical concern. One possible solution is to provide technical assistance and capacity building for developing countries in order to help them expand market access for their exports, and adjust to and take advantage of new market realities. Participation and transparency also are key elements of any CARICOM agenda, because they can help create a predictable and stable market environment for export-led development in the region. In this regard, it is also apparent that CARICOM countries lack the capacity to participate effectively in the international process of standards making.

While CARICOM countries may have an interest in the negotiating mandate on MEAs and environmental goods and services, the crucial developmental concern of market access has been left off the negotiating agenda and relegated to continued discussions in the CTE. Market access must be placed at the center of the discussions on the links between trade

and environment. The key is to promote sustainable development through enhanced market access, particularly for developing countries. After all, achieving sustainable development is one of the WTO's core objectives. Achieving a balanced policy that safeguards market access while enabling measures to protect the environment is a challenge that lies at the core of the Doha Ministerial Declaration.

The growing acceptance of process and production methods (PPMs) as part mandatory and voluntary labeling schemes is a particularly worrisome to CARICOM countries. Such schemes have the effect of imposing one country's standard on others that may have very different environmental and socioeconomic realities. The WTO has effectively abdicated its responsibility in the critically important intersection between the trade and environment agendas by leaving this issue to "market forces" that are likely to work to the detriment of developing countries.

The problem of export of DPGs is a common concern of many developing countries. The opportunities presented by the agricultural product market for environmentally preferable products (EPPs) may not be easily accessible to CARICOM exporters because of the extent of usage of chemicals that are banned in Northern markets, but which are imported from those markets. However, there may be windows of opportunity for CARICOM, particularly in organic farm products. Collaboration between the Ministry of Trade and the Ministry of Agriculture to promote such production methods is essential to realizing this opportunity.

In the Caribbean, the major natural resource that is exploited for export (apart from bauxite in Jamaica, oil in Trinidad and Tobago, and gold and bauxite in Guyana) is the marine environment for tourism. Thus, the need for sustainable development and usage of this natural resource is a critical issue. The control of TNCs over the tourism sector, however, places serious hurdles in the pursuit of sustainable tourism strategies. Market opportunities exist for developing eco-tourism in CARICOM territories, and there are already some successful eco-tourist offerings, particularly in Dominica and Tobago. The bulk of the tourist product in the region, however, has already matured as a lower-end sand, sun, and sea product, with all the accompanying environmental pollution and pressures. If the region is to move to a higher-end, more environmentally friendly tourism sector, then a strategy of disciplining the TNCs and internalizing the environmental costs of tourism will have to be considered. Given the asymmetries of power and influence, this will require direct and active support from Northern governments.

Toward a Southern Agenda

Building a Southern Agenda around the concept of sustainable development has become a priority of the South (Najam, 2004). This agenda, however,

must be grounded in the realities of the international system in which major actors at the corporate and national levels prioritize profit-maximization and commercial advancement over all else. This is a fact of the capitalist system, and a Southern Agenda must be grounded in it: Calls by the South for fair play and the voluntary adoption of measures that would hurt the profits of TNCs are futile.

When one examines the concerns of CARICOM countries, the conduct of TNCs feature strongly. The major sectors of CARICOM economies are controlled by TNCs. This is the case with the petroleum and petrochemical industries in Trinidad and Tobago, the gold-mining and bauxite industries in Guyana, the bauxite industry in Jamaica, and the tourism industry across the region, all of which are major polluters of the environment. TNCs that operate in the region are much more powerful and wealthier than the governments of the region. As such, it becomes difficult to control their conduct, either because they have the power to retaliate and hurt the economy, or they can bribe public servants in return for free rein in the economy. Corporate responsibility in trade and investment by TNCs could stem the major sources of environmental pollution in the region and go a long way toward achieving sustainable development objectives. This is also the case with the export of domestically prohibited goods and dumping of hazardous materials in the region by TNCs. Measures to ensure corporate social responsibility, including mandatory records of emissions and waste disposal, applying the polluter pays principle, and audit of records should be required. Corporate responsibility is also needed to stop biopiracy and cultivate a culture of fair benefit-sharing from the use of traditional knowledge.

Because there are no sanctions against such behavior, however, corporations will assume such responsibility only if it wins them public favor and, therefore, positively affects their profitability. It is a misnomer to say that nation-states engage in trade; in fact, it is firms that trade, and TNCs, in particular, dominate international trade. On the one hand, it is widely accepted that ours is now a global economy with global supply chains. On the other hand, the rules of the WTO apply only to states. It is therefore incumbent on the South to demand trade rules that also govern the conduct of transnational corporations. Efforts to reform the WTO should include this reality. There is precedent in the OECD Guidelines for Multinational Corporations. The UNCTAD Set of Unilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business also focus on TNC conduct, but specifically on anticompetitive conduct.

Developing countries have totally rejected competition policy negotiations in the WTO, but elements of an international rules-based agreement on competition policy would be very useful for developing countries. The South should take the initiative and press for a negotiating agenda that has elements of a competition regime, combined with restrictions on other conducts by

TNCs that negatively affect developing economies. For instance, the South was successful in setting up the trade, debt, and finance working group. Emulating this example, they could press for a Working Group on Rules Governing Corporate Responsibility in International Trade and Investment that could be a forerunner to negotiations. The totality of TNC behavior must be policed, rather than just its anticompetitive conduct. If the North could get its issues, such as intellectual property, investment, and government procurement, on the WTO agenda, which serves the TNCs' interests, why can't developing countries use their collective strength to achieve the same objectives in areas of critical interest to them?

Transparency of information and facilitation of information flows are critical, particularly to small firms, in enhancing their ability to meet the requirements of environmental standards and regulations in export markets. Small firms in the region face significant capacity constraints, however, which must be urgently addressed. Additionally, Northern firms should be required to provide the same level of information and traceability in their use of the South's genetic resources, that developing country producers—especially those exporting agricultural and fish products to Europe—are being forced to make available to Northern markets. As an immediate step, it should be made mandatory to label all GMO products accordingly. Furthermore, transparency and participation in the development of environmental standards and regulations should be obligatory, not voluntary.

Capacity building and technical assistance are the overarching pressing need for CARICOM countries so that they could: comply with obligations in MEAs; overcome obstacles to market entry erected by handling, labeling, and safety requirements; gain access to environmentally sound technologies; develop an environmentally friendly tourism product; monitor and manage usage by foreign licensees for fishing in territorial waters; preserve biodiversity; and manage access to genetic resources and traditional knowledge. It is important to stress here that requests for capacity building and technical assistance to CARICOM should not be seen as a weak response to the challenges posed by the daunting compliance agenda. Instead, such requests must be put in the context of these economies' extreme smallness, volatility, and vulnerability; severe hemorrhaging of skilled human resources; and limited financial resources. Despite the many challenges facing them, CARICOM nationals have made great contributions in the international arena in diverse areas. There is a high quality of human resource that is easily trainable. Technical assistance and capacity building can and does make a difference.

While negotiations to reform fisheries subsidies are a step in the right direction, the concerns of artisanal fisheries in the CARICOM region need to be taken into consideration when devising a framework for subsidy removal.

Finally, it is important that CARICOM countries take action to strengthen their internal capacity to negotiate in the international fora. The creation of the CRNM and its maturation over the last seven years to represent regional interests with solid research and trained negotiators is a first major step in the right direction. The Achilles heel in this mechanism is the institutional links required for research and analysis at the national level, and the processes by which these are translated into negotiating positions that support sustainable development. In the context of trade and environment, this is particularly inadequate both at the national and the CRNM level, and it is urgent that the CRNM strengthen CARICOM's representation in all parts of the WTO, including the CTE, and press for the specific issues of small economies into the discussions, debate, and negotiations.

Notes

1. CARICOM consists of Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat (still a colony of the UK), St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The Cayman Islands has observer status in CARICOM. Within CARICOM there is a subregional grouping, the Organization of Eastern Caribbean States (OECS), consisting of Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. The OECS countries and Belize are regarded as less developed countries within CARICOM and are granted special and differential treatment. A deliberate decision was made not to locate the study in the "Caribbean", as all states bordering the Caribbean Sea now claim that identity. This includes the much larger states of Venezuela, Colombia, and Mexico.
2. Interview with the Director of Tourism, Government of the Bahamas, May 2002.

CHAPTER 10

Trade and Environment in Asia: Snipping the WTO's Gordian Knot

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This chapter argues that developing countries should respond to trade and environment issues and seek to develop a realistic, proactive, and positive agenda of trade liberalization. Rubens Ricuperro, then Secretary General of the United Nations Conference on Trade and Development (UNCTAD), was amongst the first to propose the need for such an agenda, which he did during the 1996 Ministerial meeting of the World Trade Organization (WTO) and later elaborated in an UNCTAD (2000) paper. A positive agenda might minimize the possibilities of developing countries being made victims of trade protectionism and increase the prospects of their benefiting from giving due and appropriate attention to environmental issues in the trade context in a concessionary manner. Conversely, a negative agenda—one that lists only wants, without addressing the non-trade concerns of the developed countries—would only perpetuate the impasse in negotiations with the North.

For contextual purposes, this chapter focuses on the reactions of and recent developments in the member states of the Association of Southeast Asian Nations (ASEAN). The vast majority of Asian states, including the more affluent states of Southeast Asia and all of South Asia, have generally opposed environmental conditionalities on trade and have expressed doubt over the appropriateness of linking trade to the environment. Despite this broad common position, however, a focus on this region poses the significant challenge of how to address the myriad perspectives of developing states in Asia. Significantly, East Asia is perhaps the most diverse region in the world. For example, the per capita income, in purchasing power terms, of Singapore is twenty-five times that of Lao PDR, and the gap between the two countries' institutional capacities to manage development may be greater still. Concurrently, a recent study by the World Bank (Krumm and Kharas, 2004)

observed that emerging East Asian economies² have seen their share of world exports more than triple in the past quarter-century, from 5.4 percent in 1975 to 18.7 percent in 2001. Their trade with one another has grown faster than their trade with any other market, and now makes up 6.5 percent of global trade. Broad measures of development in East Asia have improved at the same quick pace; since 1990, more than 280 million people have seen their incomes rise above a poverty threshold of US\$ 2.00 a day.

Against this background, some analysts estimate that East Asia would benefit more than any other region from global liberalization of the potential shown by its dynamic exporters (World Bank, 2002). As a caucus within the WTO, however, ASEAN has evidenced such irreconcilable differences that meaningful collective action during negotiations is extremely difficult to achieve. Moreover, ASEAN members seem to lack the will to overcome differences and find common denominators for cooperation (Sally, 2004, p. 14).

In short, the notion that regional groups will naturally have common positions and interests, as well as the broader notion of a single “South,” needs to be understood in the context of the prevalent and growing diversity within these groupings. Generally, however, the common analysis of North-South divides is still somewhat valid, especially in regard to the role of the G20/22 and China since the Cancún Ministerial meeting.

Given the above, this chapter seeks to identify ideas for a positive Southern agenda and that may help “snip the Gordian knot” of trade and environment. The following suggestions seek to make the most of the current impasse in WTO negotiations and the shifting emphasis on regional and bilateral trade arrangements: 1) greater attention should be given to trade and environment issues in regional and bilateral trade arrangements; 2) as nations open up their markets, each must be encouraged to undertake and assisted in undertaking systemic and detailed national assessment of the links between trade and environment as regard their economic and ecological concerns; and 3) policy processes, dialogue, and cooperation are needed within the WTO to lessen the controversies over unilateral compulsion and the negative sanctions that attach to trade-environment issues. Instead, I propose a trade and environment policy review process that places emphasis on pre-litigation dialogue, cooperation, and assistance.

The discussion begins with background information that traces the development of the trade and environment discussions in the North-South context. It then identifies the key debates that underpin such discussions and examines the clauses and principles most relevant to the trade-environment link. The chapter then focuses on critical institutional questions about the General Agreement on Tariffs and Trade (GATT) and the environment within the WTO, after which it sketches a potential positive agenda for the South and outlines ideas for institutional processes that could help move the trade and environment debate beyond its present impasse.

The Ebbs and Flows of Attention

The history of trade and environment issues within the WTO has been one marked by strong controversy and grudging allowance, and attention to these issues ebbs and flows. This vacillating attention does not mean, however, that there has been no progress in this controversial area; nor does it indicate that the issues have been settled.

Trade-environment issues did not feature strongly, for instance, in the failed WTO talks in Cancún in 2003. Concerns over them remained a “silent issue” at Cancún, unstated and unseen but felt, nevertheless.

Before the conclusion of the Uruguay Round in the early 1990s, on the other hand, controversies about the Tuna-Dolphin case abounded.³ This motivated members to allow the Committee on Trade and the Environment (CTE) to be set up, to study the issues and report on actions to be taken.

The CTE report was presented at the 1996 WTO Ministerial in Singapore, but it was insubstantial and given little attention, as the trade-environment issue was held captive to discussions on agriculture. Lack of progress on the issue was emphasized by another controversial case, the Shrimp-Turtle case (1998), and its decision by the WTO dispute settlement panels and Appellate Body.⁴

Further discord erupted at the 1999 Ministerial meeting in Seattle, where the environmental cause was taken up by street protesters who questioned the pace and direction of globalization and free trade, as embodied by the WTO, and dramatically disrupted the meeting.

The 2001 Doha Ministerial Meeting accommodated the trade-environment issue, and some progress was made, with negotiations resulting in agreement in several specific areas. These areas included the relationship between WTO rules and specific trade obligations in multilateral environmental agreements (MEAs), information exchanges with MEA secretariats, and reductions in tariffs on environmental goods. In addition, the meeting's work program promised to identify win-win situations in which reductions in trade barriers would benefit trade and the environment, and to examine labeling requirements for environmental purposes.

Progress on these agreements has been slow, however. If the history of trade-environment issues in the WTO is a guide, we may expect differences between developed and developing countries to sharpen and further contentions to arise. Developing nations' nervousness about environmentalism stems partially from the track record of many developed countries, which have unilaterally imposed environmental standards that are often duplicitously designed to give preference to the developed countries' producers (World Bank, 2001). Developing nations are thus hesitant to embrace a call for sustainable development because their experience, and resulting fear, is

that a call to link trade and the environment may disguise protectionism and a donor-driven limit to their recovery and future development (Tay, 1997). On a related front, Southeast Asian governments also resent any moves perceived to be covert attempts to undermine their competitiveness or sovereignty. Such resentment was evident in the precursor to the 1992 Earth Summit when Malaysia and Indonesia championed their rights to continue logging as part of their patrimony.

The recurrent presence of trade-environment issues within WTO negotiations often mystifies and irritates trade experts and officials. Their instinct is that environmental issues belong elsewhere or, at best, are peripheral to the WTO. They feel, with a considerable degree of legitimacy, that the WTO agenda is already sufficiently complex and divided. I submit, however, as do the other the writers of this book, that trade-environment issues are not irrelevant or peripheral to the WTO and its members. Rather, they relate strongly to a broad range of pressing questions about the WTO, including:

- questions about doctrine and legal approaches, per the resolving of controversies in dispute settlement processes.
- larger questions about the WTO as an institution, given that trade-environment issues have affected or potentially affect the organization's dispute settlement processes. As a result of some dispute decisions, some delegates seek to amend the text of GATT.
- questions about global governance, specifically, considering how the WTO can and should be linked to other institutions of global governance.
- political concerns expressed by developing countries relating to other trade issues, such as agriculture, and to more general subjects, such as market access and subsidies.

Even when officials and negotiators hinder the examination of trade-environment issues, however, other outlets within the WTO, especially the disputes brought under the WTO Dispute Settlement Understanding (DSU), provide a forum for them. Litigation on trade-environment issues has proved controversial and deeply divisive, such as with the Shrimp-Turtle dispute. The recurrence of such cases has given environmental issues a disproportionate influence over the early directions and development of the DSU in both its procedure and its approach to decision-making (Cameron and Campbell, 1998; Barfield, 2001).

In the context of this background, this chapter now considers the contentious issues surrounding trade and the environment, particularly as they concern developing countries, especially those in South/South East Asia.

Controversies' Underlying Debates

Those who favor linking environmental issues and trade believe that environmental protection is indisputably a public good and that the international community thus should promote such protection. Proponents argue that international awareness of the principles governing trade and environmental protection, respectively, has increased, resulting in dynamic developments in international environmental law and sustainable development. They urge that the WTO needs not only to focus on freer trade and economic growth, but also to live up to its stated objective, in the Preamble to the Uruguay Agreements, of conducting trade relations and economic activity in accordance with the objective of sustainable development. Environment advocates fear that unchecked free trade will spark greater environmental degradation and more human misery in a "race to the bottom" of environmental and worker protection standards (Rodrik, 1997; Greider, 1997; Brecher and Costello, 1994; Chatterjee and Finger, 1994).

The complexity of trade-environment issues has generated a proliferation of sub-issues, which range from distinguishing between trade measures taken on unilateral and multilateral bases to developing countries' concerns over noncompulsory environmental measures, such as eco-labeling, to the environmental impacts of agriculture and fishery subsidies. Given the large number of these sub-issues, this chapter identifies three broad debates that underpin most of the current controversies: 1) economic spillover, competitiveness, and protectionism; 2) unilateralism and compulsion; and 3) "moral" spillover. These three broad areas of discussion correspond to fundamental questions of *why*, *how*, and *what*: Why trade and environment issues intersect; how trade measures are most often employed for so-called environmental causes; and what we consciously give preference to when we debate trade and environment issues.

Economic Spillover, Competitiveness, and Protectionism

Those who are concerned with market competitiveness see environmental protection as one of the cost factors affecting the overall ability of a country to produce goods at attractive prices compared with other countries. From this perspective, companies operating in developed countries and/or in countries that seek higher environmental standards suffer a cost disadvantage compared with companies operating in countries with lower standards. Thus, countries with higher environmental standards may then succumb to market pressure to lower their environmental standards, resulting in a negative spiral that environmentalists have ominously prophesized as "the race to the bottom." In addition, countries participating in the global trade regime may end up losing altogether their prerogative to set higher domestic environmental standards.

Despite the Rio Declaration's recognition (Principle 11) that one country's standards may be inappropriate for another, some developed countries and companies operating in them still see lower environmental standards as an "unfair" advantage. The view of such countries and businesses is that if disparate environmental standards are permitted, some countries will lower their standards to attract investors, and that this will lead to "havens" for polluters and sweatshops, much like existing tax havens. This, in turn, will trigger a competition to lower standards or a race to the bottom (Brecher and Costello, 1994; Chatterjee and Finger, 1994). Although these fears have not been supported by empirical studies on industrial migration (Revesz, 1992; Stewart, 1992; Esty, 1996), perceptions of a race to the bottom remain popular.

In East Asia, for example, some observers have assumed that the region's weak environmental standards play a role in its strong export competitiveness and ability to attract foreign investment; within the region, however, there is suspicion that efforts in global trade talks to introduce higher environmental standards to the region are covert ways for rich countries to deny export opportunities to developing countries (Krumm and Kharas, 2004). In fact, there is little or no evidence that stricter environmental standards would hurt trade. Econometric evidence contradicts the "pollution haven" hypothesis. As for the impact of trade on the environment, evidence suggests that while trade-induced growth adds to pollution and output of dirty industries, this effect can be outweighed by the demand for a cleaner environment as a country raises its income and acquires better technologies (Antweiler, Copeland, and Taylor, 2001).

Yet, if some developed nations fear a race to the bottom, many other countries—especially those in the developing world—are conversely concerned about protectionism. These countries suspect, not without merit, that where environmental protection is offered as a reason for imposing restrictive trade measures, it may be propelled by underlying motives to protect domestic commerce against imports.

Unilateralism and Compulsion

Many developing countries are deeply concerned about unilateralism and compulsion in the arena of environment and trade. These concerns are verified and magnified by the fact that in most cases to date, when undertaking trade measures, the United States and Europe have unilaterally defined what *they* consider to be important environmental objectives. These unilateral measures are then used as pressure, in the form of sanctions, to affect the behavior of other states by threatening to deny access to their domestic markets.

Unilateral actions *per se* are not illegal under international law (Murase, 1996). Nonetheless, they have been discouraged both in the WTO and in the environmental fora. As already noted, a number of unilateral measures

for the environment have been struck down by the DSU Panel of the WTO as being incompatible with trade rules. Nevertheless, unilateral measures persist and have provoked resentment and suspicion from many developing countries (Shahin, 1999; Tay, 1997; Intal, 1996) for two main reasons. First, such measures often are seen as a form of compulsion, practiced by larger and richer states against developing countries. Second, as mentioned previously, unilateral measures ostensibly taken in the name of environmental protection often are suspected of being a cloak for disguised protectionism.

It is notable that the international environmental regimes and treaties that exist lack strong compliance mechanisms. Instead, the vast majority of MEAs seek to promote compliance through a softer mechanism of monitoring and reporting systems, as well as by the provision of assistance to help states meet their obligations. For example, the Montreal Protocol seeks to regulate the phaseout of ozone-depleting substances not by castigation and public blame, but by trying to identify the reasons for noncompliance and to provide technical, financial, and other resources necessary to enable compliance (French, 1997). Such efforts and assistance are justified in this and other treaties by the principle of common but differentiated responsibility. This principle states that while countries share a common responsibility for the global environment, they have different abilities to contribute to discharging those responsibilities. States, especially developing ones, have recognized that trade measures can play a part in fostering compliance, alongside measures of assistance and monitoring (Weiss and Jacobson, 1998; Chayes and Chayes, 1995). It is, however, quite another thing to rely on trade sanctions alone to compel compliance, especially those decided upon unilaterally.

Moral Spillover

Beyond the economic dimension, environmental issues also contain elements of morality, including the idea of a shared, global moral connection with nature. A broad range of conservationists insist upon the special or even sacrosanct characteristic of nature, to which economics attributes, at best, a surrogate value when evolving concepts and measures such as existence value. Conversely, conservationists argue that some things are beyond price. They further suggest that the evolution of international concern and legal principles for environmental protection, despite having emerged only recently, have fundamentally altered the concept of development, leading us beyond an understanding of it as mere economic growth to more comprehensive and qualitative notion of it as necessarily sustainable and human development. Emerging principles of international law legitimize the international community's concern and intervention when a nation fails to respect areas of "common concern" and causes environmental harm that affects another state's

territory or the global commons (Sands, 1995). This argument is particularly potent in relation to environmental issues such as nuclear or other ultrahazardous waste or the trade in (or affecting of) endangered species of certain charismatic animals, such as the elephant, rhinoceros, and tiger.

In many ways, environmentalism in Asia has been shaped and supported by its international counterparts. The rise of international environmentalism is evidenced by the prominence of nongovernmental organizations (NGOs), both international and domestic, across Asia. In many cases, NGO coalitions have been able to broaden the environmental agenda to address the darker sides of globalization and transnational corporations' (TNCs') social responsibilities to their host countries. Indeed, the disruption of the 1999 WTO Ministerial meeting in Seattle was a potent demonstration of the increasing ability of NGOs and civil society to affect large and powerful transnational companies and even to block governments.

For their part, developing countries articulate an alternative moral viewpoint (Najam, 2000). They emphasize the lack of equity in and the ineffectiveness of using trade sanctions in resolving the complex, multifaceted problem of environmental degradation. Many developing countries argue that trade measures are a "second best" response to pollution and other harms. In addition, they point to the fact that trade sanctions can have secondary impacts on economic development and the provision of basic necessities to already poor countries and impoverished sectors within countries. Instead, they call for intervention and assistance in the production process to prevent the environmental damage. Only then, they argue, can true environmental protection be ensured.

Developing countries' common defense to the moral spillover argument is not to debate the inherent morality of protecting nature and conserving our planet's resources. Rather, these countries' stronger rebuttal to environmental issues concern the effectiveness of using trade measures to address the moral issues in question (Vaughan and Dehlavi, 1998) and, more broadly, to suggest that the lens of morality must be expanded to take other social and human factors into consideration.

The GATT/WTO Environment

A wide range of suggestions have been made by developing countries about amending the WTO's response to debates over trade and the environment. The process and politics of amendment is, however, extremely complex (Reiterer, 1996). Before one examines this process, however, it is important to first study the existing text of the GATT/WTO to understand the extent to which it already allows for an integration of social and environmental concerns and how its approach differs from that of other international institutions.

To begin, the core of GATT is the principles of most favored nation (MFN) status and national treatment. Additional tenets are treating like goods alike and provisions against imposing “quantitative restrictions” on imports. In this regard, the GATT is largely a scheme of “negative” rules that emphasize what a state cannot do, rather than “positive” rules that describe what a state can, should, and must do. In short, GATT rules are few and, as noted, mostly “negative.”

Exceptions to the rules, however, outnumber the rules themselves. General exceptions to the GATT obligations listed above are found in Article XX. Regarding the environment, Article XX (b) allows exceptions if the measures are “necessary to protect human, animal or plant life or health.” Additionally, Article XX (g) allows exceptions if the measures involve the conservation of exhaustible natural resources; (g) also applies to domestic production. Other co-existing exceptions relate to topics such as anti-dumping, emergency measures, the creation and consistency of regional trade agreements, and special preferences for developing countries. Despite the considerable number of exceptions, however, in Article XX and elsewhere, GATT does not specifically mention the “environment” or MEAs. Therefore, those who propose that the environmental principles should be accepted as exceptions to trade rules must draw these connections from more general or limited wording.

It is important to distinguish between measures agreed on a unilateral basis and measures supported by MEAs. Those who would uphold MEAs ask that such measures be accepted on par with the trade rules under GATT and as exceptions under Article XX, because they reflect an existing international consensus. The people who support trade measures to support MEAs may still be uncomfortable with the possibility of unilateralism. In this sense, referring to the earlier discussion of underlying debates, the debate over moral spillover and the concerns about unilateralism and compulsion are separation issues.

Two other general points should be noted about the attempts to find exceptions within the existing GATT language. First, the chapeau of Article XX is open to interpretation. Although it states that any measures should not be applied arbitrarily or in an unjustifiably discriminatory manner, some have suggested that the WTO must, therefore, take pains to try to discern genuine environmental concerns from disguised protectionism. In contrast, others suggest that the WTO can and should give more leeway to sincere attempts by nations to legislate their exceptions. In this respect, the role of the Dispute Settlement Understanding (DSU) becomes crucial as the final interpreter of the text of GATT.

Second, concerns about environmental protection most often relate to process and production methods (PPMs) rather than to the products themselves. For example, environmental treaties that severely limit trade in

endangered species of flora and fauna and impose conditions on transboundary trade in hazardous waste have been generally accepted in the WTO. On the other hand, there is considerable controversy over cases in which it is the PPMs that are considered environmentally harmful. Fundamentally, these cases question the traditional trade view of treating “like” goods alike. For example, is a can of tuna that was caught without any accidental killing of dolphins different from one that was caught at such cost? Those who care for the environment would say it definitely is. From the perspective of trade rules, however, it is not.

While these arguments regarding “like” goods can be made via Article XX, they have not succeeded to date in disputes brought before the WTO, except in the Asbestos case.⁵ That case stands out among a long list of disputes on trade-related environmental measures brought before the GATT since the 1980s, where environmental measures were found, in part at least, to be discriminatory, trade-restrictive, and contrary to GATT/WTO obligations (Petersmann, 1997; Sands, 1995). In contrast with an earlier decision concerning the Shrimp-Turtle case,⁶ the Appellate Body found that the trade embargo on shrimp did not meet the requirement in the chapeau of Article XX forbidding “unjustifiable or arbitrary discrimination,” given that the United States failed to engage in international negotiations with shrimp exporting countries in Southeast Asia before imposing the embargo. In this manner, the Shrimp-Turtle case confirmed the long-standing trend against unilateral measures taken for an environmental cause.

The Appellate Body’s decision on the Shrimp-Turtle case controversy does, however, take steps that might favor those who seek a different reconciliation between trade and the environment. The Appellate Body’s decision has been noted for supporting the idea that international law—and not simply trade law—is the context for its decision-making, and that this can and does include international environmental rules, especially where an MEA evidences widespread acceptance of those environmental concerns. As such, while the result of the case may reassure those who favor the promotion of freer trade over environmental concerns, its logic potentially opens up Article XX exceptions to allow for due consideration of environmental concerns, where these concerns are supported by evidence of an international consensus on the issue. Such a reading of the ruling signals some drift, if not a stark change, in the thinking of the connections between trade and environment issues.

There has therefore been a long and wide-ranging discussion about amending GATT articles and especially Article XX to expressly make MEAs an exception. Conceptually, there is no strong opposition to this idea. The difficulties lie in the details of substance and process. First, in substance, which MEAs should be included, and on what criteria should that inclusion be based? Those who want to specify MEAs by name debate which MEAs should be named. Conversely, those who want to specify criteria debate

which criteria and what thresholds to set for them. Second, by what process should the WTO change its rules? The feasibility of amending the GATT text is being debated in this context, because amendment requires unanimity, which is difficult to achieve among so many states and because it may further be captured by politicking over many other issues. Other procedures exist for a waiver or an understanding, but these are cause for concern to those who argue the GATT should not make exceptions for MEAs, as the former is assumed to be superior to, or a “trump” over, the latter treaties.

Beyond the MEA debate, even those who may not care much about the environment share three concerns regarding the present situation. The first concern is that several decisions seem to suggest that even multilateral treaties on the environment must give way to trade rules. Although the Appellate Body decision in *Shrimp-Turtle* is an exception to this, there is no guarantee that similar exceptions will be made in subsequent disputes. The second concern is that the interpretations given by different DSU panels displace the roles and ability of state members of the WTO to legislate and reach agreement on these issues. The third and related concern is that, even though there is considerable improvement in the procedures, a number of cases on trade and the environment have demonstrated deficiencies in the DSU process.

Trade and environment cases have revealed three basic deficiencies in the DSU process. First, these cases have shown that the panels often take a narrow and pro-trade interpretation of the GATT, especially of Article XX. Second, the premises for making the decisions sometimes appear weak; some decisions reveal a lack of expertise and interest in issues outside trade, and others have shown an ambition to reach beyond trade law into the realm of more general public international law, including environmental concerns. Third, the process and the access of NGOs and other interest groups to the DSU proceedings have come into question. The WTO agreements allow the appointment of environmental experts to panels, or have interested third parties present their case to panels. In most cases, few of these possibilities have been explored and practiced (Lang, 1996). Where these provisions have been used to allow NGOs and others to present their views, the participation by non-state actors has been questioned, especially by developing countries (see Tanaka, 2003).

The narrow trade view of the WTO mandate is, however, being challenged in several ways. Some arguments seek to situate the GATT/WTO in the context of new and dynamically changed concepts of development that include the environment and sustainable development as well as human rights, human development, and human security.

Yet, ideas in institutions and international settings outside of the WTO cannot easily be squared with the “trade first” emphasis within it. International environmental law and policy have been conjoined with economic activity in the concept of sustainable development. The concept has formed the basis of

such practices as environmental impact assessments, now elaborated and widely used by both national governments and international organizations such as the World Bank and even referred to in opinions of the international court of justice.

The sustainable development emphasis is based on such principles as inter- and intra-generational equity, common but differentiated responsibility, and the right to development (Weiss and Jacobson, 1998; Sands, 1995; and Evans, 1993). Such ideas seek to recognize the interdependence of the world's nations and communities as much as the interrelation between economics and other spheres of life. These concepts have developed relatively recently, and they have developed in institutions outside the WTO, largely in the United Nations (UN) and UN-related organizations and conferences. Although concessions have been made on these issues in the WTO Charter, they have not been embraced by the WTO. The WTO remains focused on trade, with few or no connections between the promotion of freer trade to these larger concepts. There is, as such, a perceptible gap between the breadth of our concepts of development and the narrow mandate of economic policy institutions such as the WTO. In this regard, the proposed links between trade and the environment are a debate not only about issues, but also about institutions (discussed below).

Lastly, from the perspective of developing countries, particularly in Asia, the issue is also one of arbitrary discrimination, where developed countries discriminate between developing countries in imposing environmental or moral standards via the trade mechanism. This was seen in both the Shrimp-Turtle case, and the more recent EC-India case. In Shrimp-Turtle, the U.S. lost the case, not because it sought to protect the environment but because it discriminated between WTO members in providing technical assistance to countries in the western hemisphere, and neglecting the Asian states—in particular, Malaysia, Pakistan, India, and Thailand (the complainants). Presently, the Appellate Body's holding in EC-India (2004) permits developed countries to differentiate between developing countries, provided the donor country can show that differentiation is legitimate based on each countries' needs and development levels.⁷

The Question of Institutions

The international community is anarchic, with no democracy, equity, or world government. In the absence of these qualities and institutions, effective cooperation between sovereign nations is impossible without agreements and difficult even with agreements. The international cooperation and institutions that do exist are fractured between different subjects and responsibilities, functioning with little coordination despite the umbrella of the United Nations. In a national system or in strong regional regimes, such as the

European Union, there are institutions of state with universal authority over different subjects, both economic and human or environmental (Geradin, 1997). The lawmakers are entitled to balance one against the other. Or the executive or judicial authorities do so. These systems have no equivalent in the international system. This characteristic of the international system—its lack of inherent governmental systems or institutions—is among the fundamental reasons for the controversy over the links between trade and environmental protection.

The UN, early in its history, set up specialized agencies in different subjects. This was especially so with the three Bretton Woods institutions: the World Bank, International Monetary Fund (IMF), and GATT. While this has allowed issues to be focused and specialized, it has also created a strong sense of divide between international economic policy and other aspects of international policy, such as peace and security concerns, labor rights, human rights, and environmental protection. This has placed economic institutions such as the WTO in a central dilemma when approaching issues beyond its original mandate of trade to determine whether it should allow trade to be linked to issues such as environmental protection.

The WTO is not the only international institution that is being questioned. There have been widespread calls for reform of the UN as a whole and, specifically, of its environmental institutions (Esty, 1994; French, 1995). There is no single central entity equivalent to the WTO for environmental protection. This absence has, in fact, led to calls by some, including former WTO Secretary-General Renato Ruggiero, to propose a World Environment Organization to counterbalance the WTO in the trade-environment debate. While these proposals may seem ideal, others have dismissed them as unnecessary and unrealistic, and states seem to have little political will to create more international institutions (Najam, 2003). A more useful approach in the shorter term is to suggest ways to foster greater coordination among existing institutions. To this end, paragraph 32(ii) of the Doha Declaration instructs the CTE to pursue work on all items in its agenda within its current term of reference, giving particular focus to the relevant provisions of the TRIPs Agreement.

Others also have suggested focusing on the WTO, but ask that its rules be amended and its mandate enlarged to cover both trade and social concerns. There is merit in distinguishing between suggestions for change in the WTO that require formal amendment and suggestions for change that relate only to the present practice or culture and habits (Sampson, 1999). In the latter case, there is already an ample framework for a number of helpful steps that would assist in the integration of trade with social concerns. Such steps include 1) greater transparency and timely public access to WTO documents; 2) policy discussions with civil society, especially NGOs and other groups working on social concerns (Charnovitz, 1996); 3) allowing access by and participation of

NGOs and experts in the dispute-settlement process (Lang, 1996); 4) increasing dialogue and cooperation between the WTO and international environmental bodies, such as the secretariats of MEAs and UNEP; and 5) increasing coordination between economic and trade agencies, and their environmental counterparts at the national level. By such means, coordination between trade and social policies might be increased. This would better achieve the first-best solution of reconciling the differing concerns at the level of the production of goods rather than in their trade. Similarly, this would increase cooperation among different institutions, allowing for better understanding of roles and responsibilities. This could be done both at the international level and within national governments.

Greater assistance with and mediation of social concerns outside the WTO also is needed, especially in the area of compliance with environmental standards. The WTO may face several limitations as an institution to deal directly with these issues. First, it lacks expertise, will, and culture. Second, some developing countries are skeptical about the WTO because they feel that it primarily represents Northern interests in promoting freer trade. Third, the prospect of discussions in the WTO appears to be threatening, as it could lead to new rules that may be binding. Fourth, and perhaps most important, the WTO has no strong mechanism for or principles of assistance.

The question of compliance also is at issue. Without compliance, any proposed regime risks being rendered meaningless. Yet, it is clear that for most of developing Asia, the judicial and institutional infrastructure necessary to ensure compliance is still in its formative stage. Even if governments take on the role of corporate watchdogs, the scourge of corruption and lack of political will are likely to be obstacles. As such, efforts to deal with the contentious issues of social concern may be better received and more effectively implemented in other institutions and processes. What the WTO must then do is to be open to greater exchange, improved access, and better coordination with these different institutions and processes.

Sketching a Potentially Positive Southern Agenda

The above recommendations should be seen as achievable and effective in the short to medium term. A more positive context for coordination and cooperation in the longer run may be tentatively sketched as follows (Runnals, 1996, and Tay, 1997):

- To accept the equality of MEAs with trade rules, and to work toward their congruence. In contrast, unilateral measures should be avoided.
- To emphasize international assistance for human and sustainable development. In contrast, unsustainable and “opulent” development should be eschewed.

- To recognize that efforts at the state level must be emphasized for a first-best reconciliation of trade and social concerns in the production and manufacture of goods. Such reconciliation should exist both in policies and in the different institutions of state.
- To emphasize cooperation and assistance in compliance with environmental obligations, especially for developing countries and in vulnerable sectors (e.g., small- and medium-sized enterprises). In contrast, trade sanctions and measures to restrict or prohibit market access should be avoided.
- To recognize the appropriate role of specialized fora on the environment and to increase their dialogue and coordination with the WTO. In contrast, proposals for wide-scale amendment to the GATT/WTO or the creation of new international institutions should be put aside, at least for the short to medium term.
- To change habits, culture, and outlook within the WTO in areas that would benefit environmental, as well as improve governance more generally.

Changing the WTO's approach would help create a more positive context for the WTO specifically, and the international community as a whole, in which to deal with the intersections between trade and social concerns over the environment and labor rights, and to foster better coordination and cooperation.

Clearly, however, even if the above suggestions are implemented, a demand for more concrete actions will continue to exist. Given the controversies and the polarities that this book describes, it is no surprise that the proposed agendas for the WTO to move forward on these issues have varied widely, according to the predisposition of the different writers toward the issues and the WTO. The proposed agendas have also changed somewhat over time. Proposals on the trade-environment agenda are particularly prolific. In this manner, the CTE shows itself capable of being a vehicle to generate discussion, even if its work has not thus far yielded a consensus on what should be done.

The variety of proposals on trade and environment can be analyzed in broad categories based on Northern or Southern preferences. This allows us to see the different priorities that each gives to different strands of the debate.

Northern Proposals

The following paragraphs outline the broad categories of proposals for change that usually come from the North, and the general Southern response to them:

MEAs

Many developed countries seek reconciliation between existing and potential MEAs with trade rules. This can be done through an amendment of

GATT articles and especially Article XX, or through countries negotiating and making an understanding of the scope of the existing articles. Developing countries, for their part, tend to support MEAs over the use of unilateral measures. They are, however, suspicious of attempts to amend Article XX for fear that environmental protection might be used as a basis for protectionism. There is also considerable debate between the South and the North over the criteria for deciding which MEAs should be granted exception to the trade rules.

Eco-labeling

Many developed countries wish to ensure that trade rules will accommodate the use of trade measures based on non-product-related PPMs on environmental grounds, especially eco-labeling. Developing countries, however, complain that such trade measures and eco-labels vary considerably from country to country and that their criteria are often based on questionable science. Many Southern delegates also point to the prohibitively high cost of certification required for obtaining real access to Northern markets, and to their lack of resources to participate in standard setting (Najam, 2000).

The Precautionary Principle

A number of developed countries emphasize that trade rules should be construed in light of the precautionary principle. This principle is drawn from international environmental lawmaking and suggests that certain actions to protect the environment are justified, even where science has not yet established that environmental harm will definitely result. Many developing countries would argue that the precautionary principle is an established international norm, binding on all parties, on par with GATT rules. They emphasize, moreover, that the very general nature of the precautionary principle makes it impossible to determine precisely which measures are allowed, and which are not.

Mainstreaming

In addition, the developed countries have begun to call for environmental issues to be “mainstreamed” into the WTO. Mainstreaming envisages that trade-environment issues should be considered not only in the CTE, which currently carries this mandate, but in all areas of WTO/GATT activity and agreement. Most developing countries have resisted the idea of mainstreaming, as it would complicate negotiations across sectors and widen a debate on which they continue to have reservations (Jha and Vossenaar, 1999).

Southern Proposals

For their part, developing countries are also beginning to develop a “positive” agenda. The issues on this agenda have been quite different and separate

from those of the developed countries reviewed above. The issues that developing countries typically raise are:

Domestically Prohibited Goods (DPGs)

The complaint is that while developed countries decry environmental impacts of trade, they themselves are free to export goods to developing countries that have been banned by their own national laws. The developing countries have gained some commitment from developed countries to give notification of such DPGs. It is not clear, however, how widely this commitment is practiced and where this issue can go in the future.

Trade-related Aspects of Intellectual Property Rights (TRIPs)

The connections between the TRIPs Agreement and the environment are multi-fold. One aspect relates to the incompatibility between trade rules and the Biosafety Protocol within the Convention on Biological Diversity (CBD). Another concern is the impact of the TRIPs Agreement on the conservation of biodiversity. Broadly speaking, the CBD requires that benefits be shared between countries (mainly in the South) that have these resources and companies (mainly in the North) with the knowledge and technology to develop and exploit them. In contrast, one of the South's concerns about the TRIPs agreement is that it tends to legitimize the idea of the company as the sole owner of the property that arises from such development.

Market Access

Preferential market access and trade preferences are of key importance for many developing countries, especially for the least developed countries. The overriding concern is that environmental standards might provide a pretext for limiting access or ending trade preferences. The question of market access, however, also can provide possibilities for progress on trade-environment issues. For example, on the issue of subsidies for fishing, the suggestion is that cutting subsidies provides a "win-win" solution for both environmentalists and developing countries. This is because subsidies promote unsustainable practices that are damaging to the environment and also distort market access for developing countries. A similar argument can be made for subsidies in agriculture.

Toward Convergence

Out of the seven proposals reviewed, two have enjoyed a growing consensus for some time—MEAs and market access. The Doha agreement calls for further negotiations on both these issues (WTO, 2001). In addition, it includes a request for the CTE to examine potential market access gains that would improve environmental outcomes, examination of the TRIPs Agreement, and

eco-labeling requirements. Clearly, this agenda contains issues of interest to both North and South and the potential to make significant progress in this area, although not without the potential for controversy.

For MEAs, the Biosafety Protocol to the CBD demonstrates the need for a resolution between trade rules and environmental policy. Southern and Northern states agree that something needs to be done, but debate continues on exactly what that is and how it should be executed. One potential bridge across these differences may be to adopt an Understanding on MEAs. An understanding would be an authoritative statement by WTO members and could be referred to in disputes between members brought before the WTO dispute panels—an example of this would be the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia, developed under a series of intergovernmental negotiation sessions held in Perth, Australia (1999), subsequent to the Appellate Body's recommendations in the Shrimp-Turtle decision.

An understanding secures some of the same benefits as an amendment, but unlike an agreement, is nonbinding. It does, however, secure its benefits without the difficulty of requiring formal consent by all State Parties. Some of the environmental community has tended not to prefer an Understanding approach because they think that it subordinates environmental concerns to legally binding trade rules. It is possible, however, that some developing countries may consider an understanding as a compromise that is sufficient to meet the genuine needs for reconciliation between WTO and MEA rules, without opening up the difficulties and potential dangers in amending the GATT text.

A second possibility for some progress is in dealing with market access issues and cutting subsidies. This is increasingly being aired and endorsed by a variety of academics, NGOs, and governments as a possible way forward for the trade-environment debate (Schorr, 1999). Dealing with these issues is attractive as a “win-win” formula, good both for the environment and for the economic rationality and benefit of free trade. It is also justifiable in that these areas have been held outside the ambit of the WTO for too long as increasingly obvious exceptions to general principles.

Potentially, the issue of subsidies could create an alliance between environmentalists and developing country exporters. For agriculture, the Cairns Group, led by Australia, and the U.S. would also likely be in favor of reducing, or indeed, ending subsidies. So too has the G-20/22 bloc, which emerged strongly in Cancún. However, Japan and the European Union continue to argue for the need to continue such subsidies. There has also been some concern about the impact on small-scale farmers if subsidies are removed and on the impacts on net food-importing developing countries. It is clear in this regard that the subsidies issue has its own debate and controversies.

Thus, while proceeding on this issue may unify different sides of the trade-environment debate, it is less clear that there can be progress on the issue.

The discussion emphasizes that WTO issues are becoming increasingly complex and interwoven—not just trade-environment issues, but also their intersections with other areas of WTO concern. The connections between trade-environment issues and specifically issues pertaining to agriculture, a pivotal issue, are both nefariously complex and particularly important. These may be particularly contentious within the ASEAN context. Presently, trade and environment do not feature prominently on the national positions of Singapore, Malaysia, or Indonesia; however, Thailand and Philippines have expressed concerns about barriers to agriculture and fisheries exports. Other ASEAN countries, mainly Cambodia, Laos, Vietnam, Myanmar, Brunei, and Vietnam, remain inactive on the WTO radar—with some coming to grasp with their membership privileges and obligations within the WTO and others, remaining on queue for accession within the WTO (Laos and Vietnam). With such a buffet of concerns on the ASEAN agenda, it may therefore be necessary to reemphasize the importance not so much of an ASEAN agenda for immediate action, but of exchange, cooperation, and equality. Only then might governments begin to develop a context and foundation for future agreement.

Snipping the WTO's Gordian Knot

Beyond the “positive agenda” for the South, whether as sketched in this or in other chapters, what can and should we do? How can exchange, cooperation, and equality be embedded in the ways we approach trade and environment issues? In which institutions and processes can and should we be exerting efforts for progress on these issues?

This section outlines a set of ideas that address these questions. The ideas presented here may be understood and summarized, in part, in relation to and as different from three other sets of ideas and trends.

The first of these is the idea that the South needs to focus on advancing a “positive” agenda for trade and environment issues. This paper agrees on that need. There are contestations between North and South on both the environmental agenda, and on the trade agenda. These can be twinned to identify areas in which the South could benefit and legitimately gain from changes in perspectives and priorities.

The second way in which the set of ideas in this section may be seen is in their contrast to the idea promoted by those who seeks a grand new environmental organization (Esty, 1996). The proponents of the GEO argue that it would facilitate both better environmental governance and a more easily managed relationship between trade and the environment and the WTO, and the various environmental institutions and communities. While innovations

in process and institutional arrangements can help, it is submitted that this is both unnecessary and unlikely in the current political mood (Najam, 2003). Such proposals are built on ideas of global governance as a centralized and centralizing phenomenon, with a hierarchy that prescribes, disciplines, and harmonizes the attention and activities of states. The set of ideas outlined here are, in contrast, built on the idea of global governance as diffuse and plastic systems that need to generate more and more diverse activities and approaches, not only at the international level, but also at the regional level and within individual states.

Third, this section addresses the predictions that after Doha, energies and focus will shift for many states from the global regime of the WTO to trade liberalization at the regional and bilateral levels. While some see this as regrettable, I submit that it is almost inevitable and need not derail future progress for global trade negotiations. Furthermore, the trade and environment debate too may be usefully linked to the energies at the regional and bilateral levels to ground the issues in different and more proximate sets of trade relations. Moreover, links between those regional and bilateral levels may be drawn both upward to the global level and downward to the national levels.

Against the background of these three ideas, the set of arrangements and processes that this paper imagines for breaking the impasse on trade and environment issues includes a) the establishment of a trade and policy review process, similar to the existing trade policy review process; b) a focus on bilateral and regional arrangements as the venue for trade and environment discussions; and c) national level review and reconciliation processes for trade and environment issues. Each of these is discussed below.

Trade and Environment Policy Review

As described previously, there are three chief sources of suspicion that the South has against linking environmental issues to trade. These are a) the economic spillovers, including protectionism, b) unilateralism and compulsion, and c) moral spillover. The environmental causes that are identified for protection by trade measures emerge from the domestic constituencies in the North. These domestic constituencies may include not just well-meaning environmental groups and NGOs but also lobbies for domestic producers in that sector of the market or representatives of other interests who may feel affected. In a number of cases, environmentalists have wedded their cause to those with immediate self-interest who desire to protect themselves against trade and competition from abroad. Moreover, the processes for identifying the environmental issues and then linking them to trade are, in many ways, informal and also opaque to the developing states. Subsequent to the making of these laws and regulations, which were done unilaterally and with

the force of compulsion and negative sanctions, the only viable way for aggrieved states to reply effectively is through the WTO dispute settlement process.

Against this background of concerns, this paper suggests that the WTO and member states institute a trade and environment policy review process that would be used *prior to* litigation and indeed *prior to* the passing of domestic legislation using trade measures for purportedly environmental ends. Akin to the process for trade policy review in the WTO that deals with mainstream trade issues, the policies of a member state would be examined broadly and open to comment by any concerned member states. The process would help identify and articulate best practices that the international community upholds, and thus, to ensure a degree of harmonization among the practices of different states and regions. In this process, environmental concerns that have a trade connection could be reviewed and discussed. This is with a view of changing the policy of the state under review in order that the environmental harm might be avoided. On its part, the state expressing concern with the issue would agree to forgo domestic legislation and might offer technical, financial, and other assistance to achieve the environmental goal that both states have agreed to.

To this end, it is helpful to look at the text of the WTO Technical Barriers to Trade (TBT) Agreement, which is premised on the same objective of “talking through” objectionable standards. The TBT Agreement encourages the adoption of international standards, but concurrently recognizes that countries have the right to establish protection, and at levels they consider appropriate—for example for human, animal, or plant life, or health or the environment—and should not be prevented from taking measures necessary to ensure those levels of protection are met. In order to ensure such standards are accepted by other WTO members an innovative process of dialogue is promoted. This process of dialogue operates through a notification scheme where a non-international standard is imposed, and where such a standard may significantly affect on the trade by other members, all WTO members must be notified. Further, the country imposing the said standard must allow for comments and discussions from affected WTO members within a reasonable time frame and these written comments and the results of these discussions must be taken into account.

In this manner, while trade-environment issues would be linked, the links could potentially be made much more consultative, collaborative, and cooperative, and the unilateral, compulsory, and negative sanctions might be better avoided. For example, in considering financial assistance, the parties could look to funding provided by the state expressing concern over the environmental issue, but also seek to link to multilateral funds, such as the GEF. More ambitiously, a “trade and environment adjustment fund” might be considered, built on the principle of special and differentiated treatment for

developing countries in the WTO, and perhaps drawing on a small tariff on the trade to which the environmental protection relates.

Bilateral and Regional Trade Arrangements: The Trade and Environment Dimension

There is surge in the adoption of regional and bilateral free trade agreements (FTAs). As states engage increasingly in trade and economic agreements at the bilateral and regional levels, these are held to the appropriate WTO disciplines. For developed economies, this means they must aim for “WTO consistent” or “WTO-plus” arrangements that pass muster with GATT rules. For arrangements among groups of developing countries, there is greater leeway under the principle of allowing them special and differentiated treatment. These disciplines help root out inconsistencies with WTO commitments.

Some commentators therefore suggest, as I have elsewhere (Tay, 1997), that bilateral and regional arrangements need not impede the progress of global trade talks. Indeed, they may help sustain the forward movement of such talks and allow for some states to set leading examples when others are as yet unable or unwilling to move ahead. Yet, there is no similar discipline or assurance on trade and environmental issues for bilateral and regional trade arrangements. Indeed, in many such arrangements, the issues are not covered at all.

The gaps are real as bilateral and regional trade initiatives gain speed and size. In the ASEAN-China FTA, for example, the promise is to free up markets of some 1.8 billion people, including some of the most rapidly developing societies of the world. Early access in a number of sectors has been negotiated in principle, including various natural resource products. Yet the links between trade liberalization and environmental protection do not figure in the negotiations. This is despite clear examples in which China’s dynamic economic growth and hunger for energy and raw resources, such as timber, have affected the trade and domestic environmental concerns of ASEAN states.

The situation is similar in many FTAs being negotiated among developing countries or indeed in those between even more developed economies (see Scollay, 2003). For example, the Indo-Thailand FTA has just briefly referred to the need for exploring possible cooperation in the environment sector. This does not refer to the precautionary management of environment related issues *per se*. Nor is there any reference to environmental agreements in the Singapore-Japan FTA. In the bilateral agreements that involve the U.S., there is some effort to bring in environmental considerations but these tend not to be integral to the FTA. Under the U.S.-Jordan FTA, Jordan acceded to the United States’ environment demands and environmental

obligations are part of the core text of this agreement. The Singapore-U.S. FTA has similar environmental obligations in its text. The parties will maintain their own environmental laws, but will cooperate on environmental issues and ensure that environmental standards are not lowered in pursuit of trade. Both the Singapore-U.S. FTA text and the U.S.-Jordan FTA text include monetary penalties for breaching the agreement. In comparison, the Singapore-New Zealand FTA and the Singapore-Japan FTA makes no mention of specific environmental provisions. The same can be said of the Chile-Mexico FTA, the India-Thailand FTA, and the India-Sri Lanka FTA.

The policy choices in regional and bilateral trade arrangements bear study, and more emphasis. If the policy choices are clearer, states may be better persuaded to bring trade and environment issues on board when proceeding with such arrangements. From experiments at the regional and bilateral levels and different experiments in process, policy and institutions may arise that might potentially inform and help frame the future of the discussion at the global level of the WTO.

National-Level Review and Reconciliation

There are a number of reasons why we should hope that the links between trade and the environment become issues that are discussed not only in the context of the WTO or of regional and bilateral trade arrangements, but also at the national level. The first reason is programmatic: It would be easier to operationalize a trade and environment policy review process and to forge trade and environment links in regional and bilateral trade arrangements, if each country was able and willing to carry out an analysis of these linkages. The second reason concerns effectiveness: Critics of the use-of-trade measures for environmental purposes correctly point out that these are most often “second-best” options, as the environmental harm has already been suffered. The effort to reconcile environmental concerns should best be taken in production. A third reason relates to sovereignty: States, including almost all developing states, have been quick to try to assert sovereignty over natural resources and have staked out the position that their own national standards are the most appropriate means to address environmental harms within their borders. Thus, a better national level review of environmental harms resulting from market opening and trade should logically be a matter of a state’s national interest.

It would then be possible to consider, more exactly, the pluses and minuses of undertaking various economic activities. This need not necessarily lead to an abandonment or reduction of those activities. Nor would external environmental standards and priorities be imposed on the state. Rather, the national-level review would aim at a rational assessment and reconciliation between the need for trade and environmental protection within the calculus

of a state's own priorities and needs. An example of this has been the decision by China to host, over the past years, a dialogue with international experts to advise its leadership on environmental issues. The China Council for International Cooperation on Environment and Development (CCICED) moreover promotes collaboration among Chinese national scientists, experts, academics, and bureaucrats with those from other countries. This ensures that knowledge is shared and that national priorities and interests are considered with sensitivity and relevance.

Although not perfect, the CCICED may be offered as an example of a systemic approach by a developing country to undertake a review of its own environment as the country undergoes economic change, including the liberalization of investment and trade. If other countries were to set up similar bodies, they might more fully understand their own environmental concerns and be better placed for dialogue on trade and environment issues within the context of their policy choices in pursuing market strategies.

Conclusion

In approaching new issues, many people and institutions have an initial reaction to avoid changes in paradigms. This can often be summed up in the saying, "If it ain't broke, don't fix it." This is especially so for the WTO, which many have adjudged a success in its field of focus. On the other hand, recent WTO Ministerials have shown that there are those who embrace change and see the need for vast and dramatic changes to the WTO and other international institutions. The perception behind these calls to action is that something *is* broken.

Many are making the calls for change and many others remain opposed to them. Countless agendas and counter-agendas have arisen, and more will come up. This has brought about an impasse on issues of the environment. There are no easy solutions. This chapter sketches a desirable context to bring the different states together on the issues. It does not, however, pretend to be a "magic bullet" solution. Nonetheless, efforts to progress at a bilateral or regional level may slowly but surely enable more sincere developments on trade-environment concessions than what is currently seen at multilateral level negotiations. This chapter has argued that this process can be nudged forward by 1) a trade and environment policy review; 2) the incorporation of a trade and environment dimension in bilateral and regional trade agreements; and 3) a national-level review and reconciliation.

The WTO was transformed in the Uruguay Round to take on many new issues outside the traditional purview of trade in goods. In many instances, it did not take on these new areas in their entirety but, as with investment policy and intellectual property rights, the WTO strived to find and deal with the nexus of these issues with trade. There are good reasons and also

reasonable ways that a similar approach may be negotiated for environmental protection. It is wrong to call for the WTO to become an environmental organization. But it would be equally wrong to ignore the legitimate economic, social, and political imperatives that call for improved dialogue, better coordination, and mutually supportive policies and institutions in the international community. As such, a new context for improved coordination and exchange is needed. This is necessary before, and for, deciding any agreed agenda. Such a context can and should be the foundation for progress on these issues.

The limited negotiating agenda on trade and the environment presented at the Doha Ministerial may prove to be the starting point for progress on trade and environment issues in the WTO. The issues identified for negotiation, and particularly the relationship between MEAs and WTO rules, simply must be dealt with, either by explicit rulemaking, or by dispute settlement. As Barfield (2001) has argued, it is probably better that this be done explicitly; and an initial attempt is currently being made at the WTO. Further study on issues such as TRIPs and eco-labeling also appears to be urgently needed.

The short but controversial history of the WTO and its predecessor GATT shows that trade-environment issues are perennial and perhaps growing controversies that need to be systemically addressed. This will require efforts both inside the WTO and in other appropriate international institutions. This will require the participation and joining of issues by both the developed and the developing countries. The promise of freer trade, after all, is that there can and should be benefits for all. The divisions on trade-environment issues stand to be bridged not in terms of the sanctions and market restrictions that have marked so many of the controversies to date. A new compact based on cooperation and assistance between the developing and developed countries must instead be reached on these issues through the pursuit of a positive agenda on the part of the South.

Notes

1. The author gratefully acknowledges his discussions with Joel Trachtman of The Fletcher School of Law and Diplomacy, Tufts University, and his kind comments on the idea of trade and environment policy review. Useful comments were also provided by Adil Najam and Hugo Cameron. Liu Ping and Jennifer Chien, both Harvard Law School students, provided research assistance, while Hannah Kung, a researcher at the Singapore Institute for International Affairs, helped in editing and updating the paper.
2. "Emerging East Asia" is defined here as ASEAN plus other newly industrializing economies, plus China, plus Mongolia. ASEAN members are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

3. See Marine Mammal Protection Act of 1972, Pub. L. No. 92-552, 86 Stat. 1027 (codified as amended at 16 USC §§. 1361-1407 [1988 & Supp. III 1991]); *Earth Island Institute v. Mosbacher*, 929 F.2d 1449 (9th Cir. 1991); and United States-Restrictions on Imports of Tuna, GATT Doc. DS21/R (3 September 1991).
4. See US-Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Panel, WT/DS58/R, 15 May 1998; and US-Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body Report WT/ DS58/AB/ R, adopted 6 November 1998.
5. European Communities—Measures Affecting Asbestos and Asbestos-Containing Products, Appellate Body Report and Panel Report, adopted on 5 April 2001. See http://www.wto.org/english/tratop_e/envir_e/envir_backgrnd_e/c8s2_e.htm.
6. WTO Appellate Body Report: United States – Import Prohibition of Certain Shrimp and Shrimp Products; The complaint initiated by India, Malaysia, Pakistan, and Thailand concerned a ban on importation of shrimp and shrimp products from these complainants imposed by the US under Section 609 of US Public Law 101–162. Violations of Articles I, XI and XIII of GATT 1994, as well as nullification and impairment of benefits, were alleged. See www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm.
7. *European Communities – Conditions for the granting of tariff preferences to developing countries* (7 April 2004) para. 153 WT/DS246/AB/R (Appellate Report, GATT).

CHAPTER 11

Advancing the Trade-and-Environment Agenda: Seeking Regional Cooperation in Northeast Asia

Joy A. Kim

The protracted, years-long debate on trade and environment within the WTO finally began to move forward when trade ministers at the 2001 Doha meeting agreed to place environmental issues back on the substantive agenda of multilateral trade negotiations. Far from representing the full spectrum of the issues, however, negotiations are progressing on some key issues but not on others. Meanwhile, the South remains ambivalent about the inclusion of environmental issues on the WTO agenda, and this inclusion was a reluctant compromise by the South, which has strenuously resisted having this agenda on the WTO negotiations table. Now, however, the South feels an emerging sense of opportunity for future trade-and-environment negotiations to strengthen the sustainable development dimension of the agenda. The critical question for the South is, How does it seize this opportunity?

The South's resistance to and suspicion of linking trade and environment is largely rooted in the concern that trade-related environmental measures might be used by the North as a form of trade protectionism by keeping goods produced in developing countries off the global market. Even if these measures are not used for protectionist purposes, developing countries often find themselves without any means to respond to stringent environmental requirements (which are largely defined by the North) due to their limited capacities. As a result, developing countries have maintained a defensive position on this issue (Najam, 2002).

The South's unwillingness to engage in negotiation regarding the trade-and-environment agenda, however, has not benefited it. Instead, this unwillingness has resulted in the marginalization of the South's sustainable development

interests. In fact, marginalization of Southern states in multilateral negotiations has been rampant in a variety of settings, often due to structural obstacles within the multilateral system that impede state-actors from participating in and influencing the policy-making process in a meaningful way, or because of a lack of capacity in both human and financial resources (United Nations University–Institute of Advanced Studies, 2005). Although the marginalization of the South in multilateral trade negotiations is not an exception, in this regard it is partially attributable to the South's lack of ownerships of the trade-and-environment agenda.

If the South remains wary and hesitant during post-Doha environmental negotiations, an even bigger concern is the loss of opportunity to accommodate more of its concerns and interests in the positive trade-and-environment agenda. Furthermore, the South faces the alarming realities of a changing global market as fast-moving corporations cater to the demand created by increasing numbers of “green consumers” via their supply-chain management programs, while environmental nongovernmental organizations (NGOs) promote the integration of sustainability factors into trading relations by controlling corporate access to markets in key areas. Consumers' preference for organic and fair-trade products, rejection of genetically modified food, and boycotts of unsustainable corporate practices are only a few examples of these emerging trends (Araya, 2003; Najam and Robins, 2001). Unless the South plays a more assertive role in incorporating its concerns and advancing a positive agenda, its chance to level the playing field and compete in the fast-changing global market in the short term and to strengthen the sustainable development dimension of the agenda in the long term, could easily be missed.

The negotiation on trade and environment is at a critical junction. While the scope of the negotiation agenda is limited in terms of reflecting the interests of the South and embodies many challenges, there are compelling reasons for the South to take the high road in negotiating the agenda rather than remaining in a defensive position toward it. The stakes of not taking the high road would be too high for the South.

It is in this context that this chapter explores avenues on which to move forward with trade and environment in Northeast Asia. While Northeast Asia is a somewhat diffuse geographical concept as a regional block, for our purposes it covers China, Chinese Hong Kong, Chinese Taipei, Korea, Japan, and Mongolia. Advancing the trade-and-environment agenda is of particular interest to the region as it is moving toward regional integration both on the economic and environmental fronts. In particular, there is a compelling reason for the region to push the agenda ahead with China emerging as a strong economic force following its accession to the WTO: While the growing dependence of economies in the region on the booming Chinese economy and the grave environmental consequences of unbridled economic growth

are becoming a source of serious regional concern, China's growing acceptance that it can benefit from a positive environmental strategy in the WTO is opening a window of opportunity to advance the trade-and-environment agenda in the region. Such recognition combined with a growing political will to tackle the emerging regional concerns in a concerted manner is the driving force behind the regional cooperation to address the issue of trade and environment.

Although Northeast Asia lacks formal regional institutions that can promote regional cooperation, a variety of existing fora provide its countries with a means of acting together to advance the frontier of the regional trade-and-environment agenda. Although countries in the region should strive to address the issue of trade and environment on multiple fronts—global, regional, and national—the importance of regional-level action is underestimated. I suggest that when it comes to contentious global issues such as trade and environment, forging a regional consensus through regional cooperation can be instrumental.

This chapter seeks to delineate Northeast Asia's pressing priorities and concerns in the area of trade and environment, elucidate possible avenues to advance a "positive" trade-and-environment agenda at the regional level, and propose the creation of a Multi-stakeholder Regional Center of Expertise (MRCE) anchored at a regional forum as a way to promote area cooperation for trade and environment. These are the first steps toward building ownership of the trade-and-environment agenda, which will, in turn, enable the region's countries to frame their negotiation agenda.

The Trade-and-Environment Debate: Northeast Asia's Perspective

Before looking at the issue of trade and environment through the regional prism, it is useful to understand the broader Southern perspective on the issue. It is within this framework that developing countries in the region should consider how to advance the frontier of a trade-and-environment agenda that can serve their interests.

The South Is in a Quandary

The issue of trade and environment in the multilateral trading system has been a conundrum for the developing world since the Marrakech Ministerial meeting of 1994, where the issue of trade and environment was formally introduced into the WTO through the Committee on Trade and Environment (CTE). The incorporation of this issue within the WTO was received with much resentment and many misgivings by the South, because the prevailing Southern view of the issue was deeply rooted in fears of "green protectionism."

At the same time, however, pressure from environmentalists has been steadily growing, particularly in conjunction with the rulings of the WTO Appellate Body on environment-related disputes such as the Shrimp-Turtle case. Environmentalists fear that WTO rules and regulations that do not allow for a sovereign country to use extraterritorial measures would weaken domestic environmental legislation. In addition, an increasing number of environmental regimes allow trade measures for the protection of the environment, which raises the issue of compatibility with the multilateral trading system. Amid the immense difficulties involved in resolving the trade-and-environment relationship and intensive discussions on the issue, the South hesitantly accepted the decision on the negotiation of the trade-and-environment agenda at the Doha Ministerial in 2001.

The South has maintained its “defensive” strategy toward the issue of trade and environment for a number of reasons. One of the biggest concerns for the South is that emerging environmental requirements in the North may choke off markets to its products. According to empirical studies carried out by the UN Conference on Trade and Development (UNCTAD), sectors of export interest to developing countries are most affected by environmental standards unilaterally set by the importing country. In particular, small- and medium-sized enterprises (SMEs) in developing countries have experienced difficulties in complying with environmental requirements (Shahin, 2002).

Among others, environmental standards that relate to process and production methods (PPMs), such as eco-labeling, have been at the heart of the South’s concern. While the application of eco-labeling is voluntary, and countries have the right to institute domestic regulations concerning it, the South is worried that the use of such measures for protectionist purposes, including the selective application of these measures to imported products or products that compete with domestic products. From the South’s point of view, allowing environmental standards based on PPMs can be easily manipulated for protectionism and can open a door for other non-trade-related issues such as labor standards, human rights, and good governance to be incorporated in the WTO (Charnovitz, 2002).

Outside of the WTO system, however, ample evidences can be found that the South has played a more forceful role in crafting international environment and trade policy. For instance, during the negotiation of the Cartagena Protocol on Biosafety, developing countries played an instrumental role in ensuring that importing countries have the right to demand the potential exporter of genetically modified seeds and other products to carry out a scientific risk assessment before allowing its import. The South also championed that the Basel Convention (on the control of transboundary movements of hazardous wastes and their disposal) require exporters to seek prior informed consent from importers before any shipment can take place (UNDP, 2003).

While many developing countries are still concerned that negotiations on the relationship between the multilateral environmental agreements (MEAs) and the WTO may allow MEAs to be used blanket exceptions for protectionist measures, some developing countries are keen on seeing some progress in the relationship between MEAs and WTO rules. A case in point is the relationship between the Trade-related Aspects of Intellectual Property Rights (TRIPs) Agreement and the Convention on Biological Diversity (CBD). While the TRIPs Agreement intends to encourage the development of environmentally sound technology through its patent protection, it does not provide the necessary flexibility to allow for the facilitation of access to and transfer of technology that are embodied in some MEAs, including the CBD. Many developing countries are also keen to ensure equitable sharing of benefits arising from the use of knowledge owned by indigenous communities as mandated in the CBD through means permitted by the TRIPs Agreement.

Sketching Regional Priorities

While national concerns and priorities in the area of trade and environment vary, identifying regional priorities is a useful exercise because it can spur an innovative way of thinking about moving the trade-and-environment agenda ahead at the regional level. The following issues are of particular importance to the Northeast Asia region.

Environmental Standards and Eco-labeling

One of the biggest challenges and priorities in the region is how to deal with trade-related environmental measures such as standards and eco-labeling. Experience demonstrates that these measures can choke off markets to products from developing economies because production, especially when meeting these environmental standards, becomes cost-prohibitive for Southern producers. Many countries in the region fear that such measures might be used as a pretext for limiting their access to markets in the developed world.

The fundamental problems behind such environmental measures as standards and eco-labeling, however, are the absence of international standards in general and the systematic exclusion of developing countries from corporate and international standard setting in particular. While the limited capacity of developing countries prevent them from participating in institutions such as the International Organization for Standardization (ISO), the private nature of the corporate codes of conduct precludes suppliers from influencing standard setting (Von Moltke et al., 1998). Unilaterally designed standards also tend to be based on technologies, perceptions of risk, and other cultural biases that favor products from industrialized countries (UNDP, 2003).

As a result, developing countries and their producers are forced to adjust to unilaterally set standards to meet these demands and to avoid losing

market share. The problem concerning standards and eco-labeling is multi-layered, deepening the challenges that the region is facing. Often, a variety of standards are set by the government and by the private sector, and these different standards have different priorities. This exacerbates the difficulties regional producers face and can dramatically increase the cost of meeting these multiple and nonconforming standards.

Environmental Goods and Services

The South also is keen to explore additional market access for export products. One such product type is environmental goods and services. The global environmental industry is growing rapidly and is expected to surpass US\$ 600 billion in 2005, with most of the growth expected to take place in developing countries at an annual rate of 8 to 12 percent (Zarrilli, 2003). In particular, a steady increase has been witnessed in developing country exports of environmental goods, with Asia accounting for about three-quarters of total export. As the green consumer trend changes the global market quickly, the integration of sustainability into international supply chains can enable producers from developing countries to gain access to new markets, or expand market share in existing areas. The organic food market for instance is a good example of new export opportunities for developing countries. The current global market for organic food is about US\$ 17.5 billion a year with growth rates of up to 30 percent per year. Organic food, one of the fastest growing segments of the food sector, has relatively well-defined international standards, and regional markets for organic food are expected to grow in Asia including China (Willer and Yussefi, 2004).

Countries in the region want to explore a niche market for environmental goods and services, as this market is growing fast in the region. The growth rate of this market in China, for instance, is estimated to be 10 to 14 percent, with infrastructure supply and service segments leading the way (Zarrilli, 2003). Several countries in the region appear to have comparative advantage in certain environmental products. For instance, China and South Korea have become significant suppliers of certain energy-efficient consumer goods, such as fluorescent lamps and multilayered insulating glass windows (UNCTAD, 2003).

The region remains ambivalent with regards to environmentally preferable products (EPPs) such as sustainable agricultural products, certified timber, and non-timber forest products. Although their potential in terms of export interest to the region cannot be underestimated, several challenges set the region back with regard to exploring this option. For instance, formal markets for EPPs do not yet exist in the region, and infrastructure problems persist. A great deal remains to be done outside of the negotiation forum to enhance the market access of EPPs. The dilemma that the South is facing, though, is that the issue of what constitutes an EPP is tightly entangled with

the issue of non-product-related PPMs (for example, organic products), and the distinction remains blurred even for products claimed not to be based on such criteria.

CBD, Biosafety Protocol and the WTO

Although countries in the region take somewhat different negotiating positions on the scope of the mandate in terms of the coverage of MEAs and the nature of specific trade measures, developing countries have a lot at stake in defining the scope of the Doha mandate on this issue. The region's concern and interest converge at the CBD. In particular, the keen interest in the Biosafety Protocol to the CBD and its compatibility with trade rules embedded in the Agreement on the Application of Sanitary and Phytosanitary Standards (SPS) is shared by many developing countries in the region. A number of developing countries including China have pursued an import restriction on genetically modified (GM) crops, citing health, environmental, and socioeconomic concerns. However, China is one of the world's biggest soybean importers and imported 20.74 million tons of soybeans in 2004, mostly from the U.S., where genetically modified (GM) soybean accounts for 60 percent of production (*China Daily*, 2004). Fearing that introducing such crops could undermine traditional farming practices and increase the economic dependency of poor farmers on the patented technologies of multinational seed suppliers, China published regulations that required labeling and safety certification for all GM animals and plants entering China for sale, production, processing, or research in 2002. The products specifically covered include soybeans, rapeseed, oil, and meal made from soybeans and rapeseeds, corn, cottonseeds, and tomatoes (Gale, 2002). While WTO practices require the use of such trade restrictions to be justified on the basis of "sound science," the Biosafety Protocol also allows socioeconomic factors, such as the value of biodiversity to indigenous communities, to be taken into account in carrying out risk assessment and determining risk.

The region is also grappling with how to protect traditional knowledge within the access and benefit-sharing (ABS) mandate of the CBD through means permitted by the TRIPs Agreement. The TRIPs Agreement recognizes the legitimate interests of the owner of a patent right, while the CBD calls on all members to develop mechanisms to respect and protect the rights of local and indigenous communities that are the holders of such knowledge, and to acknowledge and make recompense to the holders of the intellectual property from which the benefit is derived—for instance, the access and benefit-sharing of genetic resources.

Capacity Building

Capacity building needs are endemic to all developing countries in the region. Capacity constraint is to be blamed for the region's inability to cope

with the challenges arising from the emerging issue of trade and environment and to seize the opportunities that may accord benefits to the region. Two areas of focus have been identified: raising the necessary human resources and building institutional capacity. Developing countries in North Asia often are constrained by a lack of local experts and of homegrown, targeted research undertaken in an interdisciplinary manner to address crosscutting issues. This imposes a great constraint not only in terms of responding to a fast-changing trade-and-environment agenda but even more so with regard to moving ahead with developing new and innovative ideas for shifting that agenda in a region- and South-friendly direction. In addition, interagency coordination is in great need and much effort needs to be made to engage with different stakeholders—scientists, citizen groups, and businesspeople—in order to identify shared interests and common strategies.

Advancing Regional Priorities in Northeast Asia

Now that regional concerns and the priorities of the trade-and-environment agenda have been identified, a remaining question is, How can these priorities be advanced at the regional level? Northeast Asia is fast moving toward regional integration both on economic and environmental fronts. In addition, China's rapidly growing economic thrust provides a compelling reason for the region to push the trade-and-environment agenda ahead. This section first reviews the changing regional landscape, explores the rationale for adopting a regional approach, and then suggests key elements of doing so in practical terms.

Setting the Regional Scene: Moving Toward Regional Integration

Despite its relative geographical proximity, shared ecosystems, and overlapping environmental problems, Northeast Asia has never created formal regional institutions. The main roadblock to the establishment of such regional institutions has been the region's history of military and political confrontation, which has dominated international affairs in Northeast Asia until recently: China was separated from its neighbors by political and ideological barriers; military tensions between North and South Korea continue; and regional anti-Japanese sentiment rooted in Japan's occupation in the first half of the twentieth century linger (Schott and Goodrich, 2001). Apart from the political and ideological barriers, the diverse scale of economies in the region has also contributed to an environment that has not been conducive to the creation of any formal regional institutions.

Despite the absence of formal institutional mechanisms that promote economic integration and mobilize environmental cooperation at the regional level, Northeast Asia is currently caught up in the flow of growing regional

economic cooperation around the world, and is moving toward economic integration. Regionalism in Northeast Asia now has more weight as a result of China's accession to the WTO. The experiences of near breakdowns or at least the stagnation of negotiations at the multilateral level have further fueled the region's efforts to explore regional avenues of economic integration (Lincoln, 2004). The growing interest in strengthening bilateral and regional economic ties in the region is driven largely by the growing intra-regional trade volumes and investment links among the region's private firms. Most recently, China has replaced the United State to become South Korea's largest trading partner, and is also the top importer from Mongolia. Japan has been China's largest trading partner for the past ten years. In 2000, China exported about US \$ 55 billion worth of goods to Northeast Asia and about US \$ 65 billion to the United States. On the other hand, China imports three times as much from Northeast Asia as it does from the United States. On the investment side, Japanese investors hold more than US \$ 5 billion in assets in the Korean market, second only to U.S. foreign direct investment (FDI) in South Korea, and both Japan and South Korea hold multibillion dollar stakes in the Chinese economy (Schott and Goodrich, 2001). China also is the biggest trading partner for Hong Kong, with which it concluded the Closer Economic Partnership Arrangement in 2003 and recently agreed on the Further Trade Liberalization agreement to grant zero tariffs to more products from both sides.

A spurt of free trade agreements (FTAs) is further accelerating the regional liberalization of trade and investment in Northeast Asia. Japan, having long refrained from the bilateral route, has recently signed an FTA with Singapore, and has been negotiating an FTA with South Korea since 2002. South Korea also has signed an FTA with Singapore, following its first FTA, with Chile, and is expected to launch FTA negotiation with the Association of Southeast Asian Nations (ASEAN) and the European Free Trade Association in 2005. In addition, South Korea is undertaking numerous feasibility studies to launch FTAs with countries such as Canada, China, India, Mexico, and the United States in the short and medium terms. China has signed economic and trade cooperation agreements with Japan, South Korea, Mongolia, and Hong Kong. China also has engaged in economic and trade cooperation with other Southeast Asian countries in Asia, including India, Thailand, Singapore, Malaysia, and the Philippines. Moreover, the economies in the region have taken a bold step toward strengthening economic ties with other neighboring regions. In 2003, China, Japan, and South Korea signed trade agreements with ASEAN countries.

Slowly, the landscape of regional trade-and-environment links is being changed by these agreements. Importantly, the recent Japan-Singapore Economic Agreement for a New Age Partnership, includes a general exception that allows a party to take measures, if appropriate, for protecting

health, safety or the environment, or preventing deceptive practices. In addition, after signing an FTA with Singapore, Japan is examining the possibility of introducing the environmental impact assessment for trade liberalization under the FTA. Korea also is undertaking studies to look at the impact of the FTA with Japan on the environment (Kang and Kim, 2004), and the role of the FTA in promoting clean technology transfer and market liberalization of environmental services, with a view to further expansion of the FTA.

Increasing transboundary environmental problems coupled with additional pressures on the environment exerted by China's growing economy also have brought countries in the region together and fueled the region's efforts to seek environmental cooperation. Several environmental regimes have emerged in Northeast Asia at the multilateral and bilateral levels to address various environmental concerns shared by the region. Among others, transboundary environmental problems, such as air pollution, acid rain, and dust and sandstorms, drew much attention from neighboring countries in the region. Northeast Asian countries also are seeking a regional approach to address several global environmental problems. For instance, much effort has been made to curb the carbon emissions from China through regional cooperation, after a recent study showed that China's coal-burning power plants cause acid rain that affect neighboring countries. MEAs such as the UN Framework Convention on Climate Change (UNFCCC) also provided a reason for the region to cooperate through implementation measures such as technology transfer and environmental investments (Hamada and Morita, 2004).

While the region is moving toward economic integration and deeper trade relations, and environmental cooperation is robust, little concerted effort has been made in the region to link the issues of trade and the environment. In addition, appropriate fora where the trade-environment issue can be squarely addressed are scant in the region. The only place where regional cooperation on the topic is being discussed is within the economic and trade cooperation framework of Asia-Pacific Economic Cooperation (APEC), a loose association of countries around the Pacific basin. Although the primary focus of APEC is economic cooperation—especially the liberalization and facilitation of regional trade and investment—environmental cooperation has been within its purview almost since its inception.¹ Some of the promising areas where APEC can be a catalyst for regional cooperation include transfer of clean technology and the harmonization of energy standards.

Addressing the issue of trade and environment at APEC, however, has its limitations. Unlike other international trade fora where environmental cooperation focuses specifically on trade-environment links, the "APEC way" of environmental cooperation focuses more on broad economy-environment integration. Moreover, the divide between industrialized member countries and developing countries in terms of their priorities makes it difficult to move ahead with trade and environment at this forum. While initiatives and

aspirations are abundant little has yet blossomed in terms of implementation. Institutional mechanisms to coordinate environmental work are lacking, and engagement with environmental NGOs is minimal. Most important, the divide between the trade “track” and sustainable development objectives is obvious (Zarsky and Hunter, 1997).

Some argue that the economic integration debate has considered environmental and sustainable development governance dimensions in a secondary way as the issue of trade and environment is often depicted as a conflict-driven relationship (Tussie, 1999). Others attribute the sluggish progress and lack of achievement in environment-related activities at APEC to the lack of leadership, particularly of Asian governments, which fear environmental commitments will slow the pace of economic growth and often feel little ownership of the agenda-setting process (Zarsky and Hunter, 1997). The same problem can be found at the multilateral level. Despite the potential benefits that can accrue from the post-Doha environmental negotiations, developing countries in the region have yet to be proactive in setting an agenda that can address their concerns and serve their interests. The post-Doha environmental negotiations carry both risks and opportunities to developing economies in the region. In order to minimize the risks and maximize the potential benefits of the negotiation, establishing ownership of the agenda-setting process is the first step forward for the region’s economies.

Why Adopt a Regional Approach?

The question of which forum—environmental or economic—should be used to discuss the interface of trade and environment, is disputed at the global and regional levels, and is often left unresolved. Protracted negotiation on the Biosafety Protocol and its interface with the WTO at the global level is one of several examples. The situation also exists at the regional level in Northeast Asia. The region is rapidly integrating on both the economic and environmental fronts, yet these fronts do not always converge. As a result, trade-and-environment issues drift, without being anchored at one forum.

The merit of regional fora is often underestimated. The greater use of such fora can reduce the marginalization of developing countries in the multilateral negotiation fora, thus increasing opportunities for developing countries to interact and pursue their agendas. This, in turn, could spur more innovative responses from these countries to endemic political and capacity obstacles. In addition, regional meetings can serve as useful venues for setting the agenda and additional space for discussing specific issues. They also can provide developing countries with opportunities to coordinate positions among themselves before they move to the multilateral arena. In this way, regional institutions may provide a platform for cooperation, and serve as a bridge between the global and the national levels (UNU-IAS, 2005).

Additional regional meetings could further burden the already stretched capacity of developing countries, but the benefits of such meetings, if strategically used, could outweigh the disadvantages. Moreover, regional fora can facilitate the sharing of experience and best practices, which could help advance the agenda of common interest and pooling of resources in such areas as technology transfer, environmental impact assessment and monitoring, and capacity building.

A Regional Forum as a Platform to Advance the Agenda

Despite the absence of formal regional institutions, there is no shortage of fora where regional approaches to trade and environment could be discussed and decisions taken. One such forum is the Tripartite Environment Ministers Meeting (TEMM). As the region continues its rapid economic growth, concerns for environmental and ecosystem deterioration are becoming visible. In response, three countries in the region—China, Japan, and South Korea—demonstrated political leadership to promote further environmental cooperation by establishing the TEMM in 1999. The ministers meet every year to identify long-term visions for regional cooperation and carry out concrete cooperative projects. The three countries have agreed to give priority to such areas as promoting information exchange, strengthening environmental research, and fostering cooperation in the field of environmental industry and technology. They have also undertaken cooperative projects on joint environmental training, environmental industry development, and ecological conservation in Northeast Asia. TEMM projects have also helped establish a broad network of local governments, nongovernmental organization (NGOs), and researchers from the three countries. In 2004, the group was expanded into TEMM+1 with the inclusion of Mongolia (Korean Ministry of Environment, 2005).

While the current scope of the TEMM agenda is limited to environmental concerns, ministers at the 2004 meeting agreed that potential areas of future cooperation should include issues such as trade and environment and eco-labeling (Korean Ministry of Environment, 2005). Such a high-level regional platform could provide an opportunity to advance the regional trade-and-environment agenda and gain political buy-in for it. For instance, some of the regional priorities of trade and environment can be taken on as cooperative projects. The development of environmental goods and services markets in the region is one such issue that can be easily incorporated within the ongoing project area of environmental industry development. In addition, cooperative research can be conducted on developing mechanisms to share benefits of genetic resources derived from traditional knowledge, with China and Mongolia being providers, and Japan and Korea being users of such genetic resources in the region.

In order to produce any fruitful results from this meeting, however, it is imperative that the ministers engage with trade officials. Discussions on trade and environment at environmental meetings often result in hollow declarations acknowledging the link between the two issues and calling for cooperation among interested parties, yet without producing any concrete plans for action. This is largely due to the absence of representation from the trade circle. When the ministers meet in the future to discuss such issues as trade and environment, eco-labeling, and environmental industry development, a joint session with trade negotiators should be held to address interfacing issues. Such a session also would accelerate interdepartmental cooperation at the national level. The high-level meeting reflects a strong political will within the region to promote regional cooperation. If the momentum created by this meeting is well used, the region can make progress on a number of critical areas that are of importance to all.

Another forum where the trade-and-environment agenda can be pursued at the regional level would be the Ministerial Conference on Environment and Development in Asia and the Pacific, which was initiated in 1985 as a mechanism for strengthening cooperation between the environment and development in the region. The conference mostly has focused on assessing the state of the environment and policies for sustainable development, but its participants recently have moved toward focusing on the synergy between environmental sustainability and economic growth (MCED 2005 Bulletin, 2005).

The trade-and-environment agenda also can be pursued at the Northeast Asia Economic Forum, a regional nongovernmental gathering. Founded in 1991, the forum aims to further enhance regional dialogues and improve trade and economic cooperation among countries in the region, including China, Japan, the Democratic People's Republic of Korea, the Republic of Korea, Mongolia, and the Far East area of Russia. In 2002, the forum brought together more than 700 officials, entrepreneurs, and scholars from the region to discuss various topics, including China's economic and trade cooperation with other Northeast Asian countries in the framework of the WTO (*China Daily*, 2002). The regional priorities of trade and environment can be addressed within the framework of such a topic.

Creating a Multi-stakeholder Regional Centre of Expertise under TEMM

While the aforementioned regional fora provide platforms to discuss regional priorities on trade and environment, a more formal institutional mechanism would be desirable in the longer term. Such a forum, anchored in TEMM, could be instrumental in pushing for a regional trade-and-environment agenda and implementing any action plans that might develop. One way of doing

this is to create a Multi-stakeholder Regional Centre of Expertise (MRCE) on Trade and Environment under the umbrella of TEMM. In fact, various initiatives have been undertaken by numerous institutions to create such a research-oriented network in Asia. For instance, the Fair Trade Centre in Japan has established the “Asia Network on the WTO” to undertake research on the WTO and its policies, but lacks a focus on trade and environment. The United Nations University–Institute of Advanced Studies (UNU-IAS) has also established a research network on the WTO and Sustainable Development in Asia, but the network is composed solely of academics.

An MRCE with institutional as well as financial commitments from TEMM could be a center of gravity igniting a sense of regional unity. The multi-stakeholder component is critical given that the challenges facing countries in the region are multifaceted and require collaboration among governments, academia, civil society, and business/industry. It is also important to increase stakeholder awareness, as this awareness is the foundation for effective stakeholder involvement in integrated policy development and in identifying strategies to implement trade-and-environment–related regimes at the national and regional levels. The MRCE can also develop relevant educational material and public awareness programs to this end. All of these fit in the overall mandates and goals of TEMM.

The MRCE also could anchor established research networks among researchers in the region. Regional cooperation could further facilitate the sharing of information and expertise, as well as the pooling of limited resources. Such an approach would respond not only to the resource constraints that countries in the region face, but also help countries to meet the challenges of a general lack of understanding or of a misunderstanding of the trade–environment issues. Among others duties, the MRCE could facilitate addressing various regional priorities, some of which are discussed below.

Market Access

As described earlier, market access challenges facing developing economies in the region are multifold: information concerning various sets of standards unilaterally set by governments and the private sector is hard to come by, and meeting such standards can be costly. While countries in the region recognize the need to harmonize standards, individual countries often are unable to initiate movement in this direction due to their capacity constraints. Through the MRCE, economies in the region can work together toward the harmonization of standards. Given that intra-regional trade is substantial in Northeast Asia, efforts to harmonize standards within the region through the MRCE can benefit many parties. In fact, regional efforts to harmonize certain standards have already been made within APEC. The harmonization of energy efficiency standards is one of the key environment-related activities that APEC has undertaken, although it is conceived more in terms of

commercial needs than environmental objectives (Zarsky and Hunter, 1997). Such efforts can also help economies in the region implement climate change policies.

Regional cooperation can also offer opportunities for learning and information exchange for standards, and technical and managerial training. Countries in the region can create a working group under the MRCE to review standards and promote their harmonization in the region. The MRCE also can facilitate the creation of strategic partnerships between the private and public sectors, through which information and knowledge on standards established by the private sector can be shared in the region.

Technology Transfer

As regional trade liberalization is making headway, it could stimulate competition within the private sector that increases the transfer of energy-efficient and environmentally sound technologies. In this regard, regional cooperation can harness the technology that belongs to the private market. Regional cooperation through the MRCE can also act as a catalyst for enhancing the flow of technology transfer. In promoting technology transfer within the region, the role of MEAs cannot be underestimated, as measures employed to implement the MEAs often stimulate regional cooperation in this direction. For instance, growing regional efforts to curb greenhouse gases in the region are stimulating the transfer of clean technology. A good example is joint projects between Japan and China on a clean coal technology transfer (Rich, 1998). Countries in the region require a crosscutting way of thinking in order to reap the benefits of such initiatives through regional cooperation.

Market Development for EPPs

There is still a great deal to be done to develop a market for EPPs in the region, and regional cooperation can facilitate the process on multiple fronts. For instance, trade of organic products is growing in the region. Japan and South Korea represent the major markets within the region, while China heralds perhaps the highest growth potential in the near future, thus attracting the setting up of joint organic processing/marketing ventures between local and foreign investors (Willer and Yusefi, 2004). China's organic products have long been exported to Japan and Korea. Regional cooperation can help establish an infrastructure for an EPPs market (for example, labeling and certification schemes for green products) and develop a domestic green-product market by facilitating the sharing of specific market information on consumer preferences and consumer demand.

An Access-and-Benefit-Sharing Framework at the National Level

Regional cooperation can also be a catalyst for establishing domestic access-and-benefit-sharing (ABS) policy and legal frameworks, and mechanisms for

access and benefit-sharing, which is imperative in protecting traditional knowledge. The legal frameworks in Mongolia and China are sporadic and still in their early stages. While a few initiatives have been made to develop infrastructure for accessing genetic resources and sharing benefits thereof through bilateral channels in the region, the process has been slowed by a lack of information and mutual understanding.² Regional cooperation through the MRCE can assist the region build effective domestic ABS policy frameworks and mechanisms that balance the interest of users and providers by promoting dialogue between the two parties at the regional level, thus bringing the sporadic bilateral efforts up to the regional level. It also can facilitate the information-gathering process, which is critical for new markets and uses for genetic resources. Furthermore, the MRCE can collaborate with other regional institutional mechanisms to facilitate information concerning new and emerging mechanisms for benefit-sharing, such as sui generic systems or certificates of origin. The sharing of experiences to date, of best practices and lessons learned, could help advance the development of regulatory frameworks and enhance understanding of the experiences and thinking of others in the region.

Capacity Building

Regional capacity building could effectively address the multiple-fronts of capacity building needs for the region. Capacity building has been a frequent agenda of many regional meetings, though what capacity the region needs in order to advance the trade-and-environment agenda has not been discussed explicitly. Identification of the regional capacity constraints and priorities should be the first step toward developing a regional capacity building program. Being rooted in regional priorities is a major benefit of adopting a regional approach. For instance, research cooperation through the MRCE can contribute to creating a repository of local and locally relevant expertise within the region and building institutional capacity. In negotiating the post-Doha environmental agenda, negotiators need empirical evidence obtained from targeted research. For example, how has the dissemination of environmentally sustainable technology been affected by TRIPs rules? What impact have environmental requirements such as eco-labeling and standards had on market access in their respective sectors? The MRCE, through its research networks, can promote the growth of much-needed, cross-sectoral local experts and the undertaking of homegrown, targeted research to address crosscutting issues.

Conclusion

The Southern perspective on trade and environment that has orbited the notion of “green protectionism” has not paid dividends and has, instead, resulted in the further marginalization of the South at multilateral trade

negotiations. While the use of protectionist measures should be prevented, a defensive negotiating posture by the South would neither help safeguard its current market access nor gain it additional market access. The onus of reversing the past track record and of seizing emerging opportunities thus rests on the South.

In negotiating the post-Doha environmental agenda, the South should be assertive and proactive in incorporating its priorities and concerns into the negotiation agenda. Given that the distrust and skepticism of the South are deeply rooted in the perception of inequality within the multilateral trading system, however, little progress can be expected unless the chronic capacity constraints of the South are redressed, thus bringing the South into balance with the North in this regard. The South should make a strong case that the trade-and-environment agenda should be addressed in the context of “supporting measures”—capacity building, finance, and technology transfer (Jha and Vossenaar, 1999)—and call for more consolidated efforts aimed at demand-oriented capacity building.

What is more important, however, is for the South to shift its perspective by building ownership of the agenda. Given that the issue of trade and environment is a crosscutting and multilayered problem, solutions to it should also be multifaceted. In moving forward with the trade-and-environment agenda, the South should think in a more flexible and innovative way, and consider all possible channels to incorporate its priorities into the negotiation agenda. This chapter draws attention to the underestimated merits of a regional approach in Northeast Asia to advance the regional priorities of trade and environment. A regional approach can bridge the divide between the developed and developing worlds, as well as provide a buffer zone where dissonance between developed and developing countries within the region can be adjusted before being confronted at the global level (UNU-IAS, 2005).

This point, however, should not preclude individual countries from seeking other possible channels to push their national priorities. Given the diversity of positions and interests of economies in the region, there is a need to think strategically to pursue the best channel to deal with the divergence. When countries' positions are so divergent that regional cooperation is hard to garner, bilateral channels should be sought in tandem with the regional channel. In this regard, some of the FTAs being negotiated in the region are promising. Although generally narrow in terms of their scope, the region's FTAs have begun to incorporate interesting innovations, such as environmental impact assessments, eco-labeling, etc. Eventually, such bilateral channels of cooperation in the region should converge with regional-level cooperation for meaningful policy coherence. Ultimately, regional trade agreements can also be a positive influence on framing trade-and-environment discussion at the global level of the WTO.

While there has been renewed concern about the environmental impacts of further trade liberalization, and several developed countries have called for an environmental impact assessment of trade policies to be included in the Trade Policy Review Mechanisms of the WTO, the biggest challenge is the implementation capacities of developing countries. In this regard, a reference to the special and differential treatment and the cost implications in the negotiation on the Framework Agreement on trade facilitation is insightful. GATT/WTO negotiations on the Framework Agreement on trade facilitation has recognized that the principle of special and differential treatment should extend beyond the granting of traditional transition periods for implementing commitments, by linking it to the implementation capacities of the developing and least developed members. The negotiations also have explicitly mentioned that developing and the least developed countries shall “seek to identify their trade facilitation needs and priorities, and address their concerns related to cost implications of implementing trade facilitation measures” (Economiquity, 2004). Unless the limited implementation capacity of developing countries is recognized and properly addressed through environmental technical assistance of some sort, this is unlikely to be achieved.

Asia’s growing civil society can play a central role in advancing the frontier of the trade-and-environment agenda at the domestic and regional levels, and governments in the South should actively mobilize the potential of their civil societies. While the role of civil society often is seen as only that of a watchdog interested in limiting the power of the state, civil society in Asia has demonstrated that it can enhance the government’s capacity constraints at the domestic level by taking on social functions such as education and training. It also has contributed to furthering democracy by demanding government accountability and promoting wide participation in governance (Zarsky and Tay, 2000). Both businesses and NGOs will play vital roles in moving the trade-and-environment-agenda forward because the crosscutting nature of the issue requires engagement with multi-stakeholders.

There is a sense of opportunity in the South and an emerging realization that developing countries can benefit from the post-Doha environmental negotiation by broadening the focus to “trade and sustainable development.” Achieving sustainable development is no doubt of great interest to developing countries, as failure to do so will take a heavy toll on the poorest of the world. The often-touted sustainable development goal of the WTO embodied in its preamble will, however, remain hollow unless developing countries’ concerns are squarely reflected in negotiation agendas, and therefore in trade rules. Depending on how the South advances its own agenda, the current round of trade negotiation have the potential to become the “sustainable development” round—but only if the developing countries themselves take the initiative.

Notes

1. While APEC has concluded no binding agreements, it provides an opportunity for regular meetings of policy makers at the highest levels and has adopted a number of voluntary trade liberalization measures that have been widely respected. Indeed, APEC generated one of the earliest lists of environmental goods and services as part of an effort to promote accelerated liberalization of these markets.
2. Personal communication with the Japan Bioindustry Association (JBA). Commissioned by the Ministry of Economy, Trade and Industry, JBA has held bilateral workshops with Mongolia to enhance mutual understanding of policies, national laws, and regulatory procedures concerning ABS and exchange information and opinions. JBA also plans to have a bilateral workshop with China in near future.

CHAPTER 12

The Emerging Dimensions of a Southern Agenda for Trade and Environment

*Adil Najam*¹

The vexed relationship between trade and environment reached an important milestone around the turn of the millennium, when the trade and environment at least stopped pretending to ignore each other. After years of tortured public discussion on the subject, the Fourth Ministerial meeting of the World Trade Organization (WTO), held in Doha, Qatar, in November 2001, finally placed a limited set of trade and environment issues on the negotiating agenda of the multilateral trading system. A year later, the World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa, placed trade at the centre of its concerns and highlighted the urgency of establishing policy coherence between trade and environment. It was timely that they did so. Conceptually, each is an integral element of sustainable development; which, ostensibly, is a stated goal of both trade policy and of environmental policy; practically, these two areas of global policy cast long shadows on each other and the actual implementation of each influences, and is influenced by, the other (von Moltke, 1999; Najam and Robins, 2001).

It is not as if the two had been unaware of or uninterested in each other before the proclamations made at Doha and Johannesburg. Far from it, they were all too aware, sometimes painfully so. The WTO Committee on Trade and Environment (CTE) had seen intense discussions on the subject in the years prior to Doha, and a docket of important cases in the WTO dispute resolution system had placed the spotlight on what was clearly a complex relationship. But like strained lovers, each has traditionally been protective of its “space” and suspicious of infringements—or even advances—from the other. What Doha and Johannesburg did was to advance the relationship to

a new, although not necessarily more comfortable, level. The surprise at Doha was that environment, and more important sustainable development, was moved from the WTO Preamble, where it had been perched uncomfortably but unassumingly since the Marrakech Agreement (WTO, 1994), into the thick of action within the negotiating agenda (von Moltke, 2002; Halle, 2005). One can quibble about the limitations of the Doha mandate (WTO, 2001; Paragraphs 31, 32, 33) and the lack of meaningful headway since Doha, but the fact of the matter is that environmental issues are now *in* the WTO in ways that they were not before Doha, and they are there to stay (Najam, 2004). Environmental negotiators at Johannesburg reciprocated the sentiment; as evidenced by the sixty-two-page *Plan of Implementation* adopted at the Johannesburg (WSSD, 2002) which uses the word “trade” as many as sixty-eight times, refers specifically to the WTO 26 times, to the Doha Ministerial and its outputs twenty-five times, and adds another six mentions of the multilateral trading system.

Half a decade hence, two WTO Ministerial meetings and countless environmental negotiations later, it is rather difficult to be sanguine about the impact or achievements triggered by Doha and Johannesburg. With major divergences still looming large in the Doha negotiations, it is justifiable to feel dejected. Much water has passed under the bridge, but not that much has actually happened in terms of real policy change in either the world of trade or that of environment. But let us also acknowledge that policy change tends to come slowly; especially in the WTO and even more so on issues of such import and impact as trade and environment (Halle, 2005).

The authors of the chapters in this book—at least some of them—remind us that while the highest aspirations of Doha and Johannesburg might not have been met, things have been happening, albeit slowly. Probably the most important change, and certainly the most relevant to the focus of this book, is that developing countries themselves are beginning to view trade and environment issues in a more nuanced way. Not simply as a source of camouflaged protectionism, but also as a potential means to advance Southern interests; particularly in the context of sustainable development. As every chapter in this volume attests, the fear of environmental protectionism has not gone away; nor is it likely to go away anytime soon. Yet, most of the chapters also seem to suggest that an earlier sense of outright disdain for the trade and environment link is beginning to be tempered by a hesitantly more strategic attitude: An attitude that seeks not only to minimize the possible costs of such a link, but also to analyze its potential benefits. Of course, this change is not unrelated to the fact that, especially over the last two WTO Ministerials, developing countries have become far more comfortable in and assertive at trade negotiations (Halle and Mann, 2006; Wise, 2006). As witnessed at both Cancún and Hong Kong, they are beginning to demand a greater say in what is on the agenda and how it is dealt with; this

is especially evident on agriculture, but also beginning to be so on other issues, including trade and environment.

The purpose of this concluding chapter, however, is not to look back and evaluate what has happened in the last five years. It is to look forward and imagine what might happen in the next ten. In order to do so, we will build upon the broad insights from the preceding chapters. Without trying to summarize the dizzying array of ideas contained in these chapters—which have been written by a diverse and illustrious set of thought leaders from across the world and from all regions of the South—we wish to draw out the broadly common themes that our authors have to posit on what a future Southern Agenda for trade and environment might look like.

The authors invited to contribute to this volume were consciously selected to represent the diversity of Southern views on trade and environment; both in terms of regional perspectives and in the range of opinions and points of view represented. It would be counterintuitive and counterproductive, therefore, to seek consensus positions from these discourses. However, just as one can appreciate the breadth and diversity of the countries and people that make up the global South, and yet also recognize the clear strands of widely held aspirations, preferences, strategies, and attitudes within it (Najam, 2005a); similarly, we can identify within the multiplicity of Southern perspectives presented by our authors a generally shared sense of the broad trends and themes that have shaped the evolution of trade policy and its relationship to the environment. Indeed, as one reads the chapters in this book, the surprising element is not the wide range of opinion and ideas, or the many differences in approaches and proposed strategies. That is to be expected. The real surprise is that despite the variety of regional perspectives, disciplinary backgrounds, and ideological persuasions, there is much that is, in fact, common about the central trends and themes that these authors identify.

Of course, one does not wish to minimize the importance of very real differences in approaches between many of our chapters. For example, Yash Tandon (Chapter 6, on Southern and East Africa) and Alejandro Nadal (Chapter 8, on Central America) clearly seek an approach that questions not just the prevalent agenda but the very architecture of the international trading system. Others, for example, Falou Samb (Chapter 5, on West Africa), Carol Chouchani Cherfane and Karim Makdisi (Chapter 4, on Arab region), and Taimoon Stewart (Chapter 9, on the Caribbean region) also note the iniquitousness of current realities but seek the remedy in using the existing negotiation agenda to change the international trading system and make it more amenable to developing country interests. Yet others, like Joy Kim (Chapter 11, on North Asia), Simon Tay (Chapter 10, on South and Southeast Asia), and Pedro da Motta Veiga (Chapter 7, on South America) choose a somewhat different approach, and emphasize the ways in which

developing countries can use the rules that define the system to their best advantage. At the same time, however, one should not overemphasize these differences since there is more overlap in these approaches than this stylized caricature would suggest.

Having said the above, the goal of this chapter is neither as ambitious as to determine which of the various approaches being suggested is “best” for the South, nor as unimaginative as to merely summarize the key points from each chapter. My goal, instead, is to learn from and be informed by these chapters in order to identify some of the contextual trends and broad issue dimensions from which a Southern Agenda—or, possibly, a set of Southern agendas—might eventually emerge.² One cannot honestly say that we have, as yet, been able to identify the precise elements of such an agenda (or agendas). We can, however, suggest that some of the dimensions of a possible agenda have begun to emerge. The rest of this chapter discusses these emerging ideas, first by highlighting the contextual trends that are apparent in the evolving Southern response to trade and environment issues, and then by focusing on some of the emerging dimensions upon which a Southern Agenda (or agendas) might eventually be built.

The Contextual Landscape

There is a striking, although not surprising, agreement amongst our authors—and one would venture to say, within the South in general—on at least three broad contextual trends related to the trade and environment debate.³

- First, that there is a need to reexamine the foundational purpose of trade liberalization. That liberalization cannot be seen as an end unto itself and must be contextualized as a means toward some greater and overarching goal. Without the clear articulation and a globally shared acceptance of such a goal, the slogan of “free trade” is exactly that: a slogan that is, at best, misdirected (e.g., Ch. 2 by Halle and Meléndez-Ortiz) and at worst dangerous (e.g., Ch. 6 by Tandon, and Ch. 8 by Nadal). Many of our authors believe that sustainable development can be this goal.
- Second, that the developing countries of the South have a long-standing, deep-seated, and legitimate sense of unease about the trade and environment agenda, and we should not expect this unease to evaporate soon (e.g., Ch. 4 by Chouchani Cherfane and Makdisi, and Ch. 7 by da Motta Veiga). Our authors point out that Southern concerns about the trade-environment link are borne of long experience and deep fears about how such a link can turn into protectionist barriers to trade. While there is an acknowledgement that some of these fears may be

exaggerated, there is also an insistence that a number of them are well founded and deserve continued policy vigilance by the developing world (e.g., Ch. 5 by Samb).

- Finally, and notwithstanding the previous two points, there is a realization that the time for reactive and defensive reactions to the trade and environment debate may be over. That there is a need for the South to adopt a substantively proactive, possibly aggressive, and strategically driven agenda in the trade and environment debate that is guided by the felt interests of the developing countries rather than being a knee-jerk reaction (see, for example, Chapters 9, 10, and 11, by Stewart, Tay, and Kim, respectively).

As already suggested, there are many differences—some nuanced and others stark—amongst our authors *within* each of these points. But on a number of large contextual realizations, they seem to be in agreement. The overall picture of the contextual landscape that emerges from reading the previous chapters together is a) of a South that is uneasy about the ultimate goal of global trade policy and seeks to have it aligned to their own developmental interests; b) a South that has been wary of the trade-environment link and remains so; and c) a South that is somewhat restless in its desire to see positive movement and is beginning to recognize the need to proactively push for the changes it desires. This section will review each these three contextual realizations in more detail.

Trade Policy Needs a Goal Greater than Just Trade Liberalization; Sustainable Development Can Be That Goal

Questioning the purpose of trade liberalization and suggesting that it may not be a necessarily desirable end unto itself is no longer a radical proposition (Chang, 2002; Rodrik, 1999 and 2001; Malhotra, 2003). A report by the United Nations Development Programme (UNDP) points out that although trade liberalization has been shown to have many benefits, “expanding trade does not always have a positive or neutral effect on human development. Trade expansion neither guarantees immediate economic growth nor longer-run economic or human development” (Malhotra, 2003. p. 21).

Even as some scholars remain adamant that development benefits will eventually follow from trade liberalization (Cline, 2004; Bhagwati, 2005), the sense that the promise of trade liberalization has yet to be fulfilled in the developing world is pervasive through the preceding chapters and was a defining theme of the discussions during our all our regional consultations. For some, the late entry of developing countries into global trade policy forums, and the Southern lack of capacity, resources and expertise, have

resulted in the creation of a global trade system that was not designed with their developmental priorities—particularly social equity concerns—in mind. The solution, they suggest, is for the developing countries to participate more vigorously and seek more South-friendly rules for the global trading system. For example, chapters by Samb (West Africa), Stewart (Caribbean), and Chouchani Cherfane and Makdisi (Arab region) implore trade negotiators from their regions to change the terms of trade rules to make them more development friendly.

Others, however, argue that the structural deficiencies of the capital-led market model are so deeply entrenched and so detrimental to Southern interests that they need to be more fundamentally questioned. Writing from Central America, Alejandro Nadal (Ch. 8) questions the very premise of general equilibrium theory from which so much of trade theory flows. As a consequence, he suggests, we cannot depend on markets alone to redress social inequity or contain environmental degradation and that liberalization can work against higher societal goals in the absence of reasoned and reasonable state intervention in macroeconomic policy. Viewing the situation from a Southern and East African perspective, Yash Tandon (Ch. 6) points out that capital-led globalization—with trade liberalization at its center—can and has had devastating effects on economies that are unprepared for such liberalization. For him, the zealous focus on trade liberalization alone not only distracts from but actually works against true development by emphasizing macroeconomic growth and ignoring other aspects of development (including human rights, community rights, environmental quality, and self-determination).

Even as some seek to make trade rules development friendly and others call for structural alternatives to the prevailing system, both perspectives do agree that somewhere along the line global trade policy lost sight of why it was calling for liberalization. They also seem to agree that the ultimate goal—especially, but not only, for developing countries—has to be focused on development in its broadest and deepest sense; for many, sustainable development can be that ultimate goal.

At least three types of arguments are made in favor of considering sustainable development to be the legitimate and overarching goal of trade policy (see Najam and Robins, 2001; Najam, 2002). The first argument is conceptual. It suggests that the notion of sustainable development provides a ready-made conceptual construct that brings together the goals of economic growth, social justice, and ecological integrity and is the obvious framework in which different policy domains can be harmonized (e.g., Ch. 5 by Samb). The second argument is political and legal. This stream of reasoning points out that sustainable development has been a preambular goal of the world trading system for more than a decade and, since 2001, has been invited into the WTO negotiating agenda via the Doha mandate (e.g., Ch. 2 by Halle and

Meléndez-Ortiz). As such, the political and legal space for using sustainable development as the overarching goal for trade policy already exists. The final argument is strategic, and points out that a sustainable development perspective provides the South with an opportunity to recast the “trade and environment” debate into a “trade and sustainable development” debate and thereby influence the terms of the dialog by possibly turning a perceived threat into a potential opportunity (e.g., Ch. 7 by Da Motta Veiga).

Persistent Southern Unease about Trade and Environment Can Become the Basis of a Positive Agenda

It is not news that developing countries have long harbored deep-seated concerns and fears about the utility of the trade and environment link (Khan, 2002). Nor should it be a surprise that these concerns and fears endure even after Doha and despite the Southern interest in sustainable development (Najam, 2004). What is striking, however, is the intensity and persistence of these concerns even amongst those—and sometimes especially amongst those—Southern commentators who are calling upon the developing countries to drop resistance to and seek engagement with the trade and environment agenda. These concerns must not be ignored. Most Southern concerns are legitimate, reasonable, and well founded, and very little headway is likely to occur until the South feels that Northern governments and the environmental community have honestly engaged with these concerns and the evolving agenda has responded to them. As Taimoon Stewart (Ch. 9) points out, the burden of compliance has consistently been forced upon the South, especially in terms of trade and environment issues.

Those who think seriously about what a positive and proactive Southern Agenda on trade and environment might look like, often come to the conclusion that not only would it be built upon existing Southern concerns but, on a number of issues, defensive strategies most likely will remain a key component—but not the sole component—of the proactive Southern response (e.g., chapters 5 and 7, by Samb and Da Motta Veiga, respectively). Others, such as Chouchani Cherfane and Makdisi (Ch. 4), Taimoon Stewart (Ch. 9), Simon Tay (Ch. 10), and Joy Kim (Ch. 11), offer the elements of a potentially positive Southern Agenda by starting from persistent Southern concerns and identifying strategies for addressing them by reframing the agenda. The point is that the search for a positive and proactive Southern Agenda must not discard or discount the South’s longstanding and strongly held concerns; it should seek to address them.

The key areas of Southern concern are now well identified and well understood (Najam, 2002; Khan, 2002). A number of preceding chapters explore the nuances of these concerns and highlight how they play out in various regions of the South. At the core of these concerns is the felt belief

that environment can be used as a disguised mechanism of protectionism. A number of the specific issues are discussed later in this chapter, but the most common fear is that it is too easy for environmental measures and regulations to be used as nontariff barriers that limit the market access of Southern goods and services (e.g., Chouchani Cherfane and Makdisi, Ch. 4). For example, non-product-related process measures, such as eco-labeling, can cause trade discrimination as the costs of compliance may be higher for Southern producers, and especially for small- and medium-sized enterprises (e.g., Samb, Ch. 5). Related to the issue of market access is the lack of transparency and inclusion in the standards-making processes because of which producers from developing nations often bear a higher burden of conforming to environmental standards and a higher risk of losing market access as a result (e.g., da Motta Veiga, Ch. 7). In addition, there are concerns about the direction in which the dispute resolution mechanism has evolved and the how developing country capacity to use the mechanism remains constrained (e.g., Tay, Ch. 10). There is also concern about the direction of development in terms of domestically prohibited goods from the North continuing to find their ways into Southern markets (e.g., Stewart, Ch. 9).

In short, developing countries already feel besieged by a host of barriers to trade that they do not have the institutions or resources to cope with (Tandon, Ch. 6), and believe that the prevailing and emerging structure of subsidies, labeling, intellectual property rights, and investment regulations will keep the South locked into an unequal system that works to the advantage of advanced industrialized countries and to the detriment of the South (Nadal, Ch. 8). Environment, it seems to them, is yet another excuse by the industrialized North to “kick the development ladder” out from under them (Chang, 2002; also see Najam, 1995).

A Recognition of the Need for a Proactive Southern Strategy and Agenda Is Beginning to Set In

The third important contextual trend that emerges from this book—and from the larger consultation process that went into it—is that activists, scholars, and practitioners across the South are beginning to question the utility of, or their ability to, “just say no” to the trade and environment link (see, especially, chapters 4, 5, 7, and 11, by Chouchani Cherfane and Makdisi, Samb, da Motta Veiga, and Kim, respectively).

The realization stems partly, but only partly, from a pragmatic assessment that has crept in over the last many years about the direction of the debate and the futility of the refusenik position. It also stems, maybe more so, from the strategic recognition that while allowing environmental issues into the Doha negotiating agenda was a necessary price to pay to the North to promise that Doha would be a Development Round, now that it is in there

it can be molded into a trade and sustainable development agenda and thereby aligned to the South's own longer-term interests (see, Najam, 2004).

The South's new willingness to investigate the possibility of win-win proactive positions on trade and environment should not be seen as a shift in its negotiation interests, or as caving in by the South to mounting pressure from environmentalists in the North. While the pressure has been undeniable, it has also been accompanied by a) efforts by a number of environmental groups to mould the trade and environment debate in a direction that is becoming more cognizant of Southern interests and concerns, and b) a growing sense amongst many in the South that parts of the trade and environment agenda may actually be in the South's own trade as well as environmental interests. For example, there are potential environmental goods and services (especially related to traditional knowledge) where developing countries may hold a comparative advantage (Shaw and Schwartz, 2000), environmental degradation often impacts developing countries even more than industrialized ones (Najam, 2000), and the special and differentiated treatment clause in the WTO can provide developing countries important cover as they come up to speed in this area (Meléndez-Ortiz and Dehlavi, 1999).

As has already been pointed out, the lingering suspicions about trade and environmental issues is near universal; but so is the sense that broadening the discussion within a sustainable development framework might provide a space that is accommodating to Southern interests and therefore allaying of Southern suspicions. From a practical perspective, by agreeing to paragraphs 31–33 in the Doha Declaration the developing countries have already accepted the inclusion of environment into WTO negotiations; the question now is “to what extent” and “on what terms.” There is a pragmatic recognition of the inevitable and a sense that fighting the issue is neither feasible nor desirable any more; effort is much better invested, therefore, in either trying to contain the negotiations to only the most pertinent environmental issues, or to broaden the discussion within a sustainable development framework (Najam, 2002). Both options require active engagement with the issue and, more important, there is a certain degree of desire to do so. Luckily, calls for greater policy coherence are growing louder and sharper, and there is a parallel growth in the recognition, even amongst “hard-line trade people” that trade policy can no longer be pursued in isolation from other broadly-held social goals, and that it “must fit comfortably in a wider framework of economic, social and environmental policies” (Halle, 2005. p. 6).

To look at things from a positive perspective, there is now both the opportunity (within the Doha text) and the inclination (within the South) to move the agenda toward sustainable development. On the other hand, given the chronic pressures of capacity on developing country delegations and the predisposition for suspicion of environmental issues, the danger exists that the South could slip back into a defensive, risk-minimizing strategy. A retreat

into defensive strategies that seek merely to minimize environmental encroachment into trade policy is likely to be a recipe for frustration; not only for developing countries but for all parties including those that are most desirous of environmental inclusion. As the main demandeurs of a reformed multilateral trading system, the burden of drawing out the links between trade and sustainable development will fall principally on the developing countries. It will also require, however, a willingness on the part of the developed countries to accommodate Southern interests within the broader ambit of “sustainable development” rather than insisting on the narrower confines of an “environmental” agenda.

Emerging Dimensions of a Southern Agenda

The term “Southern Agenda” can be easily misunderstood. In choosing to use this phrase we certainly do not suggest that there is, can be, or should be, a single consensus manifesto on trade and environment that all developing countries agree to. The South is too diverse and trade-environment links too complex and contextual for this to be either feasible or desirable.

Indeed, the choice to structure this book along a series of regional perspectives from across the South is a deliberate attempt to capture the contextual diversity and distinctions within the global South. However, we started with the premise that a) despite the important internal diversity within the South, developing countries as a whole have more in common with each other than they do with the industrialized countries of the North, b) as a political grouping many of them do often work in semiformal but effective concert at a number of international forums, including in trade negotiations, and c) on issues related to trade and environment, in particular, they tend to hold generally similar positions, apprehensions and aspirations (Najam, 2005a).

For most part, this premise has been borne out by the chapters in this book. Our regionally focused chapters do, in fact, identify many differences between the various regions. Notwithstanding these differences, however, the broad issues they highlight are strikingly similar. Moreover, many of our authors explicitly highlight the need for broadly common Southern strategies and agendas and most describe and discuss the future of the trade and environment debate as a distinctly “South-wide” challenge. In short, the South remains a useful framework within which to analyze the future of the broad trade and environment agenda. However, the regional variations within this agenda will remain important and may define a whole series of regionally (and sometimes issue-) informed Southern Agendas which may not be in conflict with or contradict each other, but which are likely to be substantively distinct at the level of details.

What, then, are the broad issues that emerge as possible elements of a Southern Agenda on trade and environment? A review of the chapters in this

book, and of the regional consultations that were conducted in conjunction with the writing of these chapters, identifies seven emerging themes—or dimensions—around which the future Southern Agendas on trade and environment could be built. Most of these are relevant across all of the regions of the South; many are more relevant in some regions than in others. By necessity, these are presented in general terms. Invariably, the underlying issues will evolve over time—even in the short-to-medium term—and so must the Southern response to them.

1. Investing in Regional Arrangements Can Benefit Global Negotiations as Well as Local Implementation

A number of our chapter authors believe that the developing countries could become more proactive on the trade and environment issues if the discussions on the subject were moved to the regional level. This belief stems from an assessment that the global multilateral level may be too distant from local realities, and the bilateral level may be too open to manipulations by more powerful industrialized countries. Therefore, developing countries may find regional arrangements as the most comfortable arenas to deal with these issues.

The argument seems to flow from a series of related assessments.

- Regional experiences and priorities often overlap and, therefore, there can be useful cross-learning between countries in the same region (e.g., Stewart, Ch. 9).
- That even when individual countries do not have the capacity to fully engage in a complex subject such as trade and environment, regional arrangements will enable regional collectives to prepare and participate more fully in global multilateral negotiations on the subject (e.g., Chouchani Cherfane and Makdisi, Ch. 4).
- That there is already a blossoming of regional trade agreements and these can be used to push toward the regional harmonization and innovation on trade and environment policies (e.g., Tay, Ch. 10).
- Because much of the apprehension toward trade and environment stems from the belief that the environmental agenda is North-driven and is unsympathetic to Southern realities, regional discussions are more likely to turn local realities into regional priorities and, from there, move these issues into a South-driven agenda for trade and environment (e.g., Kim, Ch. 11).
- That there is the view that regional arrangements are more likely to focus on implementation challenges rather than rule creation, especially through capacity building, technical assistance, and policy support (e.g., Falou, Ch. 5).

- Finally, that there is also the sense that regional arrangements and markets are more likely to appreciate and respond to the interests of vulnerable groups, especially the poor, than the more distant multilateral system (e.g., Tandon, Ch. 6).

A number of our authors find regional arrangements to be a central component of a potential Southern agenda for trade and environment; albeit for an array of different reasons. For example, Joy Kim (Ch. 11) proposes a new regional forum on trade and environment for Northeast Asia so that the region can better contribute and respond to the global trade and environment agenda; Simon Tay (Ch. 10) a key goal in Southeast Asia is regional harmonization of trade and environment policy; Falou Samb (Ch. 5), writing about West Africa, and Carol Chouchani Cherfane and Karim Makdisi (Ch. 4), writing about the Arab region, seek regional cooperation on trade and environment as a way to strengthen the negotiating hand of otherwise weak countries and, within these countries, of marginalized actors especially small and medium enterprises; and Yash Tandon (Ch. 6) believes that people-centric regional groups can allow developing regions an alternative to the heavy-handed influences of one-size-fits-all globalization. But for all, a more integrated regional approach to trade and environment is a desirable goal, and should be part of a Southern Agenda.

2. A Southern Agenda Needs to Be Pursued through the Dispute Settlement System as Well as Through Multilateral Negotiation

There is great concern amongst the authors of this book about the WTO dispute settlement system and how it has been used to “sneak in” environmental regulations into the multilateral trading system. There is also the recognition that developing countries need to be more vigilant as well as more active in the dispute resolution mechanisms of the WTO. It is clear that the existing trade and environment agenda has been greatly influenced by this system. It is also very likely that the future evolution of trade and environment policy will depend not only on what happens in the negotiations but also, and possibly even more so, on what happens within the dispute settlement system. If a meaningful Southern Agenda is to be pursued, it will be shaped not only by negotiated rulemaking but also through the jurisprudence shaped in dispute settlement processes.

As Pedro da Motta Veiga (Ch. 7) points out that amongst the many layers of South-unfriendly uncertainties associated with the multilateral status quo (such as, for example, the proliferation of non-negotiated rules), the dispute-settlement system can often produce yet more ad hoc rules, thereby adding even more layers of uncertainty. In short, the dispute settlement system has, for the most part, been a matter of concern for the South, because

a) developing countries often do not have the capacity to use the system (Chouchani Cherfane and Makdisi, Ch. 4), and b) it is neither the most efficient nor the most reliable means of setting global policy (Tay, Ch. 10).

However, precisely for these same reasons, there is an urgent need for developing countries to become more active in and to better utilize dispute settlement procedures to their advantage, when they can. This is partly a matter of building Southern capacity to bring forth disputes for settlement when, for example, environmental regulations are being applied as protectionist non-tariff barriers to trade (Chouchani Cherfane and Makdisi, Ch. 4; Samb, Ch. 5). But it is also a matter of strategy—of determining when Southern interests can be advanced through jurisprudence rather than rule-making (Tay, Ch. 10). For example, determining when vagueness in the rules that is detrimental to Southern interests can be given clarity through WTO jurisprudence (da Motta Veiga, Ch. 7). This could, for example, be applicable to areas such as intellectual property rights and traditional knowledge.

3. Trade and Environment Policy Must Not Marginalize the Already Vulnerable

A number of our authors begin from the premise that the purpose of trade policy—and of trade and environment policy within that—is not simply to ensure that producers and consumers in developing countries benefit from such policies; or, at least, are not hurt by them. That, of course, is necessary. But if we are to take the sustainable development framework seriously then the poorest and most vulnerable populations within the South must be given their own “special and differentiated” treatment. A meaningful Southern Agenda on trade and environment should be pro-poor and must ensure that the most vulnerable populations within a country are not made to disproportionately bear the costs of trade and environment policy (Nadal, Ch. 8).

The need to give priority to the needs and vulnerabilities of already marginalized actors comes up in the preceding chapters in multiple ways. It is the central theme in Yash Tandon’s (Ch. 6) account from Southern and East Africa, where he demonstrates the ways in which global trade policy can further disadvantage the already disadvantaged and why building systems around local realities, needs and resources is necessary.

Others alert us to the same need in more specific contexts. Writing about the Caribbean, Taimoon Stewart (Ch. 9) stresses that for small and vulnerable economies, such as those in the Caribbean, are already marginalized from the international trading system and because of their unique situation their vulnerabilities are not temporary, but permanent. Subsidies and environmental regulations are principal concerns for Falou Samb (Ch. 5), who focuses on West Africa—but echoes the sentiments from much of the South—and alerts us to the plight of small agricultural producers. In the case

of the Arab region, Carol Chouchani Cherfane and Karim Makdisi (Ch. 4) identify small- and medium-sized enterprises (SMEs) as a particularly vulnerable group whose livelihood can be threatened ad hoc and expensive environmental standards and rules.

In terms of a Southern Agenda, environmental regulations need to be structured and implemented in ways that allow vulnerable populations to meet the requirements while improving or maintaining their livelihoods. When necessary, such populations need to be provided with the resources, training, and opportunities to adapt to and adopt these rules. It should also be noted, however, that because the livelihoods of many of the most vulnerable populations tend to be natural resource-dependent, environmental rules can often help sustain their livelihoods. For example, if cost-effective eco-labeling systems can be designed, ecological products from small producers in the South could gain important trade advantages (Stewart, Ch. 9); similarly, if the institutional hurdles are removed, the holders of traditional knowledge and organic producers in developing countries could benefit from the trends of green consumerism in the North (Kim, Ch. 11).

4. Special and Differentiated Treatment Provisions Can Be Used to Expand the Policy Space for Developing Countries

There is a clear call to operationalize and explicate the special and differential treatment (S&DT) provision in WTO texts. To the extent that this principle has been applied in the past, it has generally meant giving developing countries a little additional time or some additional resources in order to “come up to speed.” Many of our chapter authors believe that a Southern Agenda on trade and environment should seek more profound use of this principle as a means to align the actual provisions to the “special” and “differential” realities of specific developing countries and regions. In essence, the purpose of applying this principle should not simply be to buy a little more time or to acquire a little more assistance, it should be to expand and alter the policy space for developing countries and to align this policy space to Southern interests.

For example, Taimoon Stewart (Ch. 9) makes a strong case for why the artisan fisheries in the Caribbean deserve special and differentiated treatment because such livelihoods are not only dependent on key environmental resources but can be devastated by international trade. However, what she seeks is not just more time and resources to “assist” in the transition to an open market economy; she seeks, instead, a different policy space in which to deal with this issue. A policy space that acknowledges the importance of the environmental resource, the need to manage this resource carefully, and also the vulnerability of the host economy and, therefore, allows such fisheries an

exception to the global ban on fisheries subsidies and grants permission to charge a fee to foreign vessels fishing in Caribbean territorial waters.

Alejandro Nadal (Ch. 8) adopts a similar strategy in using the S&DT argument to advance the idea of international commodity agreements (ICAs) as a means to reduce market distortions through the supervision of giant corporations that control very large segments of the market. In essence, he seeks “special” status for cases where vulnerable countries (and within them vulnerable communities) depend heavily on a few commodities whose use puts undue pressure on people and the environment. The “differentiated” response he seeks, through ICAs, includes technical and financial assistance for developing countries but, more than that, it is focused on policy packages that can trigger increased value additions leading to forward and backward industrial links, employment opportunities generation, and healthy multiplier effects in commodity production chains.

Irrespective of how one might respond to these specific proposals, the point to be underscored in terms of a Southern Agenda is that the application of the S&DT provision ought to be viewed as a tool for shaping the policy space within which Southern interests are pursued, rather than simply a call for a few extra years or a few more resources.

5. Trade and Environment Policy Coherence Can Benefit the South

It is neither correct nor useful to think of the “environment” as a solely Northern interest, or of “development” as a solely Southern interest. The simplistic view that the South is not interested in the environment is simply not true. In fact, it has never been true (even if some in the South have acted as if it were!). What is true—and what is made abundantly clear in the preceding chapters—is that a) the South considers the dominant environmental agenda to be North-driven and unresponsive to Southern priorities, and b) the environmental concerns that are important to the South tend to be different from those that Northern groups and governments find most attractive (see Najam, 2005).

Ultimately, a “real” Southern Agenda on trade and environment will require individual countries to devise positions that harmonize their national *economic* interests with their national *environmental* interests. Countries pursue both for exactly the same reason: to enable a better quality of life for the citizens of that country. It used to be too easy for trade negotiators to assume either that their job was only to pursue their nation’s economic interests and someone else would separately focus on the environmental interests, or that the two sets of interests could not be pursued simultaneously. The logic of sustainable development suggests that neither position is tenable. Trade negotiators have haltingly come to this realization and, especially with the

Doha mandate, have begun a hesitant search for trade and environment policy coherence.

Many of the chapters in this book suggest that such policy coherence is not only possible but can be desirable for the South.

Nearly all our authors stress on the importance of clarifying the relationship between trade-related multilateral environmental agreements (MEAs) and WTO disciplines. As Simon Tay (Ch. 10) points out, getting this clarity should be a priority and it is best if this is negotiated rather than left to the dispute settlement system to decide. Indeed, the uncertainty that results from not being clear on which trade-related objectives of which MEAs may or may not be compatible with WTO rules is itself a source of unease for the South (da Motta Veiga, Ch. 7). It could well turn out that the discrepancies between trade regimes and environmental regimes may not be as large as have been imagined. But we will simply not know whether this is so or not, until we try to find out.

The one area where there is a significant concern about incompatibility relates to biodiversity and biosafety provisions within the Convention on Biological Diversity (CBD) and the Trade-related Aspects of Intellectual Property Rights (TRIPs) regime (Nadal, Ch. 8). The question for Southern negotiators, however, has to be broader than whether CBD complies with the spirit of the TRIPs Agreement or not. It also has to be about what is in the overall best interest of the developing countries; where Southern interests are defined as the South's economic interests as well as its environmental interests.

In trying to determine the answer to this and such questions, Southern negotiators will do well to revisit the basic principles they have negotiated in environmental arenas and in trade arenas. For example, the "polluter pays principle" is one of the key principles that developing countries have gotten inserted into environmental agreements. It seeks to impose the full cost of pollution abatement on those who pollute. It has the potential to be used as a lever of "levelling the playing field" by not allowing any country to "dump" (literally in this case) pollution or a polluting product on another country (see Stewart, Ch. 9). Similarly, as already discussed, special and differentiated treatment principle is an important principle in trade regimes. A similar concept, the principle of "common but differentiated responsibility" is equally important to how most MEAs are designed. Both concepts, in their different contexts, are key to developing country interests; both have a history of less than perfect implementation. There is a case to be made for building bridges between the two concepts, and therefore between the two contexts, as we move toward a Southern Agenda for trade and environment.

It has already been suggested that coherence between trade and environment policy at the global level is unlikely to come until it has first come at the national level. The incoherence between global trade policy and global

environmental policy can often be traced back to the fact that in too many countries there is very little interaction between those responsible for trade and those charged with the environment (Chouchani Cherfane and Makdisi, Ch. 4). Simon Tay's (Ch. 10) proposal for initiating a Trade and Environmental Policy Review process, akin to the process for trade policy review, serves force the dialog between these two domains at the national level; which, in fact, is where it is most useful (Falou, Ch. 5; Kim, Ch. 11).

6. *Perennial Agenda Issues Will Persist*

The search for a proactive Southern Agenda for trade and environment does not imply that the developing countries need to abandon all elements of its current strategy, including some defensive elements (da Motta Veiga, Ch. 7). The chapters in this book suggest that a number of key perennial issues will persist on the agenda, and on some of these the South would needs to continue along the path that it is already following; but hopefully in a more concerted and strategic fashion.

- It remains in the Southern interest to continue disciplining *the proliferation of unilateral environmental rules*. For its own capacity constraints alone, developing countries remain wary that the expanding mandate of WTO could easily spiral out of control (da Motta Veiga, Ch. 7). It remains in the South's interest to pursue an international trade agenda that is as simple, as clear and as uncluttered as possible. However, the simplicity of the WTO agenda could be compromised if non-negotiated rules keep creeping in via domestic regulations in the North or through cookie-cutter free trade agreements; these need to be resisted (Chouchani Cherfane and Makdisi, Ch. 4).
- Environmental standards *per se* are not a problem for the South. Indeed, eco-labeling could be an opportunity for some developing countries to move toward sustainable production practices and capture niche markets (Kim, Ch. 11). The problem is the imposition of *environmental standards that the South has had no say in devising and which are often discriminatory and protectionist*. This happens partly because the domestic standards from the North simply get imposed on the developing countries, and partly because of the systematic exclusion of developing countries from corporate and international standard setting (da Motta Veiga, Ch. 7). Developing countries need to continue resisting imposed standards that they have not had a say in formulating, and insist on transparency and greater participation in the standard setting process (Stewart, Ch. 9).
- Another perennial challenge for the South is that of *subsidies and protectionism, especially in the areas of fisheries and agriculture*. On this issue,

however, the approach of seeking its own subsidies in response to those imposed in the North is not sustainable in the long-term and has high direct and indirect economical and environmental costs. The South has championed the push for dismantling subsidy regimes in the North for economics reasons. It should continue to do so for environmental reasons (see Samb, Ch. 5; da Motta Veiga, Ch. 7; Nadal, Ch. 8).

- The *intellectual property rights* discussion in the context of trade and environment has been reduced to a debate on the CBD-TRIPs relationship already alluded to. In the short-term this is an important, even critical issue (Kim, Ch. 11). It makes sense for the developing countries to keep pushing for a system that respects traditional knowledge, resists easy and broad patentability, promotes equitable benefit-sharing, and requires informed consent (da Motta Veiga, Ch. 7; Stewart, Ch. 9). For the long-run, developing countries should insist on each of these principles to be imbedded in the evolving intellectual property rights system—not necessarily within the WTO enclave—so that they are not seen as specific to the CBD-TRIPs debate, but are applied broadly and enshrined boldly within the IPR regime as the guiding principles (Nadal, Ch. 8).

7. The Real North-South Divide Is All About Capacity Differences

The call for more capacity building and technical assistance is the most obvious, most reasonable, and most common refrain from the South; it is so on all issues, not just on trade and environment. After all, one can conceive of the entire North-South divide as one big “capacity problem.” There are a set of countries that have the capacity to fully engage in all aspects of the global policy problematique (research, negotiation, implementation, etc.); and there is another set of countries which does not. The first set is what we call the North, the latter is the South. The more capacity you have, the more likely you are to create a system that suits your interests and meets your goals. The less capacity you have, the more Southern you are.

Of course, this is a somewhat simplistic model. But not entirely. Capacity is, in fact, the key to influence in the international system.

Developing countries are, therefore, correct in seeking capacity enhancement as the principal cornerstone of any future strategy. However, after years of attempts and millions of dollars spent on it, it is not clear whether we know exactly which capacities are the most important or exactly how to build them. However, the chapters in this book do provide some insights that might help nudge us toward some answers.

- Developing countries are often not able to deploy the entirety of the capacities they have because of fractured institutions and structural

limitations. Developing institutional capacities within the South is, therefore, a key challenge issues (Chouchani Cherfane and Makdisi, Ch. 4). This included building the capacity of Southern institutions and also enhancing their capacity to interact with each other.

- Another key area of deficit relates to implementation capacity. Traditionally, there has been relatively little attention paid to this. However, there is the opportunity to begin addressing this deficit by creatively using the emerging Framework Agreement on Trade Facilitation (Samb, Ch. 5).
- A third area of deficit in terms of capacity, relates to the capacity for research and analysis (Stewart, Ch. 9). To be credible and to be deemed authentic, this capacity has to come from the developing countries themselves and has to be nourished internally.
- Civil society, especially within developing countries, can help the South mobilize significant capacities relevant to trade and environment issues (Chouchani Cherfane and Makdisi, Ch. 4; Samb, Ch. 5). Additionally, regional institutions and arrangements can be valuable repositories to pooled Southern capacities (Kim, Ch. 11).
- Finally, it should be noted that capacity building discussions—including in this book—too often discuss capacity as something that has to be “built” by someone from the “outside.” Although any and all assistance from interested external players is welcome and much needed, it is counterintuitive to assume that a) it can be done entirely by outsiders, or b) it is desirable to have it done entirely by outsiders. An authentic Southern agenda can only emerge from the deployment of authentic Southern capacities. The good news is that there are enough outside actors (including Northern governments and environment groups) who have a real interest in assisting the South in its search for an authentically Southern Agenda on trade and environment. While such assistance is crucial, it cannot be enough. Although developing countries have serious capacity constraints, they do have between them the capacities needed to begin constructing and implementing a Southern Agenda for trade and environment.

Conclusion

This chapter had set for itself the goal of drawing out the broad themes around which a future Southern Agenda for trade and environment might emerge. In doing so, we have mined the various regional chapters included in this book for trends and insights. In putting these together, we have taken some liberties in reorganizing the major ideas and drawing inferences about what these insights mean for the South as a whole. All of this has been

contextualized by the lessons that had emerged from the series of regional consultations that accompanied the writing of these chapters. Each of the preceding chapters, therefore, is much richer than this final chapter can be, and each offers more nuanced and more detailed findings than are contained here.

Having come this far, what can we say about what we found during this process of searching for a Southern Agenda on trade and environment?

At least four things can be said with a reasonably high level of confidence. First, there is a nascent but palpable inclination, even desire, within the South to move toward a positive and proactive Southern Agenda on trade and environment. This does not imply that developing countries have given up on their longstanding apprehensions about the trade-environment link. However, this does suggest that there is a desire within the South to test new and different strategies on the subject; since the old strategies are obviously not working.

Second, the Doha mandate may or may not deliver on its promise, but it as it has continued to stumble on the road to Hong Kong and beyond, it has provided the South with an opportunity to test out a different approach to trade and environmental issues. By placing environment into the WTO negotiating agenda—but doing so within the context of a “Development Round”—the Doha mandate provides the developing countries with a window of possibilities which may turn out to be ephemeral but which, at this moment in time, provide an opportunity to the South to try reframing the “trade and environment debate” into a “trade and sustainable development” debate.

Third, we can begin to identify—as we have in this chapter—a set of emerging ideas that could possibly become elements in an eventual Southern Agenda for trade and environment. These elements remain broad and general, as they must, but there is a remarkable amount of buy-in for these agenda elements across a range of Southern activists, scholars and practitioners. Whether there is the political will or the ability within the South to craft a workable agenda around these elements remains to be seen. But this seems to be as good a time as any to give it a try.

Finally, imagination has to be a first and vital investment in our search for an authentically Southern Agenda for trade and environment. The pursuit of such an agenda, or agendas, cannot be easy, but it is possible. But as Mark Halle and Ricardo Meléndez-Ortiz remind us, will both trigger and require a very different multilateral trading system. A system whose aspiration and intent is very clearly aligned to public policy goals that are larger and more meaningful than just trade liberalization. The chapters contained in this volume put forth the hope that sustainable development can be that goal. Indeed, an argument could even be made that it must.

Notes

1. Hyun Jung Choi of the Fletcher School of Law and Diplomacy, Tufts University, provided valuable research assistance for this chapter.
2. This chapter is principally informed by the preceding chapters, particularly the regional perspective essays. More generally, however, it is also informed by the larger literature on the subject, by recent developments within trade and environment negotiations, and by the various regional and practitioner consultations held as part of the larger project that this book is part of.
3. This is no longer surprising because we had found the same feeling at the beginning of this project when we had interviewed Southern trade delegates at Geneva and Brussels (Najam, 2002).

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The **Regional and International Networking Group** (The Ring, www.ring-alliance.org) is a global alliance of predominantly Southern independent research and policy organizations. It was formed in 1991 to stimulate preparations for the 1992 Rio Earth Summit. In 1994 the group designed and implemented an ongoing program of capacity development, pooled and collaborative research at regional and global levels, with the goal of creating a unique and influential platform for international comparative policy research, action and advocacy. With an emphasis on South-South and South-North collaboration, the Ring aims to improve environment and development policy formulation processes, and to increase the regional and local impact of organizations working on sustainable development issues. Ring activities focus on

strategic development, capacity strengthening and planning within the individual organizations, water and people, sustainable livelihoods (including people's technologies), multilateral environmental agreements, trade and environment, climate change, financing for development, and people-centered governance approaches for development.

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