

NAFTA, Environmental Effects of Trade and the Global Context[□]

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In the next two days, we will learn a great deal about issues related to the environmental impacts of trade in the North American context. We will hear accounts of the environmental effects of liberalising trade on different sectors, including agriculture and energy, and on specific stakeholders, particularly indigenous peoples. We will also hear accounts of the various approaches to impact assessments and their policy implications. Before we embark on this fascinating – and intense – journey, the organisers thought that it would be wise to pose some fundamental questions and to place the work that you are doing in a global context, examining its current trends. That is what I will attempt to do.

In today's global village, with the anxiety and uncertainties brought about by war as backdrop, I suggest that we begin by asking ourselves why it is so relevant now for us to look at:

- The vision and values that inform international cooperation;
- The public goals that drive policy, in particular on international trade; and
- The nature of the linkages between environment and trade, regionalism and multilateralism.

The tense political and policy climate over the Middle East, and emerging phenomena - such as that being termed the 'transatlantic rift' - and the failure of countries to deliver peaceful solutions through UN mechanisms in time, provide an unequivocal example of how matters related to regionalism, multilateralism and unilateralism are well alive, and more controversial and poignant than ever.

In this context, on the international trade front, the Director-General of the World Trade Organisation (WTO), Dr Supachai Panitchpakdi reminded us recently that:

*'Leadership in our increasingly global and interdependent world is about the art of cooperation and consensus. It is about defining common goals and interests, and of coherently managing the complex interdependence of global issues. This can only be successfully achieved through the full and effective participation of all countries. The world needs a reaffirmation of our choice of multilateralism over unilateralism; stability over uncertainty; consensus over conflict; rules over power.'*²

These words – cooperation, consensus, multilateralism - what are they really about? From the trade and sustainable development perspective, I would argue that they are about a few key things, primarily three:

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² Supachai Panitchpakdi, *Trade and Sustainable Development: The Doha Development Agenda*, World Summit for Sustainable Development High-Level Special Roundtable: The Future of Multilateralism, Johannesburg, September, 2002

- **Solidarity.** In order to meet many of the challenges afflicting the world today, we need a guiding vision. From Rio to Johannesburg, the world embarked on a search for common values and endeavoured to define and agree on a common vision. All that summitry of the past ten years resulted in the articulation of such a vision in conceptual terms – seen in the case of *sustainable development* – as well as in more operational terms, such as the support for trade and economic integration through liberalisation. At Johannesburg last fall, nations recognised that it now is high time to turn to action. We need common action to deliver common goals. In the context of any community of nations, we need action that takes effective and pro-active care of the structural differences between partners. We need an *operational solidarity approach* to harness power to common goals.
- **Choice.** After many years in the quest for growth, we now seem to agree that development is a function of geography, of policies, and of institutions³. We also seem to agree that the many discrete and diverse policy agendas that each country individually holds should respond to the distinct environmental, social and economic growth aspirations of the various communities and the nation as a whole. In today's world where formerly national and local economies are more and more integrated into one global economy⁴, meeting these aspirations requires allowing and enabling choice. As most of you here know, ex-ante impact assessment is precisely aimed to enhance these choices, in as much as it promises to make the case and provide the elements for embedding social and environmental concerns within the trade and integration agreements. Such an approach could potentially be empowering, if it broadens the policy choices and safeguards the policy space needed by individual countries and communities to determine their own development paths.
- **Ownership.** This concept lies at the heart of the nineties' shift in North-South cooperation. No one from outside, neither donors nor trading partners, can come and develop any country. It is now a global consensus that countries, indeed their own societies and individual communities, need to take charge and be responsible for their own development. At its core, ownership is about effective participatory decision-making processes, access to information and functional institutions that uphold the public goal in the design of the policy in question.

Allow me now to briefly take you into what I believe should be the guiding policy objectives for international cooperation. The adoption of the Millennium Declaration in 2000 by the United Nations General Assembly, (a defining moment for international cooperation in the 21st Century), follows that decade of summitry and aims at turning the agreed vision and values into commitments for action, by defining specific policy goals. All 189 member states of the UN came together to reaffirm the need for global cooperation to meet the key challenges facing the world and establish concrete measures

³ A recent and most interesting discussion on this can be found in William Easterly and Ross Levine, *Tropics, Germs and Crops: How Endowments Influence Economic Development*, Center for Global Development, Working paper No. 15, (Washington DC, October 2002)

⁴ In the sense given to the concept of globalization by Prof. Herman Daly in, for instance, in *Globalization Versus Internationalization – Some Implications*, ISEE Conference, Santiago, November 1998.

for judging performance through a set of eight inter-related commitments, goals, and targets on development, governance, peace, security and human rights. These are known as the Millennium Development Goals and Targets (MDGs).

All eight goals are critical to the discussions today and tomorrow and perhaps of most relevance are MDG No. 7 (to Ensure Environmental Sustainability) and MDG No. 8 (to Develop a Global Partnership for Development).

If the first six of the eight MDGs mostly define development targets for developing countries, the seventh calls for the integration of the principles of sustainable development into country policies and programmes. It also specifically summons global political will to reverse the loss of environmental resources, to reduce by half the proportion of people without sustainable access to safe drinking water, and to achieve significant improvement in the lives of at least 100 million slum dwellers, by 2020. Goal Eight goes a step further and addresses developed countries by explicitly delineating their special responsibilities with regard to the achievement of the other seven MDGs. It (Box 1) holds the rich countries of the world accountable – to their own citizens and to the rest of the world – for the steps they must take in the global MDG effort.⁵ In the eighth MDG, all UN Member States pledge, by the year 2015, among other things, to develop further an open trading and financial system that is rule-based, predictable and non-discriminatory. This includes a commitment to good governance, development and poverty reduction – nationally and internationally.

If the citizens of the world, especially those in the most developed countries, are serious about attaining these MDGs, in particular the eighth one, we need to make sure that all the trade components of the international trade system – be they multilateral, plurilateral, regional, or bilateral regimes – help to provide the mechanisms or the instruments to bring about this goal. This includes serious attempts to redress imbalances where they prevail.

Not all of these components of the international trade system, as they stand today – with NAFTA Chapter 11-type provisions, for instance – will deliver the Millennium Development Goals. Some may, in fact, hinder the path towards sustainable development. How do current trends in regionalism and regional agreements, such as NAFTA, score in this context? Acknowledging that NAFTA was negotiated ten years ago and that its member countries, Mexico, Canada and the US, might already be engaging and concluding trade and integration agreements of a new generation – drawing on the NAFTA experience to provide elements for better regime-building – becomes essential at this time.

Perhaps the best starting point is to look at the range of options for international cooperation. The case I will examine in this respect is regionalism versus multilateralism, and the impacts of unilateralism on such cooperative setups. As I go through regionalism and its trends, I will briefly focus my attention on NAFTA and try to extract some lessons learned from its design and implementation. After that, I will briefly discuss one of the

⁵ Nancy Birdsall and Michael Clemens, *DRAFT, Human Development Report 2003*, Chapter 12, January 12 2002

instruments that will enable countries to embed sustainable development or environmental concerns in regional or international agreements: impact assessments. I will conclude by looking at a few trends in the multilateral trade realm.

Bilateralism, Regionalism, Multilateralism [and Unilateralism]

Last September, in the Washington Post, Robert Kagan (who is a Fellow at the Carnegie Endowment for International Peace and author of the recent ‘Of Paradise and Power: America vs. Europe in the New World Order’), outlined a new kind of multilateralism – ‘Multilateralism, American Style,’ which he likened to a unilateralist iron fist within the multilateralist velvet glove. Americans prefer to act with the sanction and support of other countries if they can, he wrote, but they're strong enough to act alone if they must. And they do. This is what we are seeing today, and this is a reality we will need to take into account in the future, be it with regard to trade policy and/or global environmental protection.

The current outlook on internationalism or international order is uncertain, to say the least. We are in a scenario where there is, on the one side, a formidable and unprecedented power⁶ with the means to determine the course of history. On the other side, we have a magnificent set of instruments, a rich body of international law, and imperfect but participatory institutions for international cooperation, all struggling to keep their role in multilateral relations and decisions. Some believe that we are witnessing a new international order where international cooperation and consensus will be replaced by unilateralism.

I cannot escape remaining an optimist - being a father to two daughters - and I firmly believe that we are currently living through a phase of adjustment in which the relevance of global and regional institutions will be increasingly tested and measured with regard to their performance and effectiveness in response to challenges. In this context, it is up to us – the communities and societies that believe in multilateralism – to maintain the momentum of international cooperation and peace created in the post-WWII scenario. Indeed, the ‘velvet glove’ arguably includes the sustainable development and MDG goals we hold in common. And keeping the iron fist, the champion of modern multilateralism in the past hundred years, to its commitment to the common interest, vision and values, should be an urgent priority for the community of nations.

It was not so long ago that the multilateral trade system was viewed as the mainstay of instruments to bring peace among nations, and to insulate the weak and the small from the powerful. It was the wisdom of leadership fifty years ago that brought about principles of non-discrimination and a rules-based participatory design to govern over international trade and economic relations. The failures of the system in delivering many of the promises over the years have had more to do with the mercantilist approach characterising its implementation than with the fundamentals of its design. Indeed, the

⁶ Fareed Zakaria clearly puts this into perspective, ‘The US economy is as large as the next three –Japan, Germany and Britain- put together. With 5 % of the world’s population ...it accounts for 43% of the world’s economic production, 40% of its high technology production and 50% of its research and development.’ Newsweek, March 24, 2003.

multilateral trade system (MTS) is only now, and only slowly, adjusting to the common values and vision. Public policy objectives have been tacked onto trade policy since the inception of the WTO in 1995, mostly through the involvement of civil society in the policy formulation processes both at the domestic level and in Geneva. Sustainable development, for instance, has been brought to the trade policy process over the past five years, and has now inserted itself into the MTS in the form of hard law and jurisprudence through disputes related to environmental concerns. And the systemic imbalances consolidated through the Uruguay Round of negotiations are currently on the negotiating table to be, hopefully, level out. But the challenges remain significant and hefty.

Today, many of the trade goals, which include enabling development and providing certainty over market access, are sought through regional, trans-regional and bilateral negotiations. While these agreements may complement attainments in the MTS, they may sometimes be detrimental to the aspirations of those excluded, and in some cases to the global sustainable development goals. Multilateral trade negotiations at the WTO risk being somewhat cynically regarded as mechanisms to secure gains and losses already obtained in regional and bilateral negotiations. And the WTO Agreements risk being taken for minimum standards to be built upon. In the fifteen years that I've worked on international trade, I've seen how countries literally line up to sign bilateral trade agreements with the US or the EU. Many countries, including the poorest, have adjusted their views about bilateralism in a race to gain or maintain some form of preferential or 'privileged economic' relations with their main trading partners. Is this trend supportive of the goals and objectives of sustainable development at a global level? Would this model empower those who already suffer from weak negotiating stances? In what way do they impact the three important themes that I outlined earlier: solidarity, choices, and ownership?

Let's look at some numbers. Regional and bilateral agreements have rocketed since 1994. By early 2003, over 150 regional trade agreements (RTAs) had been notified to the WTO (and its predecessor GATT), with at least 100 of them notified after 1994⁷. In the field of environment, more than 300 regional environmental agreements (REAs) have been agreed to advance the management of shared natural resources and regulation of regional environmental problems. According to UNCTAD⁸, more than 1000 Bilateral Investment Treaties (BITs) had been signed by 1999. Bilateral agreements on intellectual property issues have increased from merely one in 1986 to 42 in 1998. In most of these negotiations and treaties, whether regional or bilateral, no ex ante assessment of impacts was carried out. Not only were environmental or social impact assessments absent, assessments on real potential trade benefits and costs for all Parties involved were also missing. Sustainable development principles or public policy objectives with regard to trade – reaching beyond commercial or mercantilist interests – are rather scarce in most preambles and rarely make it into the operative clauses.

⁷ World Trade Organization, *Regionalism: Notified Regional Trade Agreements Regionalism: Facts and Figures*, (WTO, 2000)

⁸ See UNCTAD, *Bilateral Investment Treaties 1959-99*, (UNCTAD, 2000)

On many occasions RTAs have allowed groups of countries to negotiate rules and commitments that go beyond what was possible multilaterally at the time. RTAs have not only, for example, deepened commitments made in the WTO but have also expanded the scope of negotiations to include new areas in negotiations (i.e. investment in NAFTA or sustainable development in the challenging Cotonou Agreement between the EU and 77 countries from Asia, Africa and the Caribbean).

Bilateral agreements are a very difficult kind of fish to grasp comparatively. They tend to be focused, with limited scope, covering issues in isolation i.e. investment, trade, double taxation, intellectual property, scientific cooperation, etc⁹. The current race for bilateral agreements on trade is showing signs of broadening their scope to become more comprehensive and to include issues such as the environment. The latest case is the integration of environment into the trade provisions and the dispute settlement mechanism of the recently concluded US-Chile Agreement. In the bilateral context, questions will always remain with respect to the terms of negotiation between structurally unequal partners, and on how these factual asymmetries affect the outcomes from a public policy perspective.

The expansion of the scope in regional and bilateral agreements does not necessarily imply that sustainable development will be properly addressed at these levels. Even when rules and mechanisms on environment and labour are included – although relegated to supplementary status – as in the case of NAFTA, or incorporated at the heart of the agreements, as in the Chile-US FTA, these are mainly oriented towards levelling the comparative advantages of other trade partners. They do not necessarily address the possible impacts that other trade chapters and commitments might have on sustainable development, especially for other trading partners, and especially developing countries. In this sense, the use of RTAs to address global goals and objectives of sustainable development is still at an early phase of development.

International climate policy negotiations provide an excellent example of the potentials and the pitfalls of multilateralism versus regionalism. Due to its provisions for flexible implementation of commitments across jurisdictions and the principle of common but differentiated responsibilities among developed and developing countries, the Kyoto Protocol would effectively create a self-reinforcing net between countries leading to deeper cooperation in a number of policy areas. The framework would further overlap with that of the WTO through its flexible mechanisms, potential policy requirements in areas such as taxation and border-tax adjustments, standards, and subsidies, and its trade measures with regard to non-parties or parties out of compliance¹⁰. However, since the US has rejected the Kyoto Protocol and Russia is dragging its feet with regard to ratification and thus stalling entry into force, action to address climate change has moved to the regional and national levels, where it might prove to be much less effective.

⁹ David Vivas-Eugui, *How Regional and Bilateral Agreement Can Promote a TRIPS-plus World*, (QUNO/ICTSD, 2003)

¹⁰ Duncan Brack with Michael Grubb and Craig Windram, *International trade and climate change policies*, (London: RIIA Energy and Environment Programme/Earthscan Publications, 1999)

WSSD Plan of Implementation

Section IX Means of Implementation

95. *States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.*

96. *Take steps with a view to the avoidance of and refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that impedes the full achievement of economic and social development by the population of the affected countries, in particular women and children, that hinders their well-being and that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services. Ensure that food and medicine are not used as tools for political pressure.*

RTAs: Benefits, Limitations, Drawbacks, Lessons and Trends

We are currently living through the most dynamic and complex moment in negotiations on trade. Concurrently with the Doha Round of negotiations at the multilateral level, countries are also engaged in the consolidation of some of the most ambitious regional and trans-regional projects. Asian countries are engaged in negotiations to evolve the cooperative scheme of ASEAN into an Asian Free Trade Area. The EU has launched negotiations last fall on two fronts: its own enlargement that will see countries of central and eastern Europe added to the single market and the Union; and, trade negotiations under the Cotonou Agreement that replaced the Lomé arrangements of non-reciprocal preferential access. Under Cotonou, the 77 ACP countries are expected to negotiate free trade areas among themselves and then complement this daunting effort by forming trans-regional agreements between the EC and each of the emerging FTAs. The EU is also engaged in a trans-regional FTA negotiation with Mercosur since late 2000. On all of these EU fronts, the European Commission is constitutionally mandated to uphold a sustainable development vision in the negotiations and outcomes and is undertaking ex-ante or concurrent sustainability impact assessments (SIAs). I will not expand on this at this time, but emphasise the obvious: the need to watch and learn from what is happening

at the other side of the Atlantic, and the Pacific, and promote cross-fertilisation between these efforts and what we are doing here in the Americas.

The Western Hemisphere is no exception to this dynamic regionalism. Central American countries are busy on the negotiations of the CAFTA with the US, on record time. The CAFTA is expected to be concluded by the end of this year or earlier. Next November will see the acceleration of talks to create the Free Trade Area of the Americas (FTAA) by 2005, encompassing as its 34 partners all countries of the region with the exception of Cuba. The NAFTA members will be theoretically absorbed by the FTAA and there is uncertainty as to what would become of Mercosur and the other sub-regional arrangements, particularly those with character of common markets or evolving into such. The above effort is carried out under precepts that might in some instances involve broader public policy goals and even specific sustainable development principles, but all at the preamble stage. A logic sequence into the FTAA would be to now build from lessons learned from the advances in bilateral deals, such as the Chile-US FTA, Canada's bilateral FTAs with Costa Rica and Chile, and the NAFTA experience. Hence, I see here the greatest value of the work that you are doing, and the imperative of taking it to future decision-making processes.

Depending on the content of its norms, regional trade agreements can have positive or negative impacts on sustainable development.

On the positive side, RTAs could embed, for example, sustainable development objectives and principles among the aims of negotiations and in their respective preambles (i.e. FTAA draft text). More importantly, this might somewhere down the line provide the means to operationalise these objectives and principles at the regional level. This could be done by, for example, incorporating provisions sensitive to the use of economic instruments for environmental and competitiveness policy needs within sectoral arrangements or within the overarching or specific trade or reform rules – what many refer to as *mainstreaming* environment. The NAFTA design offers built-in disciplines on standards, and sanitary and phytosanitary measures, that seek a balance between enabling countries to choose appropriate levels of environment, health and safety regulations while preserving market access conditions. They also encourage upward harmonisation. In addition, NAFTA provisions protect certain trade measures taken pursuant to an agreed selection of MEAs from challenge. Texts of regional environment agreements (REAs) may also be incorporated to complement regional trade policy. Notwithstanding a weak link to trade instruments, as is the case with the so called 1066 procedure, NAFTA brought about the Environmental Side Agreement, which at the time of its creation provided innovative approaches to environmental cooperation at the regional level.

In addition, countries may find it more manageable to define challenges and solutions on the regional scale. On fisheries subsidies, divisions at the WTO remain along the same lines as prior to Doha with Friends of Fish positioned vis-à-vis Japan and Korea. The recent reform of the EC's Common Fisheries Policy might go some way towards breaking

the deadlock¹¹. After long and difficult negotiation, the Commission had finally succeeded in overcoming strong objections from the European fishing nations – the so-called 'Friends of Fishing' made up of France, Spain, Italy, Portugal, Greece and Ireland – to agree on a phase-out of aid for the renewal of fishing vessels. The revised Policy can be expected to soften the EC's stance in the WTO negotiations on fisheries subsidies, which has traditionally been closer to Japan. This is an interesting example of how some significant progress can be made on environment-related issue at the regional level, despite strong economic interests, and how this progress can flow into multilateral rule making.

These RTAs can also provide the building blocs to establish frameworks upon which future cooperation among regional partners in environmental, social and economic arenas can be built (e.g. EU). If positive results for sustainable development are demonstrably achieved at the regional level, countries would be more empowered to push similar results in the multilateral setting. More generally speaking, South-South agreements could help empower signatories at WTO negotiations.

That said, RTAs can also have some limitations or drawbacks for addressing sustainable development concerns at the global level. In terms of limitations, for example:

- Their use may be the second-best solution with regard to global environmental and social cooperation. Multilateral environment agreements (MEAs) and other targeted agreements might be more effective in addressing, for example, environmental concerns.
- Parallel platforms for addressing sustainable development may lead to contradictory results if negotiations are not coordinated or integrated.
- Countries with limited trade policy administration and negotiation capacity have to digest the spaghetti bowl (especially because of the lack of coherence among RTAs, which have different levels of obligations) and explosion (since so much is trade-related today) of trade agreements.
- Many RTAs do not have permanent political bodies to discuss or address problems that might arise from their implementation, leaving the burden to the asymmetric capabilities of their members.

Some overall drawbacks of RTAs from an environmental policy perspective can be summarised as follows:

- Embedding environmental concerns within trade agreements can create a cumbersome policy set-up, and may not necessarily promote coherence.
- RTAs can be a diversion from multilateralism, especially when some countries are betting to obtain more direct benefits in regional agreements.
- Existing imbalances of the multilateral rules could be exacerbated for those excluded from bilateral and regional agreements. Some of the poorest countries may fall in this category.

¹¹ BRIDGES Weekly Trade News Digest, ICTSD, 26 March 2002.

- RTAs may accelerate the speed of the multilateral agenda at the WTO which, again, may not be of strategic interest for third countries.

So, trade regimes are today part of a cluttered landscape. In order to enable ourselves to navigate among different kinds of regional and bilateral agreements today, and understand better what can be effectively learned as we negotiate in this hemisphere, it is very helpful for us to spend the next two days looking at experiences from the NAFTA regional in the areas of:

- **Environment:** the particularities of NAFTA provisions dealing with environmental health and safety issues; the protection of certain trade measures pursuant to certain MEAs; the treatment of standards and the upward harmonisation approach; and the shift of burden of proof and other peculiarities in NAFTA on dispute settlement involving environmental concerns.
- **Institution building:** the establishment of the many trilateral institutions, not least to deal with environmental cooperation; and the solidarity approach informing the establishment of financial cooperation mechanisms to deal with transboundary problems.
- **Social issues:** the labour side agreement.
- **Transparency and citizen's participation:** the innovation with regard to opportunities and mechanisms for public participation.

Some interesting lessons will necessarily arise out of this valuable exercise.

Assessing Impacts: Lessons Learnt

As stated before, I would like to offer some thoughts on impact assessments as one of the instruments used to further the goals and objectives of sustainable development.

Impact assessment of trade agreements has evolved, in the past five years, from a primarily academic exercise to become a potential major policy tool for many countries, even though this has been mostly restricted to developed countries with the means to marshal resources. Whether undertaking assessment is desirable or not, continues to be undefined in the MTS. Some of the WTO agreements, most notably Agriculture and Services, call for assessments before further liberalisation continues. Others like the agreement on intellectual property issues, TRIPs, request the members to review its implementation. Drafting of these mandates took place during the Uruguay Round when the notions of sustainability were not yet coined in the trade realm. Implementation of the provisions shows a rather disappointing record here. *Non-trade concerns* in agriculture, was the term – with too many purposes – used in connection to assessment in that agreement. Further, the obligations of assessment and review in services and intellectual property have been interpreted rather loosely by WTO members, several of whom claim ambiguity in the objective of the provisions. In the absence of agreement on the nature of mandated assessments and reviews, negotiations have indeed proceeded to their next stages.

Even if the MTS and the Doha Declaration remain very shy with respect to assessment, the new mood around assessment has been reflected in the WSSD Plan of Implementation and ex-ante assessment has been inscribed as mandatory for the Administration in the body of the US Trade Promotion Authority that governs all US current trade negotiations.

Assessment of trade agreements at the WTO:

- *According to Article XIX of the GATS an assessment must be undertaken before each round of negotiations. In the current negotiations the assessment was supposed to be ex ante but it has worked as a parallel assessment.*
- *The Doha Ministerial Declaration takes ‘note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis’ (paragraph 6, preamble).*
- *The Doha Ministerial Declaration also encourages expertise and experience to be shared with WTO Members wishing to perform environmental reviews and assessments at the national level (paragraph 33).*

Assessment of trade and the WSSD Plan of Implementation:

‘Use environmental impact assessment procedures’ (paragraph 18(e)), as part of encouraging ‘relevant authorities at all levels to take sustainable development considerations into account in decision-making’ (paragraph 18 chapeau). Ex ante assessments.

- *‘Provide capacity-building and training to assist relevant authorities with regard to the implementation of the initiatives listed in the present paragraph’ (paragraph 18(d)).*
- *‘Continue to enhance the mutual supportiveness of trade, environment and development with a view to achieving sustainable development’ and ‘encourages the voluntary use of environmental impact assessments as an important national-level tool to better identify trade, environment and development interlinkages. Further encourage countries and international organizations with experience in this field to provide technical assistance to developing countries for these purposes’ (paragraph 91(d)). Ex-ante and ex post assessments.*
- *‘Take immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development and begin their implementation by 2005. To this end, as appropriate, strategies should be supported through international cooperation, taking into account the special needs of developing countries, in particular the least developed countries. Such strategies, which, where applicable, could be formulated as poverty reduction strategies that integrate economic, social and environmental aspects of sustainable development, should be pursued in accordance with each country’s national priorities’ (paragraph 145(b)).*

Aside from contractually including it in multilateral trade deals, there seems to be an emerging international consensus, even if still a cautious one, from both the trade and sustainable development communities, around the value of impact assessment as a tool to

guide trade policy toward sustainable development based on available information instead of preconceptions. The caution mainly stems from the eventuality of assessments to be used as tools for conditionality in the design of contractual trade provisions. This is a serious consideration and needs to be addressed, particularly by those who propose to make assessment binding and part and parcel of the agreements. Further, we need to be careful in designing these tools to ensure they reflect a diversity of viewpoints and enhance cooperation among – rather than alienate – affected parties, including other trading partners, such as developing countries. We must also be aware of the limits of impact assessment. For example, impact assessments per se cannot provide all the answers for the future, and they should not pre-empt other efforts at moving trade policy-making in the direction of sustainable development. But properly designed and implemented, they could contribute to better policy-making.

With that in mind, I'd like to now offer a few thoughts on how impact assessment could contribute to the present debate around trade and sustainable development.

First, from the perspective of sustainable development, **Integrated Impact Assessment (IIA)**, such as that outlined by the UN Environment Programme¹² and others, is a more useful instrument than environmental impact assessment (EIA) and perhaps, than Sustainability Impact Assessment (SIA) as promoted by the EC. On the latter, time will tell us, and the many SIAs undertaken by the EC will provide the best evidence of their effectiveness and relevance to the sustainable development agendas. The former, IIA, is designed on the premises of sustainable development at the global level being about balancing and understanding the interaction between the three pillars: social, environmental and economic – rather than looking at one issue in isolation of another. In addition, IIA is applied not only to your own country, but also others, beyond neighbouring countries. IIAs on the MTS agreements or negotiations, for example, would enable countries to take into account the various impacts on developing countries in terms of market access as well as other environment/social aspects of trade policies. Systematic underdevelopment fuels seriously negative impacts, with consequences at the global level and for your own trade and non-trade objectives. To go back to the three important issues outlined at the beginning of this presentation, pro-actively addressing underdevelopment of others provides a case for SOLIDARITY.

Second, to have buy-in for impact assessments, **process** is key. This requires, for example, members' participation, technical accuracy, transparency, shared values, sufficient lead time to conduct the exercise, and an effective implementation and follow-up process. This relates to the second of the three important issue: OWNERSHIP. Here are a few key elements:

- Data must be real; perceptions or presumptions – for instance that further trade liberalisation in itself is always a good thing – must be avoided;
- The assessments must be carried out in a public and participatory way. This will generate ownership and shared responsibility in the output;

¹² See, for example, United Nations Environment Programme, *Reference Manual on Integrated Assessment of Trade-Related Policies*, (UNEP Geneva, 2001)

- When the assessment seeks to evaluate technical questions, independent assessments are more valued;
- For the assessments to be successful, they must be valued by members, and they cannot just be an excuse to advance in a particular political direction; and
- The findings must be shown to have an impact – otherwise, what is the point of the exercise? Outcome is absolutely critical and, indeed, the *raison d'être* of assessments.

Third, there is a need to move away from enhancement and mitigation – so-called 'flanking' – measures, towards coherent policies. From a sustainable development perspective, it is better to have the maneuverability to address and evaluate the trade measures themselves, as opposed to addressing the after effects and impacts. This relates to the issue of CHOICE. The European Commission has been championing the idea of concurrent Sustainability Impact Assessment to be carried out 'without disrupting the negotiation process', and as such, focusing on correcting negative environmental or social effects after the coming into force of trade policy reform. Such an approach might be inadequate to effectively address the real impacts of a comprehensive trade agreement such as NAFTA, the FTAA or the WTO Doha round. As such, we need mechanisms to embed the findings of the Assessments into trade policy and agreements, such as those mentioned in my discussion around regionalism and multilateralism.

Multilateralism: Brief Current Outlook and Trends

Given all these concerns and developments, I'd like to spend a few minutes to succinctly look into the current outlook of some of the more popular trade and environment linkages in the MTS and the international level, and where things are likely to immediately go.

For developing countries, the prospect that the 'development' focus of the current trade round will provide meaningful advantages for them in the multilateral trading system is looking increasingly dim.¹³ There has been slow to non-existent progress in the trade round overall and in the specific sustainable development-related negotiations in particular. An 'all or nothing' approach by countries, who are insisting that their issues be resolved before they would seriously negotiate on others, continue to hold up advances.

The slow progress is also affecting the negotiations on specific environmental issues and on the environmental aspects of the various mandates. Even though the Committee on Trade and Environment (CTE) has finally agreed to admit ad hoc invitees to the negotiating sessions, including secretariats of Multilateral Environmental Agreements, uncertainty continues to surround observership in general. On the issue of MEA-WTO relationship, discussions are still at the scoping stage to decide which MEAs should be covered. On environmental goods, the CTE and the Negotiating Group on Market Access are still in the definitional phase, while discussions on environmental services are largely going on at the bilateral level in the context of the current request-offer phase underway in the services negotiations. Given this, it is highly unlikely that any other issues such as the critical issue of the effects of environmental measures on market access will be forwarded to a negotiating track.

¹³ ICTSD (2003) 'Midterm Review Reveals Development in Peril in Doha Round', *BRIDGES* Vol.7 No.1, January/February

The use of Doha's paragraph 51 mandating the CTE and Committee on Trade and Development (CTD) to ensure that sustainable development objectives are reflected in the negotiations remains controversial but could turn into something ambitious depending on how the recently initiated discussions on market access, particularly on environmental goods and on agriculture, are carried out. Integrated impact assessment data would theoretically be the perfect tool for this exercise, but fears about its use and prevailing distrust on the state of knowledge on assessment, keep it a remote possibility.

Virtually no progress has been made in the TRIPs Council on issues related to traditional knowledge, biodiversity and the review of Article 27.3(b). Some signs of compromise came from the EC with its major shift in position on the inclusion of voluntary disclosure of genetic resources and traditional knowledge in patent applications, but it remains to be seen where this will lead. In the meantime, the TRIPs Council is deadlocked over the issues of TRIPs & health and the extension of additional protection for geographical indications (GI) to products other than wines and spirits. Whether the issue of GI extensions – the only 'implementation' issue with a strong backing from some key developed countries – can be resolved, will have a significant impact on the fate of other implementation negotiations.

Despite little headway in the TRIPs Council, the need to address developing country concerns related to access to genetic resources and the sharing of benefits derived from their use is receiving increasing attention and recognition in various multilateral fora. This includes the negotiations on an international access and benefit sharing regime mandated by the WSSD; the establishment of a WIPO Committee looking specifically at genetic resources, traditional knowledge and folklore; and the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture, which for the first time establishes mandatory benefit-sharing requirements at the multilateral level.

The agriculture negotiations – the make-or-break issue for most developing countries – are in their crucial phase as the 31 March modalities deadline approaches. Few, however, believe that this deadline can actually be met. Efforts by the multifunctionality countries (EU, Switzerland, Japan, Norway and others) to push environment as a non-trade concern is being met with strong resistance from the Cairns group of agriculture-exporting countries and by many developing countries who see it as a tactic by the EC to maintain its high levels of domestic support to farming, one of the most damaging trade-related policy measures for developing countries.

Some key and quick remarks from a trade and sustainable development perspective on this outlook and trends:

First, the negotiating agenda at the WTO has been addressing only a limited cluster of issues related to sustainable development. Even though the WTO preamble includes sustainable development as one of its objectives, most of the sustainable development concerns are only partially embedded within the agreements. For example, the Agreement on the Application of Sanitary and Phytosanitary Measures is founded on the

precautionary principle and the GATT permits exceptions regarding measures necessary to protect human, animal or plant life or health, and to conserve exhaustible natural resources. The Agriculture Agreement mandates for non-trade concerns, such as developmental, social and environmental considerations, to be taken into account in the agriculture negotiations.

All in all, depending on individual agreements, agreements at the WTO can both be friendly or unfriendly towards sustainable development. For example, the General Agreement on Trade in Services (GATS) has at its disposal a framework allowing countries to make liberalisation commitments in the sectors were they consider to be adequate while they can include possible limitations to those commitments based on public policy objectives. We at ICTSD have been actively working with negotiators recently on the development of a pro-sustainable development approach to the establishment of multilateral disciplines for subsidies in the GATS – something left outstanding at the conclusion of the Uruguay Round. The TRIPS agreement, for example, has proven to be a restrictive agreement on access to technology that is necessary to address public policy concerns and sustainable development challenges. In Doha, the TRIPS Agreement had to be complemented by the TRIPS and Public Health Declaration to reiterate the flexibilities of the Agreement with respect to access to drugs by the poorest countries in cases of public health crisis.

Experience coming from the WTO Agreements, jurisprudence and ministerial declarations can draw many lessons on what should be supported or avoided in new RTAs negotiations. In this context, ex-post assessments of multilateral trade become also a useful tool for finding new options and alternatives in the regional context.

Closing reflections

Trade instruments, whether multilateral, regional or bilateral, are limited as instruments and might not present the best option in response to all sustainable development concerns. Many existing mechanisms in the sustainable development arena are yet to be incorporated in trade agreements.

Trade instruments may also be ineffective in resolving problems of asymmetries and levels of development. Most special and more favourable treatment clauses in the WTO are optional and not operational. Last December the WTO deadlines set by the Ministerial to address these issues and implementation concerns were not respected, affecting the credibility over a ‘development round’ in the WTO.

The aim of inserting sustainable development in trade has to incorporate international competitiveness and growth aspirations of the less developed partners in an RTA or in the MTS. It is now accepted, from evidence of the past decade, that liberalisation policies may constrain the ‘spaces for development policy’ for developing countries.

Only in the case of a dozen or so developing economies had growth deriving from liberalisation shown a positive association with, for example, poverty reduction and a

more equitable income distribution. These same countries also enjoy success in implementing active policies for competitiveness, which has in turn sustained a high level of productive investment. These active policies for competitiveness were based on innovation, enterprise development and the promotion of networks and productive chains of enterprises¹⁴.

There is therefore a need to put in place enabling frameworks that allow countries to pursue active competitiveness policies using necessary policy instruments as tools; and to do so in a way to preserve the necessary balances between these needs and legitimate non-trade, non-economic concerns and public policy objectives. Given the increasing scope of multilateral trade rules under the WTO, the 'autonomous policy space' for countries to unilaterally pursue competitiveness policies it deems desirable is getting increasingly constrained so far as these may have an effect on trade flows. Any regional or national laws governing the use of certain specific instruments such as tax-incentives or subsidies then essentially has to be 'WTO plus' unless specific exemptions (e.g.: differentiated treatment) are explicitly provided for or the concerned policy instrument is not covered by the scope of WTO rules.

If the multilateral trading system is increasingly determining *how* a country may pursue competitiveness policies and design its own developmental path, the options available for domestic development seem to be shrinking over time. For example, under the current TRIPs rules, many developing countries will not be able to make use of reverse engineering as a tool to absorb and enhance competitiveness, which was critical for technology leap-frogging by most OECD countries and East Asian tigers.

To conclude: Ultimately, it is important, when you are negotiating regional or international agreements, to bear in mind a few key things. First, we need solidarity to drive us to deliver some common goals, such as protecting the environment and poverty reduction in developing countries. We also need to make sure that policies leave room for countries to have the choice to make up their own mind about their development path. And, last but not least, we need to give ownership to those whose lives are directly affected by many of the decisions negotiated at the international or the regional level. In the end, this may mean all of us.

I would like to conclude by quoting, as I've done once before, from US historian **David Landes**:

'The old division of the world into two power blocks, East and West, has subsided. Now the big challenge and threat is the gap in wealth and health that separates rich and poor. [] Here is the greatest single problem and danger facing the world of the Third

¹⁴ ICTSD, Competitiveness Policies and Sustainable Human Development: A component of the UNCTAD/UNDP programme on globalisation, liberalisation and sustainable human development, Geneva, September 2002. See also *Effects of Financial Globalization on Developing Countries: Some Empirical Evidence*, IMF March 2003; Melendez-Ortiz, R. and Ali Delhavi, *Sustainable Development and Environmental Policy Objectives in Trade, Environment and Sustainable Development: Views From Sub-Saharan Africa and Latin America*, A Reader. Peider Konz, Ed., ICTSD and United Nations University, Geneva and Tokyo, 2000.

*Millennium. The only other worry that comes close is environmental deterioration, and the two are intimately connected, indeed are one*¹⁵

The great value of the pioneering work of the CEC on assessment is that it has chosen to address this grandest challenge of all, and to contribute to finding viable, institutional and sound responses to it. And to do so by following – by coincidence – Landes’ advice to ‘...avoid dogma, listen and watch well...’

The work of all of you as researchers or members of the Joint Policy Advisory Committee (JPAC) of the NAFTA and your presence here is proof of that.

Thank you and best wishes for a successful deliberation.

¹⁵ David S. Landes, *The Wealth and Poverty of Nations: Why Are Some So Rich and Others So Poor?* New York: W.W. Norton, 1998.