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Trade and Environment: Strengthening Complementarities and Reducing Conflicts

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It is with great pleasure that I have accepted the invitation by the United Nations University to contribute a chapter to this important book on Trade and Environment.¹ The fact that it is to be launched before the Ministerial Conference of the World Trade Organization (WTO) in Seattle is both a challenge and a reason for caution. On the one hand, I think that the conference and its preparatory process provide a good opportunity to reflect on progress made in trade and environment and on what is needed to move towards further integration of the trade and environment regimes. This is particularly important in the process of greater trade liberalization that is likely to follow. At the same time, however, many of my friends among developing countries' negotiators in Geneva are deeply concerned about the prospect that trade and environment could be included in a possible new round of multilateral trade negotiations.

This does not mean that developing countries are not interested in trade and environment issues. On the contrary, our experience at the United Nations Conference on Trade and Development (UNCTAD) shows that developing countries attach great interest to them. This can be observed in their strong interest in policy analysis and technical

assistance for capacity-building and in their efforts to benefit from new trading opportunities that are arising on account of environmental concerns. Developing countries have nevertheless expressed concern about developments in trade and environment issues in the context of the multilateral trading system (MTS).

In this chapter I will first address the question of why there is not much excitement among developing countries in Geneva over the prospects of a new round of multilateral trade negotiations, particularly where environmental issues are concerned. The intention is not to spread pessimism among those who see the round as an opportunity to make progress on specific issues, but rather to warn against excessively high expectations that later may turn into unnecessary disappointment and unjustified frustration. Then I will reflect on the extent to which trade and environment regimes are either complementary or in potential conflict with each other. Finally, I will make some suggestions about what can be done to move ahead on trade and environment, both within and outside the MTS.

1. A new round: Little enthusiasm among developing countries, in particular when it comes to the environment

With regard to the prospects of a new round of trade negotiations, I have already mentioned that developing countries are not exactly thrilled by the idea.² In a recent speech at a seminar organized by Columbia University,³ I highlighted that the reasons for that attitude generally fell into one of four categories: the financial and economic crisis; problems with the functioning of the world trade system; the revival of protectionism; and a growing frustration with the gap between the promise and reality of trade liberalization.

Turning now to the reasons that many developing countries are so deeply concerned about the prospects of trade and environment being included in a new round, they largely overlap with those mentioned above. But there are also additional reasons, such as the failure of developed countries to live up to the commitments made at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992. Let us discuss some of them.

The resurgence of protectionism

Developing countries are concerned that the recent international economic and financial crisis appears to be inducing renewed recourse to protectionism and unilateral measures, including measures taken under the guise of environmental concerns. There is also concern about continued pressures to accommodate the use of trade-restrictive measures for non-trade purposes. It is feared that such pressures may also spill over into other areas, such as labour issues.

Concerns about the resurgence of protectionism cannot be dismissed as being based on a lack of information or on exaggerated fears that legitimate environmental policies in developed countries will have widespread adverse effects on the competitiveness of products exported by developing countries. On the contrary, such concerns have emerged first and foremost because of the renewed recourse to old-fashioned protectionism. First, making progress on agriculture has proven far more difficult than anticipated. For example, speaking before the US House Agricultural Committee, Ms. Charlene Barshefsky accused the Common Agricultural Policy (CAP) of the European Union (EU) of responsibility for 85 per cent of the world's agriculture export subsidies. Ms. Barshefsky referred to this practice as "the largest distortion of any sort of trade." A few months earlier, the Cologne meeting of the EU had already confirmed how difficult it would be to undertake a serious reform of the CAP as a necessary basis for future liberalization of agricultural trade. There has also been a resurgence of protectionism in some industrial sectors. In steel products, for example, we are now witnessing what I personally consider the worst single setback since the Uruguay Round: the return of so-called "voluntary" export restraint agreements; in other words, the comeback in force of "managed trade." Here we have a clear-cut case of prohibited grey-area measures that are resurrected.

If we add to what could be called "grandfather protectionism" the "New Wave" variety (that is, the serious danger that legitimate concerns about the environment and labour will inevitably be misused as protectionist tools), we will understand why so many developing countries fail to see any promising prospects of redressing past imbalances in a new round.

Systemic issues

There are concerns about systemic issues. The difficulties encountered in some cases (e.g. bananas) are well known. Let me go straight to the environmental issues. Recent decisions by Appellate Bodies of the WTO have fundamental implications that still need further analysis, for example with regard to subparagraph (g) of Article XX of the General Agreement on Tariffs and Trade (GATT) 1947 and the issue of trade measures based on non-product-related process and production methods (PPMs). Although welcomed by many in developed countries, these measures have generated new concerns in developing countries, which believe they are being used to impose the environmental policies and priorities of developed countries on developing country trading partners. They have also created some alarm about the implications of clarifying trade and environment issues on the basis of case-law and Appellate Body decisions.

In this context, it should be noted that many developing countries have now become more committed to the defence of the multilateral trading partners than the major trading partners, for whom unilateralism is always an alternative and a temptation. Attempts to amend existing trade rules, for example to accommodate trade measures under multilateral environmental agreements (MEAs), may have implications for a wide range of topics. Similarly, pressure from some to make the WTO treatment of non-product-related PPMs a central and systemic issue causes deep concern to the developing countries, because it implies very substantive changes in the operation of the multilateral trading system.

The deal struck at Rio

At Rio it was agreed that all countries have a responsibility and must cooperate to achieve environmental and sustainable development objectives, based on the principle of common but differentiated responsibilities. Thus, developed countries took on a commitment to provide improved access to their markets for products from developing countries and to promote access to environmentally sound technologies and finance. It is widely recognized that MEA negotiators should consider a

package of measures focusing on supportive measures and, in some cases, trade measures. However, there is some concern that “accommodation” of MEA trade measures in the WTO may deter the search for supportive measures, such as transfer of technologies, financial assistance, and improved market access, including for environment-friendly products.

Avoiding excessively high expectations

It is sometimes argued that a new round of multilateral trade negotiations is an important opportunity to move on trade and environment. The reason given is that in a broad process of negotiations, covering a range of issues, trade-offs can be identified. I would nevertheless argue that we should be careful not to create excessively high expectations.

First, there is still no broad consensus on the need to modify the provisions of the multilateral trading system for environmental purposes. For example, several years of deliberations in the Environmental Measures and International Trade group and the WTO Committee on Trade and Environment have not resulted in any concrete recommendations to modify the existing provisions of the multilateral trading system. I will come back to the issue of compatibility/conflict between trade and environment regimes in the next section.

Second, developed countries are in a difficult bargaining position with regard to the lion's share of issues being proposed for future negotiations. Thus, they may simply not have sufficient concessions to offer to enable trade-offs between issues of interest to them vis-à-vis issues being proposed by developing countries.

Third, the current trade and environment debate seems to lack balance. Proposals made so far seem to focus on accommodating measures that could restrict trade, rather than on measures that promote trade. As long as developing countries fear that engaging in negotiations on trade and environment could result in further accommodation of trade-restrictive measures on environmental grounds, thereby limiting their market access, it is unlikely that they would be inclined to accept a trade-off between environment and market access. After all, what would be the deal?

Fourth, as mentioned above, UNCED already tried to strike a deal between developed and developing countries. However, the recent as-

assessment of progress in the implementation of Agenda 21 by the United Nations General Assembly showed that little progress has been made on what Agenda 21 calls “implementation issues,” such as finance, access to environmentally sound technologies, and, perhaps to a lesser extent, capacity-building. This leaves us with the following question: if the Rio commitments have not so far been implemented, what would be different in a new trade-off? What appears to make this question even more relevant are the doubts often expressed by developed countries over the extent to which so-called supportive measures (such as access to and transfer of technology) can be specified in WTO agreements.

Fifth, many of the solutions to problems related to the interface between trade and environment should perhaps be sought outside the multilateral trading system. I will come back to this in the final section.

Having said this, I do not want to be misunderstood. The multilateral trading system has to be responsive to legitimate environmental concerns. If there were consensus among WTO members that certain provisions of the MTS stand in the way of achieving sustainable development objectives, we should together examine possible adaptations, based on equity and other Rio principles.

The WTO Ministerial Conference is an important opportunity to raise further awareness, including on the need to ensure that the resulting trade liberalization process is as friendly to the environment as possible. This means that we have to continue to pay high priority to trade and environment, carry out policy analysis, and build consensus throughout the negotiating process. We should also step up capacity-building efforts.

2. To what extent do trade and environment regimes conflict?

We should not create the impression that the major problems for the environment stem from international trade or the rules of the multilateral trading system. The plain fact is that, although there are more than 200 multilateral environmental agreements, fewer than 20 of them have trade provisions, and there has not been a single case of differences between these agreements and the GATT/WTO agreements that member countries have considered of great importance. Thus, to postulate

conflicts between the trade and environment regimes is to indulge in abstractions that have yet to be proven to be grounded in reality.

Analysis carried out by UNCTAD for many years has confirmed that compatibility between trade and the environment is the rule; conflict is the exception. And, where conflict has arisen, current rules have often provided an appropriate setting for their settlement. *Causes célèbres*, such as the so-called “eco-dumping” controversy, or unfair competition induced by lax environmental regulations, have in reality proven to be non-issues or largely exaggerated. Equally exaggerated have been fears that MEA trade measures may be challenged in the WTO.

It is important to consider collectively, and in a coordinated fashion, the international rules needed to ensure that the trade and environment regimes are mutually supportive. Given the number, variety, and forcefulness of the non-governmental organizations involved in environmental policy-making, it seems that only good can come out of such a process.

However, we should keep in mind that all this will require time for analysis and consensus-building, including in the context of the international environmental agenda. In the environmental arena we are still far from the consensus achieved in the multilateral trading system. For instance, one needs only to remember the strenuous last-minute efforts that had to be made before Rio to bring the United States on board for the Framework Convention on Climate Change, and how similar efforts failed in the case of biodiversity. More recently, negotiators in Cartagena, Colombia, failed to negotiate a Biosafety Protocol, which *inter alia* involves the sensitive issue of trade in genetically modified organisms. By contrast, in the multilateral trade talks the United States has consistently used its unrivalled power to steer and drive the negotiations. Thus, as far as environment is concerned, the biggest hurdles to overcome have mostly been created by the most powerful players of the international trade system, not by less influential developing countries.

3. Looking ahead

Opinions on what has been achieved so far on trade and environment vary widely, in accordance with differing perspectives and expectations. Whereas many observers have expressed disappointment about the lack

of clear results in the WTO Committee on Trade and Environment, others have found that it was more important to initiate an educational process. The limitations and opportunities of the WTO system to provide remedies in order to accommodate environmental concerns are also becoming apparent. The debate has highlighted the fact that remedies often lie outside the WTO system and are to be found in the very framework of environment policy-making at both the national and multilateral level.

Some progress has nevertheless been made. First, whereas the earlier debate was characterized largely by fears of major contradictions between trade and environment policies, the post-UNCED debate has focused on exploring the scope of the complementarities between trade liberalization, economic development, and environmental protection. Secondly, conceptual and empirical analyses have helped to avoid inappropriate policy choices, for example on the competitiveness issue. Thirdly, the debate has become much more participatory. It is noteworthy that the current debate seems to have attracted the attention of a very large range of stakeholders, including at the levels of different government ministries, NGOs, the business community, and academic institutions in both developed and developing countries. This has allowed the international community to engage in a much more knowledge-based and constructive agenda.

At the national level as well, many developing countries are adopting a proactive approach to trade and environment issues. One reason is that they have become increasingly aware that they cannot embark on successful development processes without paying appropriate attention to environmental protection and the sustainable management of their natural resources. It is also becoming clear that trade-offs between environmental protection and trade liberalization have to be resolved nationally. The benefits of environmental protection in terms of development, trade, and other economic gains are also gaining currency in the developing countries.

Seattle and subsequent trade negotiations could create more awareness and promote trade and environment coordination at the national and multilateral levels. UNCTAD and the United Nations Environment Programme (UNEP) could make an important contribution, for ex-

ample through a joint programme of capacity-building on trade, environment, and development. The two institutions are envisaging the creation of a task force with the explicit aim of building capacity by pooling the technical expertise of these two organizations. Such a joint programme could bring together various stakeholders who could articulate concrete steps that should be taken to further the process of consensus-building around these issues.

The economics of the environment

National economic policies are inevitably concerned about employment creation, tax revenues, and economic growth, all of which push environmental concerns to the bottom of the list of priorities. It is necessary to focus on creating incentive structures to move environment up the priority list, in other words, to “reinvent the economy.” Markets and accounting systems should recognize natural resources as assets in the true sense of the term, or should value resource-based goods and services properly. For example, in the context of biodiversity, economic incentives and better pricing of the products and services derived from biodiversity would better meet conservation and sustainable development objectives. Misleading information about scarcity values, conveyed through low prices of genetic resources and the know-how based on traditional knowledge, can seriously endanger biodiversity. This in turn can create a faulty decision-making process for the management, utilization, and enhancement of natural resources. In the absence of well-defined property rights for public goods, to which access is generally open, such as clean air, clean water, and biodiversity, these goods can be overused in productive activities; preventing such overuse requires judicious government intervention as well as effective market signals.

Creating an effective market for environmental goods and services can also help to meet environmental objectives. Creating a market for the products derived from traditional knowledge, for example, may generate market premiums and hence incentives for conservation. Similarly, in the context of climate change, creating markets for energy-efficient products and alternative sources of energy might be a cost-effective way of reducing carbon emissions at the global level.

Strengthening policy coordination at the national level

The vast majority of environmental problems are not global, or even regional, but local. They do not involve an international dimension, or, *a fortiori*, a trade dimension. To deal with real-life environmental problems, we should literally start at the national level.

Concerns such as the reduction or elimination of perverse subsidies, distortions affecting the management of natural resources, and the distorting effects of macroeconomic mismanagement are best tackled at home. Growing economies, many of which are developing countries, are in a better position to bring about the necessary shifts in resources, employment, and government revenue required to accommodate desirable environmental objectives. In this context it is worth noting that, left to itself, the market system provides incorrect signals and misleading information and therefore needs to be complemented by well-designed government intervention. The role of strengthening policy coordination between different ministries is particularly important in guiding government intervention to correct for market failures. Such intervention should seek to ensure that levels of costs and benefits reflect the fullest information about scarcity, rights and responsibilities, and actions and consequences. Coordination between civil society and government is crucial in generating the information needed to make such intervention meaningful. The pragmatic and timely use of such information by society is a precondition for the promotion of sound long-term management of natural resources. Iterative dialogue procedures between government and civil society, including the private sector, are important for ensuring that such information is fed into decision-making procedures at the right time. The role of the media should also be highlighted in these decision-making processes.

What can be done in the context of future trade negotiations?

I very much support the view that the new round should be a Development Round. Development is needed to eradicate poverty; it also implies the need to pay greater attention to environmental quality, for example by strengthening infrastructure and by ensuring the availability of adequate sanitation and drinking water. The principle of common but

differentiated responsibilities, which gives high priority to the concept of equity, should be fully taken into account.

Progress could be made on a number of issues. First, there could be further trade liberalization in areas where possibilities for “win-win” results—i.e. improved trading opportunities and enhanced environmental protection at a global scale—have been identified. Secondly, in accordance with the principle of common but differentiated responsibilities and the concept of equity, any consideration of the environmental implications of negotiations concerning specific WTO agreements should be accompanied by an examination of developing countries’ needs in terms of technology, finance, and capacity-building. Thirdly, there should be further trade liberalization in sectors of key export interest to developing countries. Fourthly, progress should be made in the areas of technology and special and differential treatment, as well as in the effective implementation of corresponding WTO provisions.

The positive agenda

In my report to UNCTAD X, I emphasized that “environmental considerations have come to interact with trade policies, and this trend is likely to continue. UNCTAD can play a role in helping developing countries identify areas in which they can take advantage of trading opportunities that may arise on account of environmental concerns, and in helping developing countries work out a positive agenda on trade and environment issues.”⁴

The chapter in this book by my colleagues Veena Jha and René Vossenaar (chap. 3) examines possible elements of a positive agenda on trade and environment. Speaking about the positive agenda—not in the context of trade and environment, but in general—in my statement on the next trade negotiating round, I said the following: “I know that some of my friends among developing countries’ negotiators will think that our positive agenda is a losing proposition and that we only risk legitimizing an essentially flawed and unbalanced process.”⁵ They may think this in particular when the environment is involved. But in the same statement I said that, “As you can judge from some of my comments, I am not unaware of the pitfalls and dangers of the exercise. I believe,

however, with Albert Schweitzer, that one may be pessimistic in knowledge, but optimistic in hope and action.”⁶

Notes

1. These comments are made in my personal capacity.
2. The concerns of developing countries are largely threefold. First, they stress that the Uruguay Round and its implementation process did too little to improve market access for developing country exports of goods and services. Secondly, many developing countries feel that the new WTO rules have been imbalanced in several important development-related areas, such as the protection of intellectual property rights and the issue of industrial subsidies, while special and differential treatment for them in the WTO agreements has been inadequate and needs revision. Thirdly, weaker human and institutional capacities, as well as a lack of financing, have prevented developing countries from using the WTO system to pursue their interests, particularly in making use of the dispute settlement mechanism, and also from complying fully with their multilateral obligations.
3. Rubens Ricupero, “Why Not a Development Round This Time, for a Change?” Keynote luncheon statement delivered at the New York Seminar “To the Next Trade Negotiating Round, Examining the Agenda for Seattle,” Columbia University, 23 July 1999.
4. “Report of the Secretary-General of UNCTAD to UNCTAD X,” TD/380, 29 July 1999.
5. Ricupero, “Why Not a Development Round This Time, for a Change?”, *op. cit.*
6. *Ibid.*