The Evolution of the Trade and Environment Debate at the WTO
– Hugo Cameron

Expert Opinion:
The future of the trade and environment debate
– Hector Torres

Expert Opinion:
It’s time to make the global debate local
– K.G. Anthony Hill

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TRADE AND ENVIRONMENT
A RESOURCE BOOK

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The relationship between trade and environment has evolved over time. The inclusion of environmental issues on the negotiating agenda of the World Trade Organization (WTO) at the Doha Ministerial in 2001 moved this relationship into the spotlight. However, this is by no means a new relationship; indeed, as we will see below, this is a relationship that has gone through many phases and will continue to evolve in the future.

The Early Years

At a fundamental level, the production and exchange of goods and services relies on the environment in the form of natural resources. Trade in everything from shrimp to shampoo implies an environmental impact of some sort. The trade-environment relationship is, in fact, imbedded within the original text of the General Agreement on Tariffs and Trade (GATT), which was adopted in 1947 as the basis for the post-war global trading system. Among the exceptions to the GATT’s core principles were provisions stating that nothing in the GATT would prevent member countries from adopting or enforcing measures either “necessary to protect human, animal or plant life or health” or “relating to the conservation of exhaustible natural resources” (Article XX, paragraphs (b) and (g), respectively). However, Article XX also says that such measures cannot be disguised restrictions on trade applied for protectionist intent. This provision has since become a focal point for the trade and environment debate at the GATT and WTO.

Amidst growing environmental awareness that emerged in the late 1960s and the early 1970s, GATT members established a Group on Environmental Measures and International Trade (EMIT) in 1971. However, without a single request for it to be convened, the EMIT Group lay dormant for 20 years. Nevertheless, trade and environment lingered in the GATT hallways. At the 1972 UN Conference on the Human Environment in Stockholm, the GATT Secretariat presented a paper on the implications of environmental protection policies and how these could become obstacles to trade. Further, discussions during the Tokyo Round of the GATT (1973–79) over trade-related technical regulations and standards implemented for environmental purposes led to the adoption of the Agreement on Technical Barriers to Trade (TBT), or the “Standards Code,” in 1979. The TBT Agreement called for transparency in the application of technical regulations and standards and marked the first reference to the environment in a GATT agreement.
While trade officials were factoring the environment into international trade agreements, trade measures were being used as a tool to advance global environmental goals. In 1975, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) entered into force, mandating a system of trade bans and restrictions on traffic in endangered species. Trade restrictions subsequently formed key elements of other multilateral environmental agreements (MEAs), including those on trade in ozone-depleting substances (Montreal Protocol, 1987) and hazardous wastes (Basel Convention, 1989). By 2003, according to a paper released by the WTO Secretariat, there were no fewer than 14 MEAs with trade-related provisions, including a number of others with potential trade effects. The two streams of international interaction on environment and trade continued to evolve in parallel until they began coming into increasing contact with each other in the 1990s.

The 1990s: A Rocky Decade

The 1990s marked the coming of age of the trade-environment debate. In 1991, the European Free Trade Association (EFTA) finally prompted the EMIT Group to meet in order to study the trade and environment linkage and provide input to the 1992 Rio Earth Summit. Leaders at the Rio Summit recognized the substantive links between international trade and environment by agreeing to make policies in the two areas mutually supportive in favour of sustainable development. The entry into force and implementation of several major MEAs that included trade restrictions as enforcement measures was starting to draw the concern of the trade community. Meanwhile, Northern environmental groups were increasingly worried that GATT rules could chill or roll back domestic environmental legislation.

Two GATT panel decisions against the United States in the Tuna-Dolphin dispute cases confirmed the fears of environmentalists. These decisions also provoked major concern on the part of developing countries about the environment becoming a barrier to their exports, based on how they were produced or harvested. The first case was brought before the GATT by Mexico, which argued against a United States (U.S.) law imposed in 1990 that prohibited tuna imports from countries lacking appropriate dolphin conservation programs. Mexico believed that the U.S. legislation violated its GATT rights by prescribing extraterritorially how it should catch its exported tuna. The U.S. defended its action on the grounds that its neighbour was taking insufficient measures to prevent the accidental capture of dolphins by its tuna fishers. The GATT panel ruled in 1991 that the U.S. could not suspend Mexico’s trading rights by prescribing unilaterally the process and production methods (PPMs) by which that country harvested tuna. The U.S. eventually lifted its embargo following an extensive domestic “dolphin safe” labelling campaign and negotiations with Mexico. A subsequent case brought against the U.S. tuna embargo by the European Union (EU) on behalf of the Netherlands Antilles in 1992 found that the U.S. dolphin conservation policy was GATT-consistent and could be applied extraterritorially. However, it broadly upheld the first panel decision by ruling that the actual measure used (i.e., the tuna embargo) was neither “necessary” (along the lines of Article XX), nor GATT-consistent. The Tuna-Dolphin cases brought into sharp focus how differing environmental norms between developed and developing countries could prove a source for conflict.

Partly as a result of the Tuna-Dolphin cases, trade and environment linkages were also being recognized at the regional level. For instance, in 1994 the U.S., Mexico and Canada signed the North American Free Trade Agreement (NAFTA), which included a side-accord on regional environmental cooperation. The side-agreement—and the tri-national organization it created—was intended to help ensure the effective implementation of
existing environmental laws among signatories. Similar provisions subsequently found their way into bilateral trade agreements signed by the U.S. and Canada with other developing country trading partners, in order to guard against lower environmental standards as a source of comparative advantage. Environmental cooperation elements have since also been included in a number of regional trade arrangements.

The 1990s also saw the conclusion of the eight-year Uruguay Round negotiations and the creation of the WTO on January 1, 1995. By then, the trade body’s ranks had swelled to 128 Members, over three-quarters of which were developing countries. In addition to including preambular language claiming sustainable development as an objective, the WTO agreements established a Committee on Trade and Environment (CTE), included a new Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, and instituted a strengthened dispute settlement mechanism. The CTE, a regular meeting of all WTO Members, was mandated to identify the relationship between trade and environmental measures and make appropriate recommendations on whether any modifications to WTO rules were required. While the Committee has provided a valuable forum to enhance understanding of the trade-environment relationship, it has struggled to fulfill its mandate, and many have accused it of being little more than a talking shop. The SPS Agreement elaborated on Article XX by setting out parameters for the application of measures to protect human, animal and plant life or health. The new dispute settlement mechanism rules, which made it virtually impossible for losing countries to overturn decisions by panels or the new Appellate Body (AB), were a major concern for environmental groups. They were worried that the WTO now had real teeth to force countries to dismantle environmental laws, should these come under challenge in the multilateral trading system.

The future of the trade and environment debate

A Conversation with Hector Torres

Has the trade and environment debate lost steam? I would say that the debate has seen little progress since the December 1996 Singapore Ministerial and has been going around in circles. When the Uruguay Round was finished, there was a big push from the United States to include environment in the WTO. The Committee on Trade and Environment (CTE) was entrusted with a clear mandate and was tasked to present its findings at the Singapore Ministerial. However, by the time Singapore came around, the U.S. had lost interest in trade and environment and the CTE was pushed back to the periphery and stripped of its clear negotiating mandate.

Since then, the discussions have been stuck in a rut. Neither developing countries nor the current U.S. Republican administration are demandeurs, willing to push the trade and environment debate to the forefront. Although the Europeans have an interest in pursuing a stronger environmental agenda, they seem to have neither the willingness nor sufficient strength to push this debate forward.

However, even though trade and environment in the WTO is now stalled, there are a few areas where the debate needs to go if it is to become meaningful, especially from a developing country perspective. I can think of at least three specific issues that need to become part of future trade and environment negotiations.

1. **The Primacy of National Legislation.** First, an unending and fierce debate has raged between countries that prefer to pursue developing international standards and those that prefer a national approach to environmental legislation and regulations. I can understand the argument for national legislation and have no problem with it.

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A number of WTO disputes added further depth to the trade-environment debate, and underlined the difference in approach to the issue between developing and developed countries, notably the U.S. The 1998 *Shrimp-Turtle* dispute case, brought by four Asian countries against the U.S., proved a landmark in that it put into doubt the rationale that discrimination based on PPMs was not compatible with WTO rules. The WTO Appellate Body ultimately determined that, while the disputed U.S. law prohibiting shrimp imports caught without the use of “turtle excluder devices” was justifiable under Article XX, it had been implemented in a discriminatory fashion. In other words, the Appellate Body did not require the U.S. to dismantle its law, but only change the way it was implemented. The decision was particularly disturbing to Thailand, India and a number of other developing countries, who were deeply concerned with the approach to interpretation of WTO law applied by the Appellate Body. They felt that the ruling permitted Members to discriminate against “like” products based on non-product-related PPMs, an issue that had not been negotiated in the Uruguay Round. From their perspective, the *Shrimp-Turtle* decision could be interpreted as allowing Members to take unilateral actions based on the way in which products are produced (i.e., the way in which shrimp are harvested), and that these actions could be justified under Article XX as long as they were not implemented in an arbitrary or discriminatory manner.

By the close of the 1990s, the field of trade and environment was receiving much more attention than at its start. Among other issues, eco-labelling, trade in genetically modified organisms (GMOs) and perverse subsidies in natural resource sectors were providing policymakers with a host of new challenges. Supply chain issues were gaining prominence, and the use of private-sector green procurement schemes, for instance by European grocery retailers, was leading to a reorganization of international production and of relations between exporters, distributors and consumers. Dramatic street protests by environmental and other groups at the WTO’s failed Seattle Ministerial Conference in 1999 served to remind trade negotiators that the multilateral trading system needed to find a way to address how it dealt with the environment. However, developing countries remained wary, not least because they saw their own trade and environment concerns—such as green protectionism, the export of domestically prohibited goods and the equitable treatment of their biological resources—take a back seat to developed country trade and environment issues at the WTO.

**Doha and Beyond**

At the Doha Ministerial Conference in 2001, WTO Members decided to launch negotiations that, for the first time, would include trade and environment as part of the negotiating agenda. The negotiating issues agreed under Paragraph 31 of the Doha Ministerial Declaration were primarily those advocated by developed countries: the relationship between WTO rules and specific trade obligations in MEAs; observer status for MEA secretariats; and the liberalization of trade in environmental goods and services. This reflected the perception that accepting an environmental mandate remained a trade-off for developing countries, which have not been *demandeurs* in these areas.

Paragraphs 32, 33 and 51 make up Doha’s “non-negotiating” trade and environment mandate. Paragraph 32 focuses the work of the CTE on three areas: the effect of environmental measures on market access; the relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS); and eco-labelling. Paragraph 33 outlines the importance of capacity building and encourages environmental impact assessments. Paragraph 51 instructs the CTE and the Committee on Trade and Development to “each act as a forum to identify and debate developmental and environ-
mental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.”

Importantly, Paragraph 6 of the Preamble to the Doha Declaration makes a detailed case for the trade and environment linkage:

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 take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. 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. We welcome the WTO’s continued cooperation with UNEP and other inter-governmental environmental organizations.

The Doha Declaration also makes the linkage in other key areas. For example, on agriculture, the Declaration highlights “the need to protect the environment” as one of the non-trade concerns that should be taken into account in the negotiations. On intellectual property rights, the Doha Declaration instructs the TRIPS Council to examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore. On fisheries, Paragraph 28 of the Declaration man-

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However, as a global citizen, I believe that the international arena should demand enforceability and accountability in the implementation of national environmental regulations. Once nations have set their environmental laws and regulations, they should have an international obligation to ensure that these laws and regulations are implemented. We resist the push for international regulations in the name of sovereignty, but bad governance at home means that national laws are not necessarily enforced.

In developing countries, implementation of national environmental laws remains unsatisfactory. Politicians tend to enact environmental legislation in response to popular discontent or concern over the state of the environment or international pressures. However, the capacity and/or willingness to enforce existing legislation remain low. It is fair for developing nations to demand the right to develop their own environmental standards and regulations to match their economic development. But it is the obligation of every country to enforce its national environmental legislation. The future of the trade and environment link will be determined not just by the international regulations to which we agree, but also by how well we enforce our domestic regulations pertaining to both trade and environment.

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\text{2. Shift of Focus from PPMs to Consumption and Disposal. There is an urgent need for the debate to look at the entire product lifecycle rather than just one part of it. Much of the trade and environment debate to date has revolved around process and production methods (PPMs). This is, of course, very important. However, it is now time that the focus of the debate be broadened to include the entire product lifecycle, which includes not just externalities stemming from the production of goods, but also from their consumption and disposal. The obsessive focus on PPMs unfairly shifts the burden onto developing countries as the villains of environmental degradation and}
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ends up targeting outdated production methods mostly used in developing countries, without being equally vigilant about externalities stemming from lavish consumption and irresponsible disposal. Some of the most severe environmental effects come not from PPMs, but from consumption and disposal of products.

Beyond this, it should be noted that the debate over whether PPMs are consistent with WTO rules could be solved by delving into the original intention of the 1995 Technical Barriers to Trade (TBT) Agreement and the subsequent practice of countries. There is a subtle difference in the definition between technical regulations and standards that leaves room for the argument that PPMs unrelated to the product could be used in standards to differentiate “like” products. To make the situation even more confusing, many of the countries that argue that the use of PPMs to differentiate “like” products is WTO-inconsistent, actually use PPMs in eco-labelling and other voluntary labelling schemes (for example, to differentiate organic food). This could be clarified through legal interpretation, but it would be far more desirable to settle the issue at the political level, where agreement can be sought on when and where PPMs are an acceptable means to differentiate products.

3. Tariff Escalation and Export Taxes. We need to carefully consider the perverse economic and environmental effects of the tariff escalation that developing countries face. Given the capital constraints that many developing nations face, they are compelled to raise capital either by borrowing, by attracting investment or by generating trade surpluses. Both borrowing and attracting investment pose difficulties and depend on factors that go beyond their domestic policies. Thus, developing nations often need to rely on their capacity to generate trade surpluses to service their capital requirements. Developing nations would like to trade in value-added exports as these create more employment and greater opportunities for sustainable development. However, the more value developing countries add to their exports and the higher they go up the production value chain, the more tariffs these products face because of tariff escalation in export markets.

In addition to being a drag to development, tariff escalation leads to perverse effects on the environment. Due to tariff escalation on value-added exports, many developing nations need to rely almost exclusively on trade in commodities, which face lower tariffs. This turns out to be an incentive for the over-exploitation of natural resources. The problem is compounded because some developing countries tax or restrict exports of commodities in order to offset the effects of tariff escalation on their processing industries. By taxing exported commodities, developing countries are providing cheap inputs to processing industries to offset the trade consequences of tariff escalation. These effects thus feed into a perverse cycle that ultimately leads to over-exploitation of natural resources with negative consequences for the environment.

In short, if the trade and environment debate is to make any meaningful progress, it has to broaden its focus to include three key dimensions. First, it has to broaden its focus to include the enforcement of national regulations as an international obligation. Second, it has to broaden its focus to encompass the externalities stemming from the entirety of the product lifecycle, including consumption and disposal. Third, and importantly, the debate has to examine the impact of policy failures and market instruments—rather than just the impact of environmental regulations—on natural resources and environmental quality.

Written by Adil Najam and Hyun Jung Jo Choi based on a conversation with Hector Torres. Hector Torres, from Argentina, served as a trade negotiator for his country and is now an Executive Director at the International Monetary Fund (IMF). The opinions above were expressed in his personal capacity.
dates Members to “clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.”

Less than a year after the launch of the Doha negotiations, leaders at the 2002 World Summit on Sustainable Development (WSSD) sent a clear message to WTO negotiators to step up their efforts to integrate sustainable development objectives into the trade round. Amongst other commitments, the Plan emphasized the phase-out of harmful fisheries and energy subsidies and discouraged the use of unilateral actions to deal with environmental challenges outside countries’ jurisdictions.

Since Doha, Members have met several times in the CTE in Special Session to address the negotiating mandate. European countries have remained the most active supporters of the MEA-WTO relationship discussions. Some of the larger developing countries have engaged actively on different aspects of the mandate, for instance by analyzing the potential benefits (and pitfalls) for their economies of further trade liberalization in environmental goods and services. However, modest progress has continued over this time and, slowly but surely, the trade and environment agenda has started digging in its roots within the corridors of the WTO.

**Interests and Fault Lines**

The major players in the debate on the trade-environment relationship have traditionally been European countries and the U.S. Developing countries have recently become more engaged, particularly around specific issue-areas, such as the relationship between the TRIPS Agreement and the CBD. North-South alliances around certain issues, such as fisheries subsidies, have also emerged. In addition, non-governmental and inter-governmental bodies have made valuable contributions to the field. Table 1 summarizes the involvement of these actors from before 1990 to the present.

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**It’s time to make the global debate local**

*By Amb. K.G. Anthony Hill*

The barriers had already been breached. It was left to the youthful, sometimes organized non-governmental groups to administer the *coup de grâce*. To the rootsy, rocking reggae beat of Bob Marley, down came the Berlin Wall in 1989. The era of NGO activism was in full swing. “Seattle” was still to come.

It was a decade earlier that the quickly congealing Washington Consensus of privatization, liberalization and “outing” the State had bullied its way into the consciousness of the South. The transnationalization of business was opening markets, expanding its networks of consumers.

The pressure of North-centred NGO idealism and realism had moved the U.S. Congress to pressure the World Bank to pay attention to the environment in its client countries. Notwithstanding, one of the Bank’s senior officers with the cold logic of the sinecured bureaucrat, observed that the trade-off for growth was a certain degree of environmental degradation and pollution.

Transnational business, it seemed, was not perturbed. No pressure from them on Congress. After all, they were the beneficiaries of substantial business in environment-related investment projects, through OECD export credits and multilateral financing. The sums in transacting cross-border trade and project design and construction are quite substantial. More to the point, a significant percentage is in areas that are quite definitely environment-affecting, energy-intensive projects.

There is no gainsaying that the spread of less-than-safe-and-friendly environmental technology and the rise in greenhouse gases have increased ambient temperatures around the world with adverse effects felt mainly in poor countries.

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### Table 1: Key actors and the evolution of the trade and environment debate.

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<th>Actors</th>
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<th>Seattle-Doha</th>
<th>Post-Doha</th>
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<td>Europe</td>
<td>• Intra-EU harmonization</td>
<td>• Support for MEAs</td>
<td>• Support for clarification of MEA-WTO relationship</td>
<td>• Push for broad interpretation of Doha mandate</td>
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<td>• Support for multilateral solutions to environmental problems</td>
<td>• Support for MEAs</td>
<td>• Seek recognition of eco-labelling in WTO agreements</td>
<td>• Support negotiations on eco-labelling</td>
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<td>US</td>
<td>• Support for MEAs</td>
<td>• Use of unilateral trade-based solutions to environmental problems</td>
<td>• Support for increased transparency and NGO participation</td>
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<td>• Use of unilateral trade-based solutions to environmental problems</td>
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<td>Developing</td>
<td>• Concern over trade in domestically prohibited goods (DPGs)</td>
<td>• Market access concerns, especially over unilateral use of trade measures for environmental purposes</td>
<td>• Resistance to inclusion of environmental negotiations in the WTO</td>
<td>• Reluctant acceptance of WTO environmental agenda</td>
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<td>Countries</td>
<td>• Support for MEAs</td>
<td>• Support for TRIPS-CBD linkage</td>
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<td>• Push for narrow interpretation of Doha environmental mandate</td>
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<td>IGOs (including</td>
<td>• Concern over trade in domestically prohibited goods (DPGs)</td>
<td>• Market access concerns, especially over unilateral use of trade measures for environmental purposes</td>
<td>• Resistance to inclusion of environmental negotiations in the WTO</td>
<td>• Strengthened “Southern” agenda</td>
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<td>MEAs)</td>
<td>• Concern over trade in domestically prohibited goods (DPGs)</td>
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<td>NGOs</td>
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<td>• Implementation of MEAs with trade measures and negotiation/adoption of new MEAs</td>
<td>• UNEP, WTO and UNCTAD collaborate on building synergies</td>
<td>• Limited inclusion of MEAs and UNEP at CTE negotiations on MEA-WTO relationship</td>
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<td>• Implementation of MEAs with trade measures and negotiation/adoption of new MEAs</td>
<td>• Important capacity building role</td>
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<td>• Implementation of MEAs with trade measures and negotiation/adoption of new MEAs</td>
<td>• Certain MEAs accredited as observers to CTE</td>
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<td>• Rapid emergence of civil society groups focusing on trade and environment</td>
<td>• Major protests at Seattle highlight public concern</td>
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<td>• Concern over MEA-WTO mandate</td>
<td>• Major protests at Seattle highlight public concern</td>
<td>• Lobbying in Europe and elsewhere pressures the WTO to include trade and environment on agenda</td>
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<td>• Important contributions made through capacity building, analysis, and increasing specialization and knowledge</td>
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The **European Union**, frequently supported by “like-minded” countries such as Switzerland and Norway, has been the central proponent of including environmental issues in trade discussions at the multilateral level. This position is informed, to a great extent, by the EU’s support for multilateral environmental solutions and the influence of environmental groups. However, most other countries have remained suspicious of Europe’s enthusiasm for environmental issues at the WTO, particularly its support for the precautionary principle in instances of scientific uncertainty. Developing countries, in particular, are wary of European efforts to push eco-labelling and the clarification of the MEA-WTO relationship. They view these efforts as an attempt by the EU to seek additional space to block imports in sensitive sectors and obtain trade-offs for concessions in other areas, such as agriculture.

The EU has made increasing efforts to integrate its trade strategy with the principles of sustainable development. In addition to conducting **sustainability impact assessments (SIAs)** of all its new trade arrangements, the EU has launched initiatives to help developing countries gain from sustainable trade. These include the promotion of trade in sustainably-produced products, funding for technical assistance on trade and environment and an online “help desk” for developing country exporters to navigate Europe’s often cumbersome import standards. However, many remain unconvinced and some developing countries have expressed concern that SIAs could enable hidden protectionism under the guise of environmental and social concerns.

The **United States** has a mixed track record on trade and environment. On the one hand, its support for PPM-based trade measures at the WTO, reform of fisheries subsidies rules, and inclusion of environmental provisions in regional and bilateral trade arrangements points to an appreciation for balancing trade policy with effective implementation of envi-

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It was finally at the World Trade Organization (WTO) that these two “interests” met. One to press for negotiations on trade in services; and the other to press for trade and environment. Irresistible! The negotiators from developed countries, yielding to their often-contending constituencies, secured consensus for the agenda. When the city-named negotiations of “green” Seattle and “Neanderthal” Cancun “failed,” the innovative politico-bureaucrats remained with “Development” Doha as the promise of rule-making and market opening.

How can the intellectual playing field be levelled? How can developing country negotiators navigate the tributaries of issues complicated by design? What specifically can be done to rescue the WTO-centred economic enterprise of international trade as it is besieged from within and without? And how do we make sense of the seamless connections between production of goods; delivery of goods and services; the technologies of production and transport; the financing of trade; the effect of, and on the environment; and how all these are facilitated by institutions endowed with capacity?

The General Agreement on Tariffs and Trade (GATT) embodies principles that are indispensable for civilized discourse among materially unequally endowed partners. Who would wish to “negotiate” binding commitments, if there is no firm expectation that the word is as good as a bond and the agreement is law, binding on all parties and administered with equity? The principles of national treatment and non-discrimination are tempered, as always, by equity; the recognition of “infant industry”; “exceptions”; “safeguards”; and “special and more favourable treatment for developing countries.”

The objectives of full employment, the optimum use of all resources (and here I include “human,” though not to be equated to a barrel of oil), sustainable development and conditions of competition are certainly ones to be anchored. The problem arises when interests push so hard and fast that the dynamic equilibrium of wealth-generating, welfare-enhancing international trade and finance is so disturbed that inequity results.

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The generic term “South” was always contrived. When equated with “Third,” the die was cast. Thus was lumbered the “Third World.” So too, the term “developing countries.” These terms have outlived their utility. At the same time, where is the serious, practical collaboration among developing countries in general, South-South cooperation? Where is the collaboration and involvement of all their stakeholders in a focused way, and with the fulsome support of their heads of government and state?

The governments of developing countries and their private sectors, NGOs, academics and citizens should be more intensively engaged among themselves in the unfolding negotiations on the inter-related environment-facilitating measures for trade. The technical assistance and capacity building of the WTO, delivered by a Secretariat, can be self-serving and counterproductive. There is a pressing need for local circumstances to be the basis for information and knowledge driving their negotiating positions.

There is clear and indisputable evidence that efficient trade facilitation is welfare-enhancing. There is equally clear evidence that the pollution from road, air and sea transport bears heavily on the environment. As negotiations on trade facilitation take place under the Doha mandate, it is also clear that without fulfillment of trade-facilitation supply-side commitments, it will be difficult for developing countries to meet their end of the bargain and secure the balance of benefits from the negotiations.

The WTO dispute resolution mechanisms, their operation and their decisions—so hugely oversold—are fast becoming instruments of inequity, in defiance of common sense, and of the values and principles of its predecessor, the GATT. Can there be any doubt that unchecked, the present practices will taint, even distort, production and trading patterns? The adjudication of any likely disputes in the field of trade facilitation could be quite interesting. Is it premature to consider what these might be? Could one be the failure to fulfill the commitments for infrastructure, or technical assistance?

Both technology and finance are critical components of all trade. However, note their differential treatment in the present agenda. They are not integral to the ongoing negotiations. The Committees on the Transfer of Technology and Trade and Finance are study groups, with little chance of their findings making their way into the rules of rights and obligations. This lack of seamlessness does not seem to make sense.

The question arises whether the negotiations on both market access commitments and rules on environmental goods and services will contribute to improving the environment in general and the specific objectives of sustainable development.

The conventional lens of “North-South” negotiations at the multilateral level is clearly not one that is likely to lead to optimum productive results across the board. The increasing number of regional trade agreements is now in the same order of magnitude as multilateral environmental agreements. Trade-related environmental solutions may well have to be dealt with more at the regional level, if the desired welfare benefits from trade liberalization are to be realized. The trade impact assessment tools and Agenda 21 principles must therefore be used.

An important consideration will be the institutional arrangements that will accompany these increased regional arrangements. Establishing a World Environment Organization would be overkill. It would only add layers of non-productive bureaucracies, detracting from the necessary focus at the national and regional level.

No. The answer is not to overload the carrying capacity of the international organizational landscape with more and more politico-bureaucracies, which, in turn, become purveyors of their own agendas while developing countries continue to be mesmerized by policy dialogues and other buzzwords emanating from outside their societies.

It may well be that the WTO itself should scale back its ambitions.

Ambassador K.G. Anthony Hill, from Jamaica, is a seasoned trade negotiator and was his country’s former Permanent Ambassador to the United Nations in Geneva.
ronmental regulations. On the other hand, its refusal to “play by the rules” in key MEAs with trade-related elements—such as those on biodiversity, climate change and biosafety—has made its trading partners skeptical of its environmental intentions. At Doha, the U.S. was less enthusiastic than the EU about including trade and environment on the negotiating agenda. Indeed, the U.S. ensured that the negotiations would not open up more space for consideration of the precautionary principle in WTO rules, and has since sided with developing countries in advocating a limited interpretation of the MEA-WTO mandate.

**Developing countries** have engaged in trade and environment issues at the GATT at least since the 1980s. In 1982, a number of developing countries at the GATT expressed concern that products prohibited in developed countries due to environmental hazards, health or safety concerns—such as certain chemicals and pesticides—continued to be exported to them. With limited information on these products, developing countries made the case that they were unable to make informed decisions regarding their import. Domestically prohibited goods (DPGs) subsequently became a standing item on the agenda of the CTE, though the issue has received less attention since 2001 due to the focus of CTE discussions around the Doha issues.

While developing countries have been active contributors on trade and environment at the WTO, they have traditionally taken a defensive position. This is due primarily to concerns that trade-related environmental measures could be used as barriers to their exports. Developing countries have also strongly objected to any leeway in WTO rules for the use of unilateral or extraterritorial trade measures to enforce environmental norms. They argue that countries should be able to set their own environmental priorities, taking into account their level of development, and that they should not be subject to the domestic environmental standards set in other countries. At the same time, developing countries have advocated a range of issues that reflect Southern trade and environment interests. In addition to concerns surrounding trade in DPGs, many developing countries have sought to reconcile the TRIPS Agreement with the CBD. For their part, the least developed countries (LDCs) have emphasized the importance of financial resources for technical assistance to meet Northern environmental and health standards.

Developing countries have also joined North-South coalitions. These include the “Friends of Fish” which, in pushing for disciplines on fisheries subsidies, groups Argentina, Chile, Ecuador, Peru and the Philippines together with Australia, Iceland, New Zealand, Norway and the U.S. North-South cooperation has further emerged on environmental aspects of agriculture, with a wide coalition of developing and developed agriculture-exporting countries (the Cairns Group) denouncing the environmentally-harmful effects of agricultural subsidies. Argentina, Chile and Uruguay have joined Australia, Canada and the U.S. in opposing restrictions on transboundary movements of GMOs under the CBD’s Biosafety Protocol, while some African countries have voiced support for the EU’s precautionary approach to GMO imports.

Developing countries agreed to the MEA-WTO linkage mandate from Doha, but only as part of a wider package that contained other trade-off issues, including reductions in agricultural subsidies. Since Doha, many developing countries have participated actively in the negotiations, for the most part preferring a narrow approach to the mandate to ensure talks do not result in further regulatory space for environmental provisions that could restrict their exports. Some developing countries are also cautiously exploring potential benefits from liberalization of trade in environmental goods and services.
Intergovernmental organizations have played a key role alongside WTO Members in the discussions on the trade-environment relationship. Secretariats from relevant MEAs have been regular invitees to the CTE and have participated in a limited fashion in the environment negotiations in the Doha Round. The United Nations Environment Programme (UNEP) has played a useful role in highlighting synergies and mutual supportiveness between MEAs and the WTO. UNEP has been an observer at the CTE since 1995 and, as host of the 1992 Rio Summit, was instrumental in elaborating the links between the trade and environment regimes. Together with the UN Conference on Trade and Development (UNCTAD), UNEP has engaged in extensive capacity building and research activities for developing countries on trade and environment.

Many non-governmental groups have emerged in both the North and South to follow the multifaceted issues around trade and environment. The number of these groups mushroomed in the mid-to-late 1990s, due in large part to the coming into force of the WTO and to the growing public interest in pursuing sustainable development. The fields of expertise of NGOs active in trade and environment are varied, and their impact can be substantial, especially through interaction with trade policy-makers. In particular, these groups have contributed significantly as monitors of the trade policy-making process, as knowledge providers, information disseminators and capacity builders.

Trends and Future Directions

Over the next five to 10 years, the environment is likely to remain on the trade agenda, but in different ways than it is now. Once WTO Members come closer to mutually-agreed terms around the relationship between WTO rules and MEAs, further space could open up to address areas of trade and environment concern to developing countries. China, India and Brazil—all members of the Group of Twenty (G20) of developing countries opposed to Northern agriculture subsidies—can be expected to bring their own trade-environment priorities to the table, including the environmental benefits of reductions in agricultural support. The question of GMOs is also likely to challenge the trade-environment relationship for years to come.

Changes in modes of international production, partly as a result of trade negotiations, are likely to shift issues of priority in trade and environment to more concrete areas, such as negotiating mutual recognition agreements for different product standards in different countries. Global supply chains and consumer preferences can also be expected to play an increasingly important role. Some developing countries, which can afford to, have already adopted their own domestic labelling and certification schemes in response to consumer preferences in the North. To continue meeting these challenges and to advance sustainable development, all countries will have to resist pressures to build protectionist fences and instead promote cooperation on green spaces. As neighbours in a globalized world economy, trade and environment cannot afford not to get along.
The Evolution of the Trade and Environment Debate at the WTO

Figure 1. Annotated organogram of the World Trade Organization.