

Background Paper

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SUSTRA

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1 Introduction

A well functioning and coherent architecture for the global system of governance would ensure that trade and sustainable policies are mutually supportive and effective. The general consensus at present is that current architecture is neither well functioning, nor coherent. Trade and sustainable development policies at the global level sometimes compete, are not fully effective within their respective spheres, and the institutions that develop these policies do not interact consistently or holistically. This policy brief is based on the outcome of an international workshop on the architecture of the global system of governance of trade and sustainable development and will explore some of the many implications involved in confronting the challenge of constructing an effective architecture of governance. Despite the great deal of research that has been carried out about the nexus of trade and sustainable development on the global scale, remarkable uncertainties and areas for further research continue to exist.

The recent growth in number and scope of international institutions and instruments that make up the global architecture has profound implications for sustainable development in the context of globalisation. The international sustainable development regime itself is composed of a diverse range of institutions and instruments. Although individual instruments and institutions may function well, collectively, the regime is perceived of as suffering from insufficient organisation and inefficiency, which takes away from its potential clout. By contrast, the international trading system is anchored by a single institution, the World Trade Organisation (WTO), which is continuously broadening its scope. Initially concerned with the abolishment of quantitative trade restrictions and the reduction of overall tariffs in the first decades of its existence, the GATT/WTO system now incorporates issues such as services, intellectual property rights, and in the near future will likely take on competition and investment. In the process, the WTO abuts, and overlaps, with other international regimes, including that of sustainable development. However, while the WTO is perceived of as relatively powerful, it is rapidly becoming an organisation of economic globalisation (rather than simply trade), such that it runs the risk of overload.

Thus, an examination of the global architecture of governance of trade and sustainable development must begin by considering the relative strength and weakness of each respective regime in relation to addressing both trade and sustainable development. On this basis, one can explore whether the

interaction between the two is appropriate, and what mechanisms are available to achieve improvement.

The recent World Summit on Sustainable Development (WSSD) has demonstrated the limitations of intergovernmental institutions in moving forward the trade and sustainable development agenda. At the same time, however, it reaffirmed the vitally important role of non-State actors in promoting sustainable development. Accordingly, an analysis of the global architecture must also examine how such actors interact with and either support or undermine the formal international institutions and instruments.

The international workshop "Architecture of the Global System of Governance of Trade and Sustainable Development" -- the second workshop in the "SUSTRA project -- brought together academics, researchers, and policy makers from several European Countries, Canada and the US to support the development of a research agenda on these issues. The workshop was structured around the following key questions:

- How can the international, sustainable development regime be strengthened vis-à-vis international trade issues?
- What role should the WTO play in support of sustainable development?
- How can the interaction between the international sustainable development regime and the WTO be improved?
- How can the contribution of non-State actors in support of the global system of governance be leveraged?

2 What issues are truly global and how should they be considered by the global architecture?

Trade and sustainable development both have high priority on the global policy agenda. And yet, in parallel, action and norms on these issues are also developed at regional, bilateral and national scales. Thus, a preliminary and cross-cutting issue to consider in assessing the global architecture of governance is whether substantively and procedurally an issue is best addressed at the global scale, as compared to the regional or bilateral level. The relationship between all these levels is not only

complex, but also dynamic. The architecture of global governance on trade and sustainable development must be both sufficiently resilient and flexible to effectively address global matters, while leveraging supporting action at the lower scales.

Several phenomena are observable. Firstly, the nature of most MEAs and the WTO is to establish frameworks and principles at the global scale, but to leave the means for implementation to other scales of governance. Yet there are also other types of rules in both regimes that are very specific and leave little room for discretion in the implementation, e.g. Montreal Protocol on Substances that Deplete the Ozone Layer or the agreement on trade-related aspects of intellectual property rights. The development of both types of rules is the result of pragmatic and political realities, rather than a principled approach to selecting the most appropriate level of action. A starting point might be to structure the analysis along the particular type of global public good being addressed and provided. However, a more sophisticated analytical framework is needed to determine the most appropriate basis for achieving subsidiary and decentralisation.

Secondly, there has been a significant growth in addressing trade and sustainable development issues at regional, inter-regional, and bilateral levels. To some extent, this may reflect the reality that consensus is easier to obtain at these scales than globally, but again, questions remain as to whether there is a principled approach that can be taken to opt for a more local scale, so as to ensure that the outcomes are truly supportive of sustainability. A related matter is the necessity to avoid conflicts between different scales of governance where there may be overlaps, which begs the question as to what the appropriate boundaries of global and regional scales, respectively, should be.

Thirdly, action at the regional scale can influence the global one, and vice versa. This may be the case where global rules are minimum standards, and regional agreements adopt higher standards. Another scenario is where a regional consensus is used as a basis for leveraging global agreement.¹

Accordingly, more research is needed to better understand these linkages and to develop proposals that will ensure that issues are addressed effectively at each of these scales, and that the corresponding governance architectures mutually support effective and equitable developments.

¹ Faber 2001; Kimball, 1999

3 Strengthening the way the international sustainable development regime addresses trade policy

Global governance of sustainable development needs strengthening to ensure sustainable outcomes on the ground. This perception is founded on several aspects, namely the dispute settlement and enforcement mechanisms, the low cost of opting in or out of the concerned regimes and the fragmentation of the sustainable development regime as compared to the international trading system. While most of the discussion has focussed on the general issue, the challenges, in principle, apply *a fortiori* to the way the sustainable development instruments and institutions address trade policies. Individual instruments may contain effective trade measures, e.g. CITES or Montreal Protocol, and yet the trade aspects tend not to be sufficiently integrated into a holistic approach that addresses the wider challenges of sustainable development. Indeed, piecemeal environmental policy is too often isolated from trade policy.

At the root is the debate over whether more centralisation of the sustainable development regime is necessary or a better organisation based on the existing structure. Proposals range from providing more financial resources and political powers to the existing institutions, to a reorganisation of multilateral agreements, to a complete new global environmental governance system.

3.1 Strengthening existing institutions

One well known proposal is to upgrade of UNEP to a full-fledged UN specialised agency. It is argued that the increase in political weight and financial resources would bolster UNEP's current activities in regard to trade, including capacity building for integrated decision making and facilitation of international cooperation.² The governing body of a specialised agency could potentially have greater legal leverage to address policy issues, including trade related issues. A related option is to broaden membership and mandate of the Global Ministerial Environmental Forum (GMEF). Created by UNEP, the GMEF is meant to be a forum that considers important and emerging policy issues in the field of environment, promote policy guidance, set priorities and provide overall coordination. However, until now, the GMEF does not have a well defined status, and proposals to open it up to universal membership have so far not gathered sufficient consensus. Additionally, there is concern

² UNEP, 2001b

about whether strengthening of one sustainable development institution will weaken others, especially when there are overlapping mandates, such as between UNEP and the CSD. And indeed, so far, none of the many proposals made in recent years to strengthen UNEP have been adopted.

3.2 Enhancing synergies between MEAs

Most MEAs were negotiated on an ad-hoc basis without taking other MEAs and potential synergies into consideration. Consequently, there have been calls to cluster related MEAs to enhance synergies, lead to efficiency gains and promote the standing of MEAs in relation to the WTO.³ One option proposed is to cluster MEAs dealing with related topics, such as biodiversity, seas, chemicals, energy and climate, land resources, air and freshwater.⁴ However, clustering is not without its challenges or difficulties, given the variety of structures and procedures currently in place.⁵

Another option is to have MEAs jointly carry out common actions, such as research, capacity building, monitoring and even possibly dispute settlement.⁶ As such, common standards and procedures could foster transparency and facilitate participation. There is some limited experience with the joint work programmes between the Convention on Biological Diversity and the Ramsar Convention, but it is too early to draw significant conclusions.

In both cases, it is unclear how the relevant trade policy will be affected. Clustering may offer the potential to address relevant trade issues in a more cohesive and integrated manner, e.g. by harmonising MEAs influence on WTO policy and decision making process, but no research has been done on these aspects.

3.3 Creating New Institutions

The most far reaching and controversial proposal to enhance global environmental governance is to set up a new World Environmental Organisation (WEO), that could act as a counterweight to the WTO, is brought forward not only by academics⁷, but also by a number of governments⁸.

³ von Moltke, 2001; von Moltke, 2001a; UNEP, 2001

⁴ What Governance Programme, 2001

⁵ Oberthuer, 2002

⁶ United Nations University Report, 2002

⁷ Esty, 2002; Biermann, 2000; German Advisory Council on Global Change 2000, Newell, 2001

Key arguments often cited in favour of this options are the expected efficiency gains, combined with the greater political clout, especially vis-à-vis the WTO. Some commentators even envisage a WEO with the organisational, legal and financial power to establish markets and associate property rights for global environmental public goods.⁹ However, critics point to uncertainties about its structure and actual functioning, and the fear that it add yet another bureaucratic layer without leading to meaningful results.¹⁰ To date, there appears to be little political appetite to establish such a body.

Another option, mooted so far only amongst academics, is to establish a World Environment Court.¹¹ This proposal stems from concerns about the lack of judicial enforcement of MEAs and possible conflicts between international environmental and trade norms. Its purpose would be to solve conflicts in international environmental law in a more juridical manner, thus increasing predictability and facilitating enforcement. In principle, such a body might offer an alternative to environmental cases ending up before the WTO, but would likely only be the case if it had compulsory procedures. Even if it did, questions of potential overlap with the WTO, and possibly the International Court of Justice, would need to be addressed. In any event, it does not appear likely that such a body will be established in the near future, as no State has yet endorsed the idea.

Despite the aforementioned problems and challenges, the actual weakness of the international governance of sustainable development should not be exaggerated. First, the diversity of instruments and institutions is testament to the flexibility and innovation of environmental negotiators in crafting solutions to particular problems. Secondly, the global environmental regime has been successful in pressing environmental concerns widely on the global political agenda. Thus, it seems sensible that any new organization of the global governance of sustainable development should be the result of an evolutionary process and should in the first instance seek to making better use of existing institutions.

⁸ Speech by Helmut Kohl, Chancellor of the Federal Republic of Germany, at the special Session of the General Assembly of the United Nations, 23 June 1997 New York, French President Jacques Chirac; "Jaques Chirac s'empare de l'ecologie", *Le Monde*, 5 May 2001

⁹ Whalley & Zissimos, 2002

¹⁰ Juma, 2000; Oberthuer. 2001

¹¹ Postiglione, 1999; Rest, 1994

4 The WTO as an institution that supports sustainable development

The relationship of the WTO to sustainable development is complex. On the one hand, it is commonly asserted that the WTO is not an environmental organisation or an organisation whose mandate is directly focussed on sustainable development. On the other hand, references to environment and sustainable development appear in the Preamble to the Agreement establishing the World Trade Organisation, provisions impacting on both appear in several Agreements, and both have been a standing topic of discussion in various WTO bodies. For the first time, Doha Development Agenda brings sustainable development issues squarely into the trade negotiations.

Some key questions arise from this. What should the boundaries of the WTO be in relation to sustainable development? How should the right balance within the WTO between sustainable development and trade liberalisation be ensured? What procedural consequences flow from therefrom? These questions are linked to the more fundamental dilemma of whether priority should be given to "deepening" the WTO agenda (i.e. going further with existing obligations) or "broadening" it (i.e. extending WTO rules to new areas).

All of this must be considered against the background of an unbalanced power distribution among WTO members and different priorities in regard to environmental conservation and economic development. The North-South divide in the WTO on environmental issues is well known. One argument consistently heard from developing countries is that environmental standards could be abused as hidden trade barriers, thus reinforcing the unbalanced power distribution in the WTO.¹² Concerns of developing countries are reflected in the priority they place on "implementation issues", such as TRIPS, agriculture and textiles.

Environmental organisations and environmental policy makers frequently question whether the WTO is institutionally capable of dealing with complex environmental issues and has the legitimacy to do so. Also, advocates of trade liberalisation argue that addressing environmental issues in the WTO risks overburdening the regime, thus jeopardising the legitimacy and credibility of the international trading system.¹³

¹² Srinivasan, 2002; Figueres-Ohlsen, 2001

¹³ Steger, 2002

On other hand, it has been argued that the WTO is well placed to handle broad-based agendas because this allows political deadlocks to be broken by package deals.¹⁴ It could therefore be argued that a result favourable to sustainable development, coupled with the WTO's strong dispute settlement system, could ultimately result in very powerful norms. However, the problem is that there is little in the WTO negotiating procedures that ensures that deal is actually favourable to sustainable development.

Accordingly, research should focus on how the WTO can retain sufficient legitimacy to succeed with a broadened agenda, including sustainable development and what implications might an (over)extension of the WTO mandate have on the overall effectiveness. Moreover, as the WTO is based on the principle of comparative advantage, which theoretically ensures that every country benefits from every deal, it is questionable, whether the WTO provides the institutional fit to deal with issues that are not ruled by this principle, such as investment or intellectual property rights.¹⁵

A related issue to the WTO's mandate is the manner in which decisions are taken in the WTO. The infamous "Green Room" style of decision-making, combined with the under-representation of many developing countries and the high cost of participating in the dispute settlement mechanism has, in the past, tended to favour OECD countries. To some extent, this situation has improved, with concerted efforts now being made at capacity building and a decline in the exclusionary methods of taking decisions. In addition, the Advisory Centre on WTO law was established in 2001, to provide expertise on WTO law for developing countries. However, many developing countries continue to perceive themselves as being marginalised. One proposal which has been made to increase the leverage of developing countries some have advocated allowing developing countries to take collective retaliation against developed countries, so as to strengthen the impact of such remedies¹⁶ or to focus rather on compensation than retaliation¹⁷.

Demands continue to be made for more internal transparency: decisions should be taken in open meetings only and based on an active consensus, differences should remain in brackets until resolved,

¹⁴ Bronckers, 2001

¹⁵ Martin, 2001

¹⁶ Least Developed Country Group: TN/DS/W/17

¹⁷ Ecuador: TN/DS/W/9

and the chair's discretion should be limited.¹⁸ One crucial question is how to enable developing countries to play a more proactive role in the WTO's agenda setting process.

Calls have also been made to reform the WTO's dispute settlement mechanism. The Dispute Settlement Body of the WTO is a cornerstone of the international trading system, ensuring that it is a rule based system, rather than power based decision making process. However, although the DSB has proven to be robust in its treaty interpretation, it remains uncertain as to the extent to which it can tackle the complex interactions between trade liberalisation and sustainable development in a balanced manner.

A number of proposals have been made in relation to dispute settlement in the WTO on matters concerning sustainable development. First, a less juridical approach may be more effective in enable countries to comply with their obligations, thus avoiding conflicts. This could be achieved by relying more frequently on mediation, conciliation and good offices and encouraging of members to exhaust all non-binding WTO remedies before invoking their right to launch formal proceedings.¹⁹ More far reaching is a proposal to set up a new conciliatory body that makes recommendation about a conflict, before the formal dispute settlement proceeding are launched.²⁰ Both of these proposals may be more adequate for some types of sustainable development and trade issues, as they emphasise multilateral cooperation factors rather than purely legal ones that can be taken into account to deal with the complex issue how to reconcile trade and sustainable development.²¹ However, the outcomes of these processes are not legally binding and they may be delayed or obstructed by participating parties. In addition, power inequities between parties may influence the process and outcome, and it is not clear how outside stakeholders will be able to relate to these processes.

Some have also called for better integration of environmental expertise into the Dispute Settlement Body. Proposals range from the creation of informal links among MEAs and WTO in relevant disputes,²² to an obligatory consultation process that includes environmental organisations, NGOs and

¹⁸ Focus on the Global South, 2002

¹⁹ Shirzad, 2000

²⁰ New Zealand: WT/CTE/W/162

²¹ Marceau & González-Calatayud, 2001

²² UNEP, 2000

individual experts.²³ In the past, NGOs have advocated for the ability to submit *amicus curae* briefs – in recent cases, this practice has been adopted by the DSB. However, as this procedure has not been fully formalised within the WTO system, more research and policy development is needed to help leverage consensus within the WTO. One apparent challenge that will need to be overcome, is the concern of some developing countries that some NGOs will have more resources to make interventions than some countries. After NGOs and a developing country non-party to the dispute successfully submitted *amicus curae* briefs in the *Sardines* case, it has still to be seen whether briefs from additional entities, such as parliaments or international organisations, have access to the DSB as well.

Finally, the relation between trade and sustainable development is not only complex and difficult, but WTO rules and DSB decisions can have strong repercussions the further development of these regimes. The current deliberations inside the US about whether to challenge the EU ban on GMOs indicates that an array of factors, apart from pure legal consideration, but including the overall credibility of the trade regime, influence the decision on whether to bring certain cases in front of the WTO. The Beef Hormone case demonstrated that even a successful case does not always lead to a change in the behaviour of the offending party, while such cases can have spillover effects on general public opinion that can undermine the legitimacy of the international trading system. As such, the role of strategic political considerations as well as the impact of public opinion and civil society on the dispute settlement process needs to be further researched.

5 Improving the interaction between the international sustainable development regime and the WTO

International trade and sustainable development governance can only be mutually supportive if both bodies of law and policy do not undermine the other, and the relevant institutions cooperate efficiently and effectively. Currently, there has been an increase in interaction between the WTO, UNEP, FAO, ILO and MEA secretariats, but it is questionable as to how effective this has been in creating meaningful synergies in policy development and implementation.

²³ Shirzad, 2000

On the substantive level, the considerable debate over the past decade has created greater awareness of the complexities of the relationship between sustainable development and the WTO, and although many sustainable development advocates no longer fear an all-out assault by the WTO on sustainable development rules, the potential for conflict remains. And despite the absence of an actual adverse ruling by the WTO on an MEA measure, the clarification of the relationship between international trading rules and MEAs was put onto the Doha Development Agenda, which calls for negotiations on the relationship between existing WTO rules and specific measures in MEAs. However, these negotiations appear, *prima facie*, limited in scope as they should neither "prejudice the WTO rights of any member that is not a party to the MEA in question" nor "add to or diminish the rights and obligations of members under existing WTO agreements".

There is a long history of debate and proposals to deal with the relationship between MEAs and the WTO. The US and the majority of developing countries have consistently argued that the status quo should be maintained.²⁴ By contrast, the EU initially proposed amending GATT Article XX(b) – the exception for measures necessary to protect human, plant and animal life or health – to expressly include measures pursuant to MEAs,²⁵ and currently advocates a broad interpretation of Paragraph 31 of the Doha Mandate²⁶. Other developed countries have proposed lesser instruments to further accommodation, such as interpretive understandings, guidelines, and principles and criteria. For example, Switzerland proposed an interpretive understanding or amendment that would ensure that MEAs are entitled to determine objective, proportionality and necessity of trade measures, while the WTO would have the authority to assess whether the trade measure applied is an arbitrary, discriminatory or protectionist manner.²⁷

In addition to proposals calling for the adoption of new or modified instruments, there have been calls to promote the exchange of information between MEAs and WTO if novel trade questions arise²⁸, and the incorporation of transparency and non-discrimination principles in MEAs trade measures²⁹. Independent commentators have proposed a variety of options, including tasking the International

²⁴ ICTSD, 2002a; Haverkamp, 2001

²⁵ EC: non-paper submitted to the Committee on Trade and Environment, 19 February 1996

²⁶ EC: TN/TE/W/1, 21 March 2002

²⁷ WT/CTE/W/168, see also TN/TE/W/4

²⁸ EC: TN/TE/W/1

²⁹ Werksmann, 1999

Court of Justice with reviewing decisions that concern both sets of rules.³⁰ Less judicial approaches involve using sustainability impact assessments to examine how trade liberalisation affects measures in other treaties, ensuring coherent implementation of both regimes, capacity building, and enhancing cooperation between national trade and sustainable development officials.³¹

Another possible way to render trade and sustainable development mutual supportive, is to pursue win-win situations. One example is the mandate provided for in the Doha Declaration for the elimination of subsidies in the fisheries sector. Another is the negotiations on reducing or eliminating tariff and non tariff barriers to environmental goods and services.³² But there is so far no consensus on what is encompassed by "environmental goods and services" and to what extent they relate to processing and production methods. A related issue is whether such goods and services could also be labelled as such. Thus, the discussion about special treatment of environmental goods and services may help advance consensus on the contentious labelling debate in the WTO. Standards may also play an important role to resolve potential conflicts between trade and sustainable development. Several WTO agreements, like the TBT or the SPS Agreement, expressly defer to international standards, which could potentially include those established by MEAs. But difficult cases are unilateral standards, which may be these can firstly represent trade barriers and secondly, as the Appellate body decision in the Shrimp-Turtle case showed, can be applied extra-territorial.³³ Consequently, there is need to develop consensus on procedures for establishing such standards, which might include transparency and consultation with affected stakeholders.

³⁰ Marceau & González-Calatayud, 2001

³¹ Stilwell and Tarasofsky, 2001

³² WT/MIN(01)/DEC/1

³³ WT/DS58/AB/R and WT/DS58/AB/RW

6 The role and impact of non-State Actors in relation to the global governance of trade and sustainable development

The World Summit on Sustainable Development has reconfirmed the significant role non-State actors play in the architecture of global governance on trade and sustainable development. However, there has been relatively little analysis on how to consider this role both in terms of the architecture, *per se*, and the relationship between civil society actions and policies developed by global institutions.

6.1 Participation of non-State actors in the global governance of trade and sustainable development

Participation of civil society is well established in international sustainable development institutions, and is solidly grounded in law and practice to the point of being taken for granted by all concerned. By contrast, the WTO provides only limited participation possibilities for non-State actors, such as observing plenary sessions of Ministerial Conferences or submitting *amicus curae* briefs in certain circumstances. In addition, the US and the EU were recently successful in pressing for faster public release of WTO documents and in enhancing the de-restriction of documents.³⁴ However, non-State actors are still not admitted into committee or working group meetings, where meaningful negotiations take place, and do not yet have as much access to documentation as in other international fora. The United States and EC have consistently urged greater transparency, but developing countries have been reluctant to agree so long as "internal transparency" issues have been resolved.³⁵ Addressing this imbalance in the architecture of global governance is a priority. However, achieving consensus will entail addressing equity issues, including the unequal capacities and conflicts among members of civil society.

However, even were there to be a willingness to make the WTO more transparent and participatory, there would still be a number of challenges and trade-offs to be reckoned with. First, determinations need to be made regarding the amount and type of transparency and participation that is appropriate to the varying types of negotiations in the WTO. Second, some matters under consideration might be *bona fide* confidential, and, third, there can be an overall restraint in resources in implementing

³⁴ ICTSD, 2002

³⁵ Sutherland, Sewell & Weiner, 2001; Third World Network, 1999

effective participation. Lastly, it is important to ensure effective participation from each region and sector.

Another aspect of the involvement of civil society in global governance is the participation in the national/regional development of policies and positions aimed at the global level. In this regard, the Aarhus Convention may have significant implications for civil society participation in policy making relating to trade and sustainable development, by leveraging better access to the national authorities by NGOs.

6.2 Leveraging contributions of non-State actors in support of the global system of governance of trade and sustainable development

The range of non-State actors concerned with trade and sustainable development is diverse: from those who are antagonistic to either trade liberalisation or sustainable development, to those that pursue initiatives that bridge both objectives. Currently, many civil society groups accept that trade liberalisation can promote investments in sustainable development, increase in welfare and technology transfer. As a result many now cooperate with the private sector, while the corporate sector itself has launched a large number of initiatives on trade and sustainable development.

6.2.1 Corporate Social Responsibility

On one hand corporate actors can be engines of trade, promote economic growth and contribute to technology transfer. On the other hand, as profit maximisers, businesses are frequently engaged in environmental unsound activities and seek loopholes to avoid environmental and developmental regulation.

Responding to pressure from many sources, including to some extent, their own shareholders, a growing number of voluntary initiatives have been developed to enhance corporate social responsibility. While the majority of these initiatives was launched by the business community itself, others are officially encouraged, e.g. EC Eco-labelling or EMAS Regulations, OECD Guidelines for Multinational Enterprises, Global Compact or ISO 14000. Voluntary initiatives can have a number of advantages over regulations. First, in contrast to binding regulations, voluntary initiatives tend to be more flexible as they define certain goals but not the exact means how to achieve these goals. By

avoiding direct government involvement, time and financial resources are saved in monitoring and enforcing. Yet, another possibility is for voluntary initiatives to evolve into international accepted standards³⁶, opening the debate about a privatisation and proliferation of norms without legitimate control.

While critics accuse voluntary initiatives of often justifying "business as usual", initiatives with strong standards can also increase selective adoption and free riding. One of the main arguments against voluntary initiatives is that they may encourage a lack of collective action by governments.³⁷

Voluntary initiatives may also interact with trade policy. On the positive side, widely applied transnational standards may act to diminish trade conflicts. On the other hand, they may involve labelling of products based on processing and production methods, which may sit uneasy with actual WTO rules.³⁸ Furthermore, such initiatives may influence investment patterns or even the making of investment policy in home and host countries. To better assess the role and contribution of voluntary initiatives it is essential to carry out further research about these types of voluntary initiatives, including the motivations of corporate actors to participate, as well as their impacts on trade patterns and policy.

6.2.2 *Financial services and investment*

Financial capital flows grew at an immense rate in recent decades, bolstering the role of investments in supporting or undermining sustainable development goals. Indeed, investment liberalisation is a major item currently on the global agenda. Although foreign direct investment can be a major channel for promoting ecologically sustainable development, in many instances, such investment does not further, or even hinders, sustainability.

Another aspect involves the ability of States to regulate the behaviour of investors. A key concern for sustainable development advocates is the experience under NAFTA Chapter 11, where investment liberalisation provisions have been a basis for disallowing seemingly legitimate environmental

³⁶ Gibson, 2000

³⁷ Friend of the Earth, 2002

³⁸ Palmer, 2001

regulations.³⁹ Despite the collapse of the negotiations for a Multilateral Agreement on Investment at the OECD in 1998⁴⁰, negotiations on investments in the WTO may be launched at the next WTO Ministerial Conference, in 2003. Canada, Chinese Taipei, the EU and Japan have recently submitted papers in support of having a new agreement on investment, whereas India and Pakistan are against it, arguing that investment is not a trade issue.⁴¹

Some commentators argue that most benefits accruing from investment liberalisation could be obtained by exploiting and expanding the mechanisms present in existing agreements, such as the TRIMs agreement and GATS.⁴² Others call for striking a balance between investor rights and obligations in regard to public environmental goods through a new, discrete regime, such as a framework convention on investment.⁴³

Responding to the lack of agreed standards for the increasing "green" investment opportunities promoting environmental accounting and providing opportunities for the private sector to act socially and environmentally responsible, one proposed is to harmonise procedures of standardisation, certification and accreditation of green investment labels.⁴⁴

6.2.3 Coalitions and Networks among non-State actors

In recent decades, not only the number and the influence of non-State actors involved in global governance increased steadily, but also the number of coalitions and partnerships among different non-State actors expanded. While good relationships between some NGOs and the corporate sector are not new⁴⁵, current coalitions frequently include universities, research institutes, municipalities, as well as parliamentarians.

These coalitions received prominence as "Type two" initiatives launched at the World Summit on Sustainable Development. In contrast to official agreements among governments (Type One agreements), Type Two initiatives are voluntary partnerships between various actors that act

³⁹ Krüger, 2002

⁴⁰ Wickham, 2000

⁴¹ ICTSD, 2002b

⁴² Hoekman & Saggi, 1999; Graham, 2000

⁴³ von Moltke, 2000

⁴⁴ IISD, 2000

according to the principles for sustainable development that aim to support the WSSD Plan of Implementation.⁴⁶

Another form of coalition is reflected in the establishment of Global Public Policy Networks. These networks bring together a broad range of different stakeholders, including international organisations, governments, business and NGOs in order to break deadlocks on complex issues through transparent processes.⁴⁷ While GPPNs have already been successful in some contexts, such as international policy on dams, it remains to be seen how whether they can help to move forward the agenda on complex issues like trade in GMOs or the establishment of international environmental standards.

Thus, it is important to understand the exact characteristics of successful networks and the underlying reasons why other networks fail. Important issues to be considered include *inter alia* the composition of partnerships, the power equilibrium inside them, their transparency and participation procedures and the legitimacy of their outcome.

Furthermore, regarding all types of coalitions and networks, it would be useful to examine the extent to which they distract from the need for government initiatives and legally binding rules, especially considering that the broad majority of non-State actors is not affected by these initiatives. In addition, the process in which privately created norms acquire legitimacy and their relation to national and international norms created by public actors is another area where further research is needed. In particular, it is important to identify the conditions under which private norms might constitute a basis for the development of universal public norms.

On one hand it is important to look for reforms of the institutional architecture of global governance to allow an effective participation of non-State actors, on the other hand the more influential non-State actors become, the more urgent is the development of independent monitoring and accountability systems. Consequently, research is needed on a legal and political framework for including lean but effective reporting and monitoring mechanisms as well as access to information for affected parties and the interested public. Another little studied phenomenon in the global trade and sustainable

⁴⁵ Charnovitz, 1997

⁴⁶ Calder, 2002

development arena has been the emergence of coalitions between NGOs and States. This practice has been seen in the WTO in the Sardines case, where a NGO from a developed country supported Peru or in the coalition between WWF and a number of countries to put fishing subsidies on the Doha negotiation agenda.

⁴⁷ Streck, 2002; Reinicke & Deng, 2000

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