



IT'S TIME!

SUSTAINABLE DEVELOPMENT



PARIS
2016

BACKGROUND NOTE

How to inject the 2015 momentum into international trade policies?

Environmental protection has long been a controversial issue of trade and investment negotiations. If the World Trade Organization Preamble makes explicit reference to a positive link between trade openness and sustainable development, the inclusion of environmental or climate change provisions in free trade agreements is uneven and patchy, raising the risk of inconsistency across agreements, trade conflicts and investor-State disputes over environmental regulation. To cope with these risks, a first-best solution would be to take stock of multilateral trade negotiation failure and create momentum either to strike a deal within a close deadline, or to acknowledge that the negotiation agenda, principles and rules are flawed—hence the need to explore radically different options.

1. CONTEXT

With the creation of the World Trade Organization (WTO) in December 1994, the multilateral trading system pioneered the mainstreaming of sustainable development across international laws. The preamble of the WTO explicitly asserts that sustainable development and protection and preservation of the environment are fundamental goals of the world trading system. The potential contribution of international trade to sustainable development through the diffusion of the best available sustainable technologies now seems to be acknowledged. Over the last 10 years it has motivated the negotiation of a specific Environmental Goods Agreement by a subset of WTO members willing to improve market access for such goods. Technology diffusion aside, the contribution of international trade to sustainable development is more controversial. The ecological footprint of transport is on a rising trend, while the capacity of sovereign states to meet national collective preferences for environment protection, “green” industry promotion and jobs has been challenged through several trade conflicts brought to the Dispute Settlement Body over the last decade. Let us cite for example the dispute between Japan and Canada on domestic content requirements imposed by the Government of the Province of Ontario to qualify for guaranteed prices offered under the Feed-In Tariff (“FIT”) Programme.

The contribution of bilateral trade deals to sustainable development is also marred by controversy. Over the years, American and European trade negotiators have gradually become proactive on environmental issues, and increasingly insert detailed environmental provisions in their trade agreements, such as the compliance with multilateral environmental trade agreements protecting species (Convention on International Trade of Endangered Species, CITES) or dealing with dangerous waste and chemicals trade (Basel and Rotterdam Conventions). Rather than framing environmental protection as merely a legitimate exception to trade rules, as it used to be, they now use trade agreements as vehicles to export their environmental standards to other countries—the US for instance being known for its protection of endangered species and its automobile emissions standards. The downside risk of such initiatives lies in potential conflicts among standards, and inconsistency in environmental provisions across bilateral trade agreements.

2. ISSUES/SOLUTIONS

The paradox of the current stalemate in multilateral trade negotiations is that the momentum for multilateral trade liberalization seems to have vanished at a time—2015 in particular—of outstanding achievements in multilateral negotiations on sustainable development. An obvious reason lies in the particular character of multilateral trade commitments: these are binding and enforceable. The sanction system of the WTO—the dispute settlement body—is unique and provides both the strengths and traction of the multilateral trading system, but also its weakness as countries are more risk averse as regards to the inevitable losses associated with overall gains. More prominently, the geopolitical divide between North and South is still very present in trade negotiations, and even overplayed, while things have evolved towards a useful blurring of the diplomatic frontier between North and South in SDGs and UNFCCC negotiation tracks over the last couple of years.

When reflecting upon the possible contribution of the world trading system to sustainable development goals, including climate change, a first challenge that comes to mind is therefore to confront multilateral trade negotiation failure and create momentum either to strike a deal within a close deadline, or to acknowledge that the

negotiation agenda, principles and rules are flawed—hence the need to explore radically different options. The Copenhagen “failure” in 2009 provided a thunderbolt to climate negotiations, which proved decisive in helping to bring about the success of the Paris COP21 six years later. A shock of a similar amplitude in terms of its consequences (while not necessarily of the same nature) would be useful on trade, if we all agree that trade has a role to play on sustainable development issues.

A second challenge lies in the proliferation of bilateral trade agreements, fragmenting international trade and creating an uneven set of environmental standards. Making up for the protracted failure of WTO members to agree on a global deal, regional or bilateral trade agreements have become the main vehicle for trade liberalisation. Contrary to WTO provisions, some recent regional trade agreements explicitly refer to climate change and, in some cases, include specific provisions on the topic, indicating that there is a positive role for trade to play in the area of climate action—while others bilateral agreements do not. The Trans-Pacific Partnership (TPP) notably makes no explicit references to climate change, as opposed to the Peru-Korea agreement, or the EU-Moldova agreement. Nor does it mention the recent Nagoya Protocol on access and benefit sharing around genetic resources, as opposed to the 2013 agreement between Colombia and Korea. Likewise, the investment chapter of the TPP does not include a provision stating that measures requiring the use of specific environmental technologies should not be considered as prohibited performance requirements, although it is found in several agreements signed by Canada, Chile, Mexico, and Peru—four TPP countries. The critics once worried that a “spaghetti bowl” of overlapping free trade agreements could harm trade by increasing transaction costs for businesses through variable tariffs, complicated rules of origin, and assorted bureaucratic requirements. The same concerns are now magnified by environmental standards being added to the list.

3. OBJECTIVES OF THE SESSION/QUESTIONS

- Should governments envisage bilateral trade agreements as the main trade vehicle for climate change norms setting? Is the harmonisation of environmental standard provisions across free trade agreements needed?
- The investor-state dispute settlement mechanism (ISDS) of the Transatlantic Trade and Investment Partnership (TTIP) could only indirectly concern environmental protection, but the environment is frequently raised in debates on ISDS. What are the envisaged consequences of ISDS on the ability of TTIP signatory countries to increase their effort to combat global warming?
- From a deep decarbonization perspective, are there particular risks that governments should consider before engaging in bilateral trade deals?
- Could a climate stress test or climate-sustainability impact assessment be set up, building on and improving the trade sustainability impact (SIA) assessment developed by the European Commission over the last 15 years?
- Now that the Doha Round seems to be in clinical death, what political room is there for launching a sustainable energy trade agreement that frames subsidies, local content and investment provisions to harness trade policies towards the 1.5-2°C objective?

REFERENCES

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