

Taking the Doha Language Seriously: The WTO as if Sustainable Development Really Mattered

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Aaron Cosbey
Associate and Senior Advisor
Trade and Investment
International Institute for Sustainable Development
Winnipeg, Canada
acosbey@iisd.ca
<http://www.iisd.org>

The Doha Ministerial Declaration sets out, in the strongest language we have seen to date, sustainable development as an objective of the World Trade Organization (WTO).¹ To those that have worked for some time on the issues of sustainable development, this can hardly be surprising. That is, if we are not trading and making trade rules in order to sustainably increase human well-being, then why else? What other objective could we contemplate?

And yet, before the statement to this effect in Doha, and before its weaker statement in the Marrakesh preamble to the Agreement establishing the WTO, it was understood that the WTO was about facilitating international trade, on the implicit understanding that doing so would better the human lot worldwide. To most this is still the understanding, whatever the wording of Doha's paragraph 6.²

In fact, there has been too little serious consideration from all sides of what exactly it means to have sustainable development as a key objective of the multilateral system of trade. Intuitively it would seem obvious that we cannot pursue such an objective using the same institutions and the same rules that we used in the past to pursue narrower commercial objectives. This paper briefly considers what implications arise when we take the Doha Declaration at its word. What does it mean for the WTO itself and for the other organizations and constituencies that are a part of the WTO's constellation?

The implications fall into two realms: the substantive issues that are treated in the current rules and ongoing negotiations, and the process issues that address the organizational structure.

¹ "We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh 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." (Para. 6, Doha Ministerial Declaration, 2001)

² The enthusiasm expressed here for the wording in paragraph 6 of the Doha Ministerial Declaration must be tempered with some measure of cynical realism. The paragraph goes on to establish a sort of "trade supremacy clause," by saying that states may enact whatever environmental protection measures they please, "*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.*"

Issues of substance: the ongoing negotiations

At the outset, it is worth defining the scope of WTO issues related to sustainable development, if only by identifying what they are not. First, they are not simply environmental issues. They include the vital issues of development that prompted the as-yet unearned title: Doha Development Round. Neither are they confined to those areas in the Doha mandate that can be labelled environmental (paragraphs 31 and 32) or development (for example, those passages related to technical assistance and capacity building, debt, technology transfer, least-developed countries and small economies).

In fact there are few if any areas of the WTO's negotiating mandate that do not in some way bear on sustainable development. The agriculture talks will deal with forms of support whose implications are key to developing country aspirations for greater income through export. They will have major environmental implications as well; removal of trade-distorting support has been one of the key "win-win" issues addressed by the Committee on Trade and Environment over the years. Similar potential impacts through subsidy reform reside in the negotiations on WTO rules. The trade-related intellectual property negotiations will deal with access to technologies and products needed by developing countries, and will also cover the relationship of the Agreement to the Convention on Biological Diversity. Talks on investment, should they materialize, will impact the flows of foreign direct investment (FDI) so needed by poor countries, and will also raise the same environmental concerns now being uncovered in the bilateral and regional investment contexts.³ Talks on services raise similar environment and development issues: impacts on developing countries, and impacts on domestic regulatory processes.⁴ Market access talks have clear interests for developing country exporters and may impact on the environmentally friendly jurisprudence established in such rulings as the Appellate Body's "Shrimp-Turtle."⁵ And it goes without saying that sustainable development will be a key ingredient in the obvious areas of work and negotiation on trade and development; technical cooperation and capacity building; special and differential treatment; small economies; trade, debt and finance; and technology transfer.

Given that the WTO will be, in almost every facet of the Doha agenda, touching on issues with implications for its stated objective – sustainable development – how can we ensure that that objective is in each case duly considered? Are there

³ On the troubling environmental implications of NAFTA's Chapter 11 investor protection, see Mann (2001) and Mann and von Moltke (2002).

⁴ See Sinclair (2000), WWF (2001).

⁵ See WTO 1998 and 2001.

ways in which we can change the procedures that were sufficient in the past for an organization devoted to more narrow commercial objectives? I submit that there are several such ways.

First, the various delegations need to understand with greater certainty what the stakes are at the national level. That is, most countries enter into negotiations with some idea of the *economic* implications of the various negotiating scenarios (though, as the agenda is broadened into non-trade areas, this kind of calculation is increasingly difficult and shallow, if it exists at all). If the final result of the negotiations is indeed to be sustainable development, it is essential that countries also understand the national level impacts of the various scenarios on environment and development. For example, how will changing the rules on agricultural support impact on income distribution, soil erosion, biodiversity and poverty? What are the implications of investment and services negotiations for domestic regulatory capacity? Without at least rudimentary answers to these types of questions, sustainable development will be achieved only by chance, not by intention.

It is obvious that some type of assessment exercise is needed to better understand the impacts. On the environmental side, there have been a number of pioneering attempts to refine methodologies for assessment of trade liberalization agreements. At the government level they have been undertaken by Canada, the United States and the European Union. A number of non-governmental or intergovernmental bodies have also worked in this area, including the United Nations Environment Programme (UNEP), the Organization for Economic Cooperation and Development (OECD) and the World-Wide Fund for Nature (WWF).⁶ On the development side, there has been less of this type of work, but in many cases the tools for assessment needed here are not radically different from those used for standard economic analysis of the effects of trade liberalization.

Those undertaking such assessments need to consider the impacts at the international level as well as the national. If a negotiating outcome has nothing but positive benefits for Canada, for example, but holds nothing but disaster for developing countries, then Canada will probably not want to pursue it without some amendment.⁷ In an ideal world all countries would undertake impact assessments, and so the need to consider international influences would be lessened; they would be picked up by those potentially impacted. But this ideal world is more than a few years away.

⁶ See UNEP (2001), OECD (2000), WWF (2000).

⁷ The fact that most forms of environmental damage have at least some global or regional “spill-over” effects reinforces the case for a global scope of analysis.

Of course, such assessment will require a great deal of capacity building. This is a call we have heard over and over again at this conference, in various contexts, and it rings true here again. A useful integrated assessment requires both expertise in the mechanics of assessment itself (involving issues of scope, methodology, timing and public participation), and a solid understanding of the linkages that bind economy, environment and development. Even the countries now practising this type of assessment are struggling to perform it adequately, having only a few years of experience and a handful of completed exercises behind them. The vast majority of countries will need dedicated assistance to be able to begin the same sort of learning process.

Unfortunately this does not seem to be the type of assistance likely to be offered under the unprecedented program of action on technical assistance and capacity building envisioned in the Doha Declaration. WTO assistance has traditionally tended toward training for negotiators and training in proper implementation of WTO agreements.⁸ This type of narrow effort is needed, but does not begin to address the broader need for policy expertise in the capitals, where there is little experience in the type of integrated assessment that can shape negotiating positions, and can help develop domestic policies that will exploit the opportunities and avoid the risks inherent in liberalization.

My organization, the International Institute for Sustainable Development (IISD), is doing a great deal of this type of capacity building through its Trade Knowledge Network, its work in China and other initiatives.⁹ Others such as UNEP and the United Nations Conference on Trade and Development are also active.¹⁰ But it goes without saying that much more needs to be done.

Issues of process: the institutions

Process and substance are fundamentally linked. A lack of institutional reform will hamper any initiatives to address the issues of substance. If the goal is in fact to pursue sustainable development, there are a number of changes we might want to see in the WTO institutional structure, mostly related to openness and integrated thinking.

⁸ The WTO has mounted a number of regional meetings on trade and environment in the last several years (mostly for government officials) whose aims go more broadly than the narrow objectives outlined here. These efforts are commendable, but effective capacity building demands a more long-term and intensive type of commitment.

⁹ See <http://www.iisd.org/tnk>, and <http://www.iisd.org/trade/cciced/trade.htm>.

¹⁰ See <http://www.unep.ch/etu/etp/acts/capbld/index.htm>

One such change is suggested by the Doha text, paragraph 51:

“The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.”

If we take this seriously, it is a dramatically different type of role than has been contemplated for the CTE and CTD to date. Along with the new negotiating roles these two committees have been assigned (though not everyone yet agrees that it has indeed been assigned), the two committees are being asked to play a “watchdog” role during the negotiations. They are to identify and debate those aspects of the negotiations that have a bearing on environmental and development issues. And they are to do so for an explicit purpose: to help achieve the objective of having sustainable development appropriately reflected in the final outcome. This can only be done by having the committees forward the results of their deliberations to the bodies responsible for the relevant negotiations.

In other words, the committees are to play an ongoing *assessment* role during the negotiations. This is an important opportunity for integrating environment and development considerations at the international level, to match the efforts being undertaken at the various national levels. But it is worth reflecting briefly on how it might actually be carried out.

The problem is that the committees have little expertise in conducting such assessments. As well, they are made up of representatives of the same member states simultaneously negotiating in other fora. It is hard to imagine the members telling *themselves* that their negotiating positions will need to change on account of environmental and development implications. Or, more accurately, it would be the junior consular staff from the CTE and CTD telling this to the senior staff and Ambassadors from the higher profile bodies. It all seems a bit improbable.

There a number of ways in which these problems might be addressed. One possibility is that the committees themselves would not actually conduct the assessment, but that they act as a forum in which the results of the national level efforts could be aired. This would address the problem of lack of expertise in assessment.

Another possibility is somehow opening up the CTE and CTD to public input. This would help address the problem of expertise, again, but would also help

address the problem of “institutional incest,” by opening up the process to those outside of it—participants who could express concerns that might not be raised in the closed setting. Finally, it could help address the problem of power imbalance. At the domestic level it is well understood that the weak ministries of the environment depend on the crutch of vocal public support to grant them strength they otherwise would not have when dealing with their colleagues in ministries of finance, foreign affairs or industry.

Another possibility is establishment of something like a “friends of the Chair” independent advisory group on sustainable development. Something like the Joint Public Advisory Group of the North American Free Trade Agreement’s environmental side accord, this group could render its own expert opinions in its advice, but those opinions might be based on extensive public input.

At a more fundamental level, public participation is consistently seen as necessary to the success of any assessment process. In fact, participation is a first principle of environmental impact assessment, and has been made a key feature of all the national level integrated assessments to date. This is because an open process has more legitimacy, but more fundamentally it is because governments rely on the public to provide them with information they alone could not have in complete form. Governments need the eyes, ears and brains of the affected public to help them discern where the impacts of various policy changes will fall (or has been falling). This type of need is taken for granted in the context of economic assessment. Governments rely on exporters to tell them what types of impediments they face and what their needs are as a basic prerequisite to building an appropriate negotiating strategy.

As a side-note, the same types of effectiveness arguments can be used for opening up the WTO process of dispute settlement. Particularly as the disputes tend to go beyond commercial matters to touch on issues of public policy such as environmental management, human health and other non-commercial objectives, it would be more appropriate to run the dispute settlement proceedings in the full view of the public. The panels could restrict confidential business information, as they now do in domestic courts. And it should surprise nobody who knows IISD to hear that we would also like to see effective use of the *amicus* brief procedures in the WTO dispute settlement mechanism.

Another type of institutional change might involve the creation of a body with a mandate for ongoing systemic review of the WTO—a suggestion made here earlier by Prof. Thomas Cottier. The current institutions are painfully short on this type of role, focusing more on negotiations, implementation and dispute settlement. Even in the absence of a negotiating round, this body could alert the members to systemic problems, and propose solutions. One of its tasks might be,

for example, to fully assess the implications for the WTO of a serious commitment to the objective of sustainable development, either doing the analysis in-house or appointing a high-level commission to study the problem.

Conclusions

Some will argue that I have been using my time foolishly in taking the WTO at its word when it commits to sustainable development as an objective. But the process has been instructive, if only because it has identified a number of concrete steps that could be taken if we were to take the Doha mandate seriously.

The Doha Declaration presents us with remarkable opportunities, but they involve a fundamental shift in organizational character. Until we fully explore their implications – and this present foray is only scratching the surface – those opportunities will belong in the “cold fusion” category: a wonderful concept, but something for which few people will hold their breath waiting.

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