

# The WTO and Sustainable Development



BY GARY P. SAMPSON

With a Foreword by WTO Director-General Pascal Lamy

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Gary P. Sampson

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## The WTO and sustainable development

“One of the most pressing challenges with which the WTO is confronted today is how to reconcile free trade and sustainable development. The relationship between the two issues is complicated and they sometimes seem incompatible. Yet the maintenance of free trade helps economic development on a sustainable basis if these two issues are put into a proper relationship. Professor Gary Sampson’s analysis of this challenge is sharp and his suggestions are full of wisdom. I regard this book to be a very important contribution to the study of the WTO.”

– **Mitsuo Matsushita**, *founding member of the WTO Appellate Body, and Professor of Law at Seikei Law School, Tokyo, Japan*

“For trade to contribute to sustainable development, it is pertinent that WTO must shift the trade balance more in favour of developing countries and change its paradigm from promoting “free” to “fair” trade, especially if trade is also aimed to alleviate poverty.

It is in this context that I welcome Professor Gary Sampson’s book and hope that it will stimulate intellectual discourse for changing our mindset by putting fair trade in the mainstream of sustainable development and poverty alleviation.”

– **Emil Salim**, *former Minister of Population and Environment, Indonesia, and former Chairman of the Preparatory Committee for the World Summit on Sustainable Development, Johannesburg, 2002.*

It has long been established that improved market access for developing country exports and the economic growth that this can generate make the WTO a powerful potential ally of economic development. Sustainable development, however, embraces not only the alleviation of poverty but also the protection of the environment and the achievement of important social objectives. With the passage of time, the interface between the WTO and sustainable development has expanded considerably, the result being that its responsibilities embrace far more aspects of sustainable development than did its predecessor – the GATT.

The WTO now addresses the harmful effects of fisheries subsidies, access to essential medicines for impoverished people, liberalization of trade in goods and services beneficial to the environment, and numerous other high-priority issues on the sustainable development agenda.

That the multilateral trading system is an important tool to carry forward international efforts to achieve sustainable development is well recognized by governments. The World Summit on Sustainable Development in Johannesburg emphasized the significant potential contribution that trade can make to sustainable development, and WTO members identified sustainable development as both a core objective for the work of the WTO itself.

Doha Development Agenda. The challenge governments now face is to take the necessary action to ensure that trade does indeed promote sustainable development. However, to turn good intentions into results requires both a clear identification of those areas of policy where there is an overlap between trade and sustainable development, as well as constructive proposals as to how to ensure trade and sustainable development are mutually supportive.

In *The WTO and Sustainable Development*, Professor Gary Sampson addresses this need. He identifies an inventory of policy issues that fall within the overlap between trade and sustainable development, and analyses the implications of this overlap. He also presents policy options that are both ambitious and realistic, the pursuit of which could contribute to more coherent and mutually supportive action on the part of governments to both trade and sustainable development. This book is a useful contribution to the literature and should be of interest to a large part of the international community, including government officials, academics, the business community, and both intergovernmental and non-governmental organizations.

– **Dr Supachai Panitchpakdi**, *UNCTAD Secretary-General and former WTO Director General (2002–2005)*

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# Foreword

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The world trading system and the role it plays in international economic and political relations have changed dramatically in the past half-century. Barriers to trade have been greatly reduced, trade itself has mushroomed, new and far-reaching rules governing trade have been written, and many more countries have now joined the World Trade Organization (WTO) and therefore play by those rules. This timely book investigates one important, sometimes controversial, aspect of this change – the relationship between trade and sustainable development. Given the evolution of the rules-based trading system, as well as the growing attention paid to policies designed to achieve sustainable development, there has been an increasing overlap between what have now become “trade” policies and policies relating to sustainable development.

It is not really in question whether or not this overlap ought to exist. In my view, the factual position is that it simply does exist. It is a natural outcome of the definition of sustainable development, as well as the objectives of the multilateral trading system. In common usage, the term “sustainable development” means securing a growth path that provides for the needs of the present generation without compromising the ability of future generations to meet their own needs. From a policy perspective, the pursuit of sustainable development requires a careful balancing between progress in each of its pillars: policies designed to advance economic development, for instance; to conserve the environment; and to ensure social progress. On the trade side, the WTO of course seeks to

raise standards of living and to ensure full employment and a steadily growing volume of real income with the expansion of world production and trade. These days, however, the WTO simply cannot ignore the need to promote and preserve the environment, or indeed to enhance the means for doing so in a manner consistent with different levels of economic development. But an additional responsibility assigned to the WTO compared with its predecessor, the General Agreement on Tariffs and Trade (GATT), is to provide for the optimal use of the world's resources in accordance with the objective of sustainable development. In other words, the achievement of sustainable development is a formal goal of the WTO.

Yet, it is not only the formal business of objective-setting that has increased the relevance of sustainable development for the WTO. The manner in which the trading system has evolved over the past half-century has significantly changed the link between trade and sustainable development. First, there is more trade for the rules to apply to. Because world trade has grown more rapidly than world production in almost every year since the Second World War, it follows automatically that countries now trade a far greater share of their production than they did half a century ago. The rules apply to more countries too. Originally there were 23 members of the GATT; this number is now approaching 150 in the WTO, with another 27 countries in the process of accession. The result is that WTO rules that bear on "traditional" trade are now relevant for more than one-third of world production.

Impressive as this figure is, trade rules themselves have been expanded in consecutive trade Rounds. Minimum standards relate to intellectual property rights and can be enforced by the WTO even if no goods or services cross the border (for instance in relation to counterfeit goods). Similarly, the most important means of delivering services internationally are dealt with by the WTO. These include the commercial presence of foreign service suppliers with no cross-border movement of the service itself. The other "behind the border" agreements are important as well. The Subsidies Agreement is one example because it relates to domestic practices, as are disciplines relating to safeguard action against surges of imports, and measures to ensure that production standards, technical regulations and conformity assessment procedures are not unfair protection.

As a result, both the daily work of the WTO as well as the multilateral negotiations held under its auspices have come more and more to address key issues of public concern that far transcend those associated with the conventional political economy of trade policy. For example, agricultural negotiations naturally embrace sensitive questions relating to the "multi-functionality" of agriculture, and the Agreement on Trade-Related Intellectual Property Rights (TRIPS) addresses matters of access to essential medicines for poor countries without the means to produce them. The



Agreement on Sanitary and Phytosanitary Measures (SPS) already tackles the controversial question of the role of the precautionary principle in the absence of scientific evidence, and also bears on critical policies relating to public health. In addition, the issues dealt with in the normal course of WTO business have been expanded through the process of continuing negotiations. Addressing concerns relating to subsidies that lead to the depletion of fish stocks and negotiations on the relationship between the WTO rules and multilateral environment agreements provide current examples. All these matters are on centre stage in discussions relating to sustainable development.

Given the increased importance of trade and the rules that govern it, we have also seen the WTO's rules and practices evolving in response to the new challenges of the broader international agenda. These rules assume an even greater importance than did those under the GATT, reach deeper into the regulatory frameworks of all member countries and are, unlike in some other institutions, legally enforceable. This latter point is of particular relevance. When disagreements arise over WTO rights and obligations, poor and rich members alike can take these disagreements to the greatly strengthened dispute settlement mechanism of the WTO. Unlike the GATT, the WTO process is hard for the rich and powerful countries to thwart: Panel and Appellate Body reports are adopted unless there is a consensus against them. Moreover, the rule of negative consensus, backed up by a mechanism providing for compensation or sanctions in the case of non-compliance, has greatly increased public awareness of the WTO's existence. As a consequence, public interest has heightened, particularly in the light of recent high-profile disputes that extend into some of these new, sensitive areas. These disputes deal with the role of science in risk management (for example, in the *Hormones* case), the conservation of endangered species (for example, in the *Shrimp-Turtle* case), the cross-border movement of genetically modified organisms, and measures to protect public health (for example, in the *Asbestos* case). On occasion the rulings of the WTO dispute settlement process have even raised questions relating to the compatibility of trade rules with sustainable development. In other words, do trade and sustainable development find themselves on a natural collision course?

Overlap does seem inevitable, but I do not see any need for collision. I am firmly of the view that policies bearing on both trade and sustainable development can – and indeed must – be consistent and mutually supportive. From a trade perspective, the key elements in creating such a system come in the form of establishing fair and balanced rules for trade, enforcing them efficiently, and continuing trade opening in goods and services to promote economic development – particularly that of developing countries. I am not alone in holding this view. At the Ministerial meeting in Doha in 2001, trade ministers reaffirmed their commitment to



sustainable development and once again expressed the common view 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. Less than one year later, at the World Summit on Sustainable Development in Johannesburg, environment ministers called for urgent action to promote an open, equitable, rules-based, predictable and non-discriminatory multilateral trading system that benefits all countries in the pursuit of sustainable development. They also called for the successful completion of the work programme contained in the Doha Ministerial Declaration. There is clearly common ground in terms of objectives in the worlds of both trade and sustainable development, and this is as it should be.

At this point in history, however, the challenge is to put into practice what we preach. How will the work of the WTO evolve against the backdrop of the increasing importance of trade and trade rules? In addressing this question, my starting point is a simple one: trade opening and the reduction of trade barriers have been, remain and will remain essential to promote growth and development, to improve standards of living and to tackle poverty reduction, and also to provide the means to protect and preserve the environment. Nonetheless, trade opening is neither natural nor automatically beneficial, in and of itself. It needs a system based on rules coupled with adequate domestic policies. Since the creation of the GATT, some important steps have been taken towards the construction of this system and we can be proud of them. But there remains a lot to do; hence the launching of the new multilateral trade Round in Doha in 2001.

High on the “what to do” agenda is of course to ensure that trade opening and sustainable development can work together for the poorest countries. For them, there must be an assurance that their concerns will be listened to and acted upon. Absent this, there will be no successful conclusion to the Round. Many of these countries have undertaken new and demanding obligations, and rightfully look to improved market access in both goods and services to support their export-led growth strategies. Their legitimate expectation is that the WTO will provide a forum in which their views can be effectively expressed and their concerns adequately dealt with. Least developed countries in particular have not benefited as they should from the multilateral trading system, and creative and ambitious solutions must be found to ensure that they too benefit fully from trade-led growth. Only then can they be lifted out of their desperate economic situation through a multilateral trading system that is effective and equitable. Only then can they develop in a truly sustainable manner.

Indeed, to ensure that trade opening contributes more to development, the current WTO Round has been designated “the Doha Development

Agenda". I know from my former life as an EU Trade Commissioner, and therefore as one of the authors of this programme, that it represents a promise of fairer trade opening. To lead these negotiations in the right direction should therefore be our priority number one, our priority number two, our priority number three. This Round is in large measure a response to the recognition that, although exports from developing countries have tripled in just 20 years, the new possibilities unleashed by the world trade system remain unequally divided and unequally utilized by the different members of the club. Perhaps the rules themselves remain unequal, or perhaps making the necessary adjustments is too difficult a task for the weakest countries. Whatever the reason, it is the results and the perception of the results that count. There remains so much to do that the priority must be to re-balance the international trade system in favour of developing countries.

However, although the promotion of economic development and the contribution it can make to providing the resources necessary to improve environmental and social conditions have long been recognized, multilateralism is now confronted by new issues that the GATT never had to tackle. Many of these come from the trade and sustainable development overlap which I outlined above. Against this backdrop, the value of this book on *The WTO and Sustainable Development* is clear to me. It is a crucial first step in identifying and exploring the issues that fall under the umbrellas of sustainable development and the expanded agenda of trade policy. Only then can there be a full appreciation of the implications of the decisions taken.

In this respect, a crucial question that emerges throughout this book is whether a clearer mission for the WTO in support of sustainable development implies major institutional reforms. I do not think so. Yes, the WTO must reinforce its efficiency and legitimacy. It must be more interested in practical questions of organization and implementation, and in assuring better coherence with other international institutions. Having described this organization as "medieval" at the conclusion of two Ministerial conferences, as I have, I could hardly say otherwise. We learn more from our failures than from our successes, as ever. To surmount the difficulties confronting the WTO, it must adapt. To achieve this, the WTO must better integrate its work in the landscape of actors, states and international governance organizations. But the fundamental objective of the WTO has to remain the construction of fair trade rules to guarantee better, more long-lasting, more predictable and more transparent trade opening.

Pascal Lamy  
WTO Director-General  
Former European Union Commissioner for Trade (1999–2004)

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# Acknowledgements

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In the period since joining the General Agreement on Tariffs and Trade (GATT) in 1987, I have had the opportunity to direct a number of divisions in both the GATT and the World Trade Organization (WTO), including the Development Division and the Trade and Environment Division. One thing that particularly struck me is the extent to which issues relating to sustainable development have increasingly appeared on the trade agenda. Against this backdrop, it seemed useful to explore the implications of this expanded agenda from a policy perspective. This book is the result of that enquiry.

The following chapters have greatly benefited from participation in many GATT and WTO meetings, a large number of conferences, and discussions with colleagues too numerous to acknowledge individually. Nevertheless, I would like specifically to mention Edwini Kessie, Serafino Marchese and Jorge Vigano of the WTO Secretariat, with whom I have discussed many aspects of the book. I would also like to thank Maria Pillinini of the WTO Secretariat for her input on matters relating to WTO rules and developing countries. In addition, I have benefited from exchanges with Bradnee Chambers of the Institute of Advanced Studies (IAS), particularly relating to international law and the environment. Sam Johnson, also of the IAS, provided helpful comments on a number of institutional and legal considerations relating to multilateral environment agreements. As far as basic research is concerned, I am very much indebted to both Mathieu and Gregory Sampson for their

valuable and skilful contributions to many of the topics addressed in this book.

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# Introduction and overview

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## Introduction

One of the potentially most important trade meetings in history took place in Doha, Qatar, from 9 to 14 November 2001, when a new round of multilateral trade negotiations – the Doha Development Agenda – was launched. At Doha, trade ministers told the world: “We strongly reaffirm our commitment to the objective of sustainable development ... 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.”<sup>1</sup>

Less than one year later, in September 2002, the World Summit on Sustainable Development (WSSD) – the largest intergovernmental meeting ever – took place in Johannesburg, South Africa. On this occasion, environment ministers called for urgent action to continue “to promote open, equitable, rules-based, predictable and non-discriminatory multilateral trading and financial systems that benefit all countries in the pursuit of sustainable development [and] support the successful completion of the work programme contained in the Doha Ministerial Declaration”. They “welcomed the decision contained in the Doha Ministerial Declaration to place the needs and interests of developing countries at the heart of the work programme of the Declaration”.<sup>2</sup>



My objective in this book is to review the relationship between trade policies as conducted in the World Trade Organization (WTO) and policies designed to promote sustainable development. Although many may understandably balk at the notion, I conclude that the WTO has unquestionably gravitated towards becoming a *World Trade and Sustainable Development Organization*. Some may or may not like this fact, but it is – by design or by default – a reality of the day.

In elaborating this proposition, we first need to address the questions of what trade policy is and which policies are designed to promote sustainable development. In broad terms, if trade policy is what the WTO deals with, then its objectives should offer some guidance as to the boundaries of trade policy. Its objectives are both ambitious and far-reaching: to raise standards of living and to ensure full employment and a steadily growing volume of real income with the expansion of world production and trade. Similarly, the WTO is to seek to protect and preserve the environment, and to enhance the means for doing so in a manner consistent with different levels of economic development. An additional responsibility assigned to the WTO compared with its predecessor, the General Agreement on Tariffs and Trade (GATT), is to provide for the optimal use of the world's resources in accordance with the objective of sustainable development.<sup>3</sup>

Convention has it that sustainable development means *securing a growth path where providing for the needs of the present generation does not mean compromising the ability of future generations to meet their own needs*. From a policy perspective, the pursuit of sustainable development requires a careful balancing between progress in each of its pillars: economic development; conservation of the environment; and improving social conditions.

The means available to the WTO to achieve its ambitious goals are the *liberalization* of trade and the conduct of trade according to multilaterally agreed *rules and procedures*. Both the liberalization of trade and the rules that govern trade have become inextricably linked with economic development, conservation of the environment and improving social conditions. In this respect, the working hypothesis of the WTO is that trade liberalization removes restrictions in the market, efficiently allocates resources and contributes to their optimal use. As a result, it increases production and income, promotes economic development, and makes more resources available for economic development, environmental management and improving social conditions. WTO rules ensure predictability and stability in a trading system based on, *inter alia*, non-discriminatory trading relations coupled with a powerful dispute settlement system. The conclusion is that both trade liberalization and trade rules are important contributors to sustainable development.

Despite the fact that there have been many contributions in both the theoretical and applied literature refining the definition of sustainable development, the concept remains somewhat vague – at least for providing a solid basis on which to identify policies to promote it. Setting the boundaries for the purposes of this book is therefore not a simple task. However, since the following chapters are about policy, one way to proceed is to consider the boundaries to be the policy issues addressed in the various forums devoted to sustainable development. Hundreds of government officials from diverse national administrations attended the World Summit on Sustainable Development in Johannesburg. The Declarations that emerged from the meeting identified and prioritized key issues. In addition, government officials regularly attend the meetings of the United Nations Commission on Sustainable Development and the United Nations Environment Programme and discuss the same or similar issues. Many specialized agencies of the United Nations – including multi-lateral environment agreements – deal directly or indirectly with many aspects of sustainable development, as does the International Labour Office. There is also a vast array of non-governmental organizations that focus on sustainable development<sup>4</sup> and chambers of commerce that have business and sustainable development as their focus.<sup>5</sup> Reviewing the issues that emerge in these deliberations in the light of the WTO work schedule provides useful insights into which policy issues deal with the interface between trade and sustainable development.

There is also guidance from academic circles. Although not necessarily addressed in the context of sustainable development, a great deal of intellectual activity has revolved around the extent to which there should be formal linkages between WTO rules and domestic policies relating to economic development, environmental management, labour standards and human rights. A key question that emerges in this debate is whether trade policy should be used as an instrument to promote sustainable development by obliging countries to adopt harmonized environment, labour and other standards in the conduct of international trade.<sup>6</sup>

Adopting this approach identifies a vast area of enquiry. The most important common area of policy concern for both trade and sustainable development is arguably the relationship between the trade liberalization successfully concluded under the GATT – and now the WTO – and economic development. Some remain unconvinced about the positive relationship, but the picture that increasingly emerges from empirical studies is that, although there are many influences bearing on economic growth, the adoption of liberal trade policies, through both expanded market access and domestic trade liberalization, generally promotes higher economic growth. The fact that trade is conducted according to enforceable rules on a non-discriminatory basis means that countries can pursue their