From discord to harmony

The Sustainable Development Goals should guide international trade policy

International trade and investment policy has moved to the forefront of global public debate. This is one outcome of the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the Trans-Pacific Partnership (TPP). The investment policy arrangements promoted in these trade deals are facing growing opposition and resistance, not only in Germany but also in numerous countries of the Global South. More than 100 countries are therefore currently reviewing the bilateral investment treaties (BITs) that they concluded in the past. India is just one example: it recently served notices to 57 countries, including Germany, seeking termination of BITs. As a result of these debates, countless people in North and South alike have come to realise just how much trade agreements affect their daily lives. The public and politicians, in growing numbers, therefore see a need to make trade and investment policy more sustainable. However, trade policy is sustainable only if it enables every country to achieve balanced, robust and self-determined economic and social development.

There is no shortage of ideas and practical proposals on shaping sustainable trade policy. The development community, human rights initiatives, church-based organisations and academics alike have devised plenty of options over the years.

Even at an early stage in the Doha Round of World Trade Organization (WTO) negotiations, environmental and development groups were attempting – for the most part unsuccessfully – to influence the EU's negotiating position. Later, in 2010 and 2014, a broad coalition of civil society groups produced a comprehensive counter-proposal to prevailing EU trade policy. The EU's trade and investment policy, outlined in its 2010 Trade, Growth and World Affairs strategy, for example, aims to enhance European companies' competitiveness abroad. To that end, it demands that other countries grant maximum unrestricted market access for European exports, services and investment, unlimited opportunities to participate in public procurement, an unrestricted access to raw materials, and more

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protection for European companies' investment and intellectual property rights. Taking issue with these demands, a European civil society alliance published an Alternative Trade Mandate, calling for human rights and environmental protection to take priority over commercial objectives and for governments to have the right to regulate imports and exports in pursuit of their sustainable development strategies. The enforcement of the precautionary principle is seen as a priority in this context.

In academia and politics advice, too, proposals for a rebalancing of trade policy goals have played a more prominent role since the early part of the decade. In his book The Globalization Paradox, published in 2011, Dani Rodrik, Professor of International Political Economy at Harvard University, calls for a more influential role for democratically elected institutions and for a greater emphasis on sustainable development goals in the international trade system. In his view, every country should be permitted to impose protective tariffs and introduce other trade-restricting measures in pursuit of socially beneficial goals. These measures should be legitimised through transparent and democratic procedures at the national level, which would help to prevent their misuse for protectionist purposes. Countries with democracy shortcomings should show that trade restrictions genuinely serve the interests of sustainability.

Economist and former US Treasury Secretary Larry Summers calls for decision-making powers to be restored to democratic institutions. Now that most direct trade barriers have been abolished, what is needed, he says, is a shift towards international harmonisation on issues such as taxation and environmental protection. The influence of transnational corporations should be curbed at the same time. French economist Thomas Piketty argues along similar lines: faced with global challenges such as climate change, there should be no more signing of international agreements that simply lower customs tariffs and promote deregulation; treaties like this, he says, belong to another age. Daniel Esty, Professor of Environmental Law and Policy at Yale University, proposes that the principle of sustainable development enshrined in the preamble to the agreement establishing the WTO be elaborated with a commitment to the Sustainable Development Goals (SDGs). In WTO dispute settlement, the SDGs could then be applied directly as a benchmark to determine the permissibility of trade-related measures.

Do the SDGs pave the way for new and improved trade policies?

The 2030 Agenda for Sustainable Development was adopted by the United Nations in September 2015. At its heart are the SDGs, aimed at transforming our world for the better in three dimensions – social, environmental and economic – by 2030. The SDGs are universal goals: they apply to every country in the world, including the wealthy and prosperous developed nations.

The developing countries and emerging economies have a long way to go to reach these goals by 2030 – but the developed nations face an even greater challenge. Their current patterns of production and consumption conflict with the 2030 Agenda in a multitude of ways. Their consumption of natural resources is far too high and their emissions damage the global climate. They promote inacceptable social and environmental conditions in lower-income countries that export raw materials and consumer goods. The Global North's policies conflict with the SDGs across a range of sectors. Trade is an obvious example. The logic of minimal regulation of trade in goods, services and capital, which currently informs WTO policy, obstructs development and sustainability in many cases, instead of advancing it.

A cursory glance at the 17 SDGs and 169 targets suggests that their treatment of trade rules is superficial at best. On closer inspection, however, it becomes clear that trade policy crucially determines the parameters for global economic, environmental and social policy and is therefore highly relevant to numerous aspects of the 2030 Agenda.

The role of trade policy in the 2030 Agenda

International trade is "an engine for inclusive economic growth" and poverty reduction and contributes to the promotion of sustainable development, according to the United Nations' explanatory comments on SDG 17. The SDGs therefore promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, including through the swift conclusion of negotiations under its Doha Development Agenda, which commenced in 2001.

The 2030 Agenda generally portrays international trade in a positive light and recognises the role of the

WTO as the main rule-setting institution. According to the 2030 Agenda, developing countries' exports should significantly increase by 2030, with the least developed countries' share of global exports doubling by 2020. Timely implementation of duty-free and quota-free access to developed countries' markets for all least developed countries is a key mechanism in this context.

And yet a measure of restraint in the assessment of free trade can also be detected in the SDGs. There is no wholesale commitment to the liberalisation of trade in goods, but only when it is "meaningful". The right of poor countries to regulate trade if this is conducive to their development is recognised, at least implicitly.

SDG 2 calls for an end to hunger and for improved food security in developing countries. Trade restrictions and distortions in world agricultural markets should be corrected. In December 2015, the WTO voted to abolish agricultural export subsidies but failed to reach agreement on the much higher domestic subsidies paid by the EU and the US, which encourage cheap exports and expose developing countries to unfair competition. The refusal, particularly by the US, to make concessions here is one of the main causes of the stalemate in the Doha Round.

SDG 3 on health also refers to trade policy. It reaffirms the right of developing countries to use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regarding flexibilities to provide access to affordable essential medicines and vaccines for all.

SDG 10 on inequality reaffirms the principle of special and differential treatment for developing countries in accordance with World Trade Organization agreements.

And finally, SDG 14 on the conservation of the oceans, seas and marine resources makes direct reference to WTO negotiations. By 2020, states should prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing and eliminate subsidies that contribute to illegal, unreported and unregulated fishing. Exceptionally, it sets a deadline much earlier than 2030.

Conflicts between trade agreements and SDGs

Food security and sustainable agriculture

One of the targets and key mechanisms defined for SDG 2 (end hunger) is to double the agricultural productivity and incomes of family farmers. This can be facilitated through incentives and funding programmes, which developing country governments can utilise to support domestic agriculture. However, the WTO Agreement on Agriculture substantially curtails their opportunities in this regard: WTO members are obliged to adopt progressive reductions in agricultural support and protection, such as price guarantees and investment subsidies, on the grounds that they distort trade.

A current dispute between the US and China illustrates the problem. Despite China's rapid industrialisation, around 400 million of its people still work in agriculture. Many are impoverished; millions suffer hunger. Recognising that higher prices may help to ameliorate their situation, the Chinese government is attempting to raise rural incomes by applying a package of measures which includes increased price supports for farm products.

However, by increasing the guaranteed prices paid for products such as wheat and rice, China may well find itself exceeding the limit set for its trade-distorting support under WTO rules, currently around USD 88 billion annually. The US has sought formal consultations with China in the WTO. If the issue goes forward to a dispute settlement panel, these agricultural subsidies are likely to cause problems for China.

By contrast, the US – in compliance with WTO rules – pays its farmers around USD 48 billion in trade-distorting support, although only around four million people currently work in the US farm sector – equivalent to just one hundredth of China's agricultural workforce. What's more, all countries are permitted to provide unlimited payments that are classified as only minimally trade-distorting. The EU in particular makes lavish use of this form of support. As this type of subsidy must come directly from government budgets, they are unaffordable for most developing countries. This injustice stems from a form of customary law applicable within the WTO, which is based on the level of subsidies paid by a country in the past. In simple terms, a country whose agricultural support previously ran into billions is permitted to phase out these subsidies gradually. However, much lower ceilings apply to

1. No poverty
2. Zero hunger
3. Good health and well-being
4. Quality education
5. Gender equality
6. Clean water and sanitation
7. Affordable and clean energy
8. Decent work and economic growth
9. Industry, innovation and infrastructure
10. Reduced inequalities
11. Sustainable cities and communities
12. Responsible consumption and production
13. Climate action
14. Life below water
15. Life on land
16. Peace, justice and strong institutions
17. Partnerships for the goals

the developing countries, which have only recently begun to introduce subsidies.

It is a similar situation with the conflict over tariffs on agricultural goods. In order to promote rural development (SDG 2) and reduce poverty (SDG 1), most developing countries are keen to protect their markets from cheap agricultural imports from the industrialised nations. However, the US and the EU categorically reject such restrictions. Here too, the WTO's free trade logic conflicts with the 2030 Agenda goals. The right to food must be recognised in future as the guiding principle for all rule-making for trade in agricultural goods.

Promoting renewable energies

Conflicts frequently arise over measures to promote SDG 7 (renewable energy) and SDG 13 (combat climate change) as well. If developing countries and emerging economies are to increase their energy generation from wind, solar and biomass, it may make sense for them to support their domestic manufacturing capacity in this sector. Environmentally sound and economic development thus go hand in hand.

Numerous countries – including Canada, China and India – therefore couple their feed-in payments for RES electricity to a domestic content requirement: a specific proportion of components used in the construction of these systems must be produced locally. The Indian delegation's announcement at the United Nations Climate Change Conference in Paris in late 2015 that their country intended to tackle poverty with solar energy instead of coal in future met with a rapturous response from the international community. In Paris, Prime Minister Modi announced that India was setting an ambitious target of reaching 100,000 megawatts of solar power – at least three times more than Germany – by 2022. While expressly welcoming this target, the US government lodged a complaint about India's National Solar Mission with the WTO on the grounds that its domestic content requirement broke WTO rules. The panel found in favour of the US: according to the ruling, the domestic content requirement discriminates against non-Indian suppliers of solar cells and modules and thus violates the principle of equal treatment. For Canada, which found itself in front of a WTO dispute settlement panel in a similar case in 2013, this type of ruling came close to spelling the end for its solar industry. This is yet another example of how trade law impedes progress on the sustainable development agenda.

Product labelling

The labelling of consumer goods such as textiles and electronics, food and household appliances is an important tool in providing consumers with information about the social and environmental conditions in which goods are produced. This accords with SDG 12 on ensuring sustainable consumption and production patterns. However, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) has the opposite effect: here, labelling requirements are to some extent seen as creating unnecessary obstacles to international trade. Here too, conflicts with the SDGs are built in. A well-known dispute between the US and its North American Free Trade Agreement (NAFTA) partners Canada and Mexico illustrates the difficulties associated with the WTO's stringent labelling rules.

In 2009, the US introduced mandatory country of origin labelling (COOL) for various commodities, including meat. However, due to the highly integrated meat production chain in the NAFTA zone, this proved to be problematical: animals born and raised in one country were often slaughtered in another. Furthermore, the slaughterhouses in the US, most of which are large-scale operations, would normally process animals from several countries on the same day, making it extremely difficult to accurately determine the origin of the meat. The slaughterhouses therefore responded to the COOL legislation by only processing animals born, raised and slaughtered in the US.

This sparked a response from livestock farmers in Canada and Mexico. Faced with a decline in their meat exports to the US, their governments lodged a complaint against the COOL law with the WTO – and won. In late 2015, in order to avoid punitive tariffs on US imports into Mexico and Canada, the US Congress finally repealed the country of origin labelling requirement for all meat products.

As this case shows, mandatory labelling of origin, which is intended to provide consumers with useful information about environmental and social conditions along value chains, can come into conflict with WTO rules and may be classed as discriminatory. However, this in turn conflicts with the SDGs. According to the WTO's logic, providing no consumer information is preferable to providing information that obstructs trade.

Policy coherence

"Enhance policy coherence for sustainable development" is one of the targets for SDG 17. In theory, this requires the provisions of diverse international agreements to be interpreted in a way which avoids conflict between them and, at the same time, supports the SDGs. However, the international community has a long way to go until it achieves this level of harmony in its implementation of the 2030 Agenda, as the disputes between the EU and the US, Canada and Argentina over the status of the precautionary principle in relation to genetically modified organisms (GMOs) show. Is it permissible for governments to impose import restrictions on GMOs due to environmental and health concerns? That is the key question in this context.

The US, Canada and Argentina are some of the world's largest producers and exporters of genetic modified (GM) crops, mainly cereals and oilseeds. In the EU, by contrast, the cultivation of GM crops is a highly contentious issue. For years, this resulted in a noticeable lack of coherence in the policies pursued by the German Government, other EU member states and the EU itself. Some EU countries banned GM crops outright, although the European Commission permitted their cultivation. In order to circumvent the problem, processing of applications for GMO authorisation in the EU was slow.

This was extremely vexing for the US, Canada and Argentina. In 2003, they lodged a complaint with the WTO, claiming that the EU had applied a de facto moratorium on genetically modified organisms in contravention of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which sets outs the rules governing measures necessary to protect human, animal or plant life or health in international trade. For the most part, the ruling found in favour of the complainants. What is particularly worrying is that the WTO dispute settlement panel did not accept the precautionary principle as a universally recognised principle of international law. This very narrow interpretation of the SPS Agreement conflicts sharply with policy coherence as an Agenda goal and, in effect, asserts the primacy of WTO trade rules over environmental principles and agreements. This example lends weight to the argument that the WTO should be integrated into the United Nations system or that UN decisions and rules should be recognised as binding on trade policy decision-making by a future world trade organisation.

Trade should serve sustainable development

Value-based deregulation? The EU's new trade strategy

The proposed Transatlantic Trade and Investment Partnership and the Comprehensive Economic and Trade Agreement have sparked criticism of trade policy not only from experts but now also the general public. The EU is therefore beginning to shift its position.

In October 2015, the European Commission unveiled its new trade strategy, entitled "Trade for all", in which it commits to a trade and investment policy based on values. The Commission recognises that consumers want to know that products reach high safety and quality standards, and that they want to know about the environmental and social conditions under which they are manufactured. It also pledges that no EU trade agreement will lead to lower standards nor constrain the ability of the EU and Member States to take measures in the future to achieve legitimate public policy objectives. It commits to working with consumer associations and civil society organisations to assess the impacts of trade agreements, and emphasises that when concluding trade deals with developing countries, it will promote environmental protection, labour and human rights and good governance.

With its new trade strategy, the EU has shifted its focus towards more sustainability – but there is little sign of a dramatic change of policy course. The Commission continues to assume that it can pursue partially conflicting objectives simultaneously: on the one hand, the liberalisation of international trade and the abolition of non-tariff barriers; on the other, a sustainable development strategy. Conflicts between these two goals and the various problems affecting the WTO rules are ignored. The Commission therefore neglects to discuss any mechanisms that would resolve these issues.

The Commission's Special Adviser on the Sustainable Development Goals has produced a set of more detailed recommendations. The EU must give developing countries better access to their markets. Production capacities and value chains in low-income countries must be strengthened, also in the interests of supplying domestic markets in those countries. And there is a need for coherence between various policy measures. So far, so good – but will the EU draw any practical conclusions from these recommendations? That is still an open question.

The SDG as a benchmark for the re-regulation of the world economy

Clearly, a change of course is urgently needed in European and international trade policy, which at present often reverses social, environmental and economic progress instead of supporting it. Trade liberalisation can deprive people of their jobs and incomes, not only in developing and emerging economies but in developed countries as well. What's more, current trade rules impede the major progress that is needed towards sustainability. A radical rethink is therefore required. A repackaged business-as-usual approach, attempted in the EU's "Trade for all" strategy, does not go far enough. However, such a revision process must tread carefully: a radical departure from existing trade relations and treaties can pose serious economic risks – particularly for those developing and emerging economies that have taken a development path geared to exports and the world market.

Multilateral deregulation on the one side and nationalistic protectionism on the other is a false dichotomy. It is necessary instead to engage in discourse on how the benefits of the international exchange of goods and services can be retained without blocking social and environmental goals. The SDGs must be the benchmark against which trade policy is measured. Several key questions require answers: What kind of regulatory framework is needed at the national and international level in order to achieve the SDGs? Where does trade policy currently impinge on this framework? National governments, economic blocs such as the EU and the UN's specialised organisations should all contribute to this discussion, along with stakeholder groups. The WTO should also be involved; however, the United Nations should take the lead. The United Nations Conference on Trade and Development (UNCTAD) is the ideal candidate to assume a coordinating role and should be granted an appropriate mandate by the UN General Assembly.

The United Nations could also make a useful contribution by devising basic rules to deal with conflicts between trade regulations and the Sustainable Development Goals. The task of weighing up the conflicting interests of SDG policy and free trade should not be left to the WTO. International organisations working on food security, biodiversity, climate and other policy fields should also be involved in this process, which must include mandatory assessment of the impacts of trade and investment agreements on human rights and gender equality. If a measure is found to be beneficial to development but restricts trade, it should not be immediately rejected but should remain in force until the parties have agreed a more trade-friendly alternative. Appropriate compensation should be paid to low-income developing countries or social groups which are adversely affected by trade restrictions.

In other words, we must start to re-regulate the world economy. Liberalised markets should no longer be the only acceptable paradigm. Pro-active policies and effective rules are required to combat poverty, protect the environment and facilitate development. Free trade is not an end in itself: wherever it leads to a lack of freedom, it needs guard rails and regulations in the interests of sustainable development in line with the SDGs.

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