

Trade Sustainable Impact Assessment and the new challenges of trade liberalization

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Abstract

Trade SIAs have been conceived to help policy makers to maximise trade-offs in the liberalisation process, assuming that positive trade-offs ultimately exist across sustainable development pillars. Existing Trade SIAs tend to anticipate objective impacts of trade liberalisation at global level. To that aim, they use indicators that are likely to give an image of the reality after liberalisation. The relevance of these indicators for sustainable development and the relevance of their aggregation rest on each society's views and priorities on sustainability. Indeed, the varied appreciations of trade liberalisation's impact values – meaning impact valued within each society, and not only physical impact value – explain much of WTO negotiators' misunderstanding in trade talks. Trade SIAs, by unveiling differences in the valuation of trade liberalisation impacts across countries, could ideally help trade negotiations progress in areas where convergence in sustainability meanings and values has been made clear. In the meantime, it should help isolate deadlocks stemming from apparently incompatible views on what sustainability means for each different country. By reviewing and comparing the challenges of trade liberalisation in 1999 and 2006 from a Trade SIA perspective, we argue that new directions for Trade SIAs seem needed, which we summarise in conclusion.

Keywords: Trade liberalisation, sustainable development, sustainable impact assessment

1. Introduction

Trade SIAs originated in the particular context of the World Trade Organization (WTO) negotiations on trade liberalization, a few months before the WTO Ministerial Conference was convened in Seattle in November 1999. Increasing concern over the social and environmental impacts of the previous liberalization cycle (The Uruguay Round, 1986-1994), sharp criticism of WTO opacity in final decision-making, from which developing countries and NGOs were excluded, in addition to the protracted and worrying difficulty of the EU defending its own preferences on particular issues such as agriculture, cultural goods, and environmental standards, were all warning signals – much more clear now than they were at the time – that WTO trade negotiations were very likely to be disrupted and that the EU would be found guilty of such a disruption, along with a few OECD countries. All three signals turned to red a few weeks before Seattle. The Ministerial Conference ultimately collapsed.

Trade SIAs were still at the development stage at this time and were unable to prevent the failure of the Seattle and, later on, the Cancun WTO Ministerial Conferences. They nevertheless deserve undisputed praise for having seriously considered the three aforementioned warning signals, through their bid to rebalance trade liberalization outcomes across sustainable development pillars, countries and stakeholders.

Seven years later, what has been achieved? This is the question behind our work. Trade SIAs have benefited from substantial improvements over this period, with numerous applications to both multilateral and bilateral trade liberalization

agreements¹, a published handbook², and all such achievements made possible by perennial funding from the European Commission. Meanwhile, the multilateral trading system has found itself “in the dizzying aftermath of a roller coaster ride”³, ending in a stalemate on July 24 2006, when WTO trade negotiations were officially suspended.

The background of explanatory factors behind the postponement of the Doha Round seems rather similar to the situation in 1999. Developing countries are still asking for a fairer agreement, enabling them to reap disproportionate gains when compared to developed economies – their voice is simply louder and the threat of a veto taken more seriously by developed countries than seven years ago. Transparency and participation, though improved since the Seattle ministerial Conference, remain a controversial issue. Finally, throughout the Hong Kong Ministerial Conference in 2005 the EU suffered a sustained crossfire of complaints for its stringency on agricultural market access, in spite of its claim to be the most developing country-friendly of all OECD economies⁴. As a consequence, this would suggest that Trade SIAs have not made the contribution to trade talks, and particularly to the European Union’s trade position, that might have been expected⁵.

In this paper we argue that Trade SIAs have done little to benefit trade negotiations firstly because trade negotiation hurdles have dramatically changed over the 1999-2006 period in spite of superficial similarities, and secondly, because Trade SIAs have failed to address a number of important factors that cause negotiators to resist free trade today.

2. A comparison of 1999 and 2006 negotiation contexts

Though any diagnosis of who is to blame for the Doha Development round deadlock is politically sensitive, a reasonable reading of the current WTO crisis is that considerable misunderstanding prevails across member countries, which relentlessly argue that they have already reached their breakeven point and that they cannot concede more – in terms of market access or subsidy cuts – without incurring net negative social returns on their concessions⁶.

This point is one of the major innovations of the current period in comparison with 1999. It was indeed admitted in 1999 that trade talks needed to be rebalanced across sustainable development pillars, member countries and stakeholders; there was no misunderstanding about this point. The naming of the current Round as “the Doha Development Round” acts as a kind of reminder of such imbalances. Substantial

¹ Kirkpatrick C., George C. and S. Scricciu, “Sustainability Impact Assessment of Proposed WTO Negotiations. Final Global Overview Trade SIA of the Doha Development Agenda” Final Report. IARC University of Manchester, July 2006.

² “Handbook For Trade Sustainability Impact Assessment”, European Commission, External Trade, March 2006. http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127974.pdf

³ Bhagwati J. (2004). *In Defense of Globalization*. Oxford University Press.

⁴ The EU, and France in particular, were deemed to be “excessively defensive on agricultural issues” by Pascal Lamy in an interview given to *Le Monde*, 24 February 2006.

⁵ NGO Statement on EU Trade Policy SIAs, 2002, available at <http://www.foeeurope.org>.

⁶ See Voituriez T. (2007), “Soyons généreux, soyons égoïstes : le Cycle du Développement à l’OMC” *Economie Rurale* 291, Jan-Feb 2007: 11-17. See also “The Doha Development Agenda: Sweet Dreams or Slip Slidin’ away?”, Speech by Pascal Lamy, International Institute of Economics, Washington, 17 February 2006. http://www.wto.org/english/news_e/sppl_e/sppl19_e.htm

efforts have been made ever since to rebalance the trade negotiation process. Leading developing countries (Brazil and India) figured among the Five Interested Parties that took the initiative in 2004 to re-launch trade talks and draft the July package – an initiative that would have been confined to the Quad countries (EU, US, Canada, Japan) under GATT and during very early WTO times. The July package and its subsequent versions themselves included far more concessions from OECD countries in favor of developing countries than could have been achieved during the Uruguay Round. To quote Pascal Lamy, *“The ‘agricultural package’ — if I may call it so — that we had before us in July, had nearly all the makings of a deal that would have represented a QUANTUM LEAP from the results of the Uruguay Round”*⁷.

Yet although enough efforts were made for the EU and the US to claim that the playing field was now sufficiently leveled for reciprocal concessions to occur on a fair basis, the development objective of the current round creates this seemingly inextricable situation where developing countries are entitled to ask for more, and developed countries claim they carry a significant share of the effort burden, shifting the responsibility for failure onto their neighbor next door. And whereas vocal NGO leaders called for a “sustainable development round” in 1999, with consensual reference to sustainable development pillars, now a “fair development round” is the priority, with no consensual notion of what such fairness should imply⁸.

The paradigmatic shift from “sustainable development” to “development” and “fairness” is not a purely semantic issue. What we would like to stress at this stage is simply that should a Trade SIA be created from scratch against the new background provided by “development” and “fairness” priorities, while retaining the similar 1999 objective of helping negotiators improve trade sustainability, then the information such a Trade SIA should convey would be rather different from that initially expected.

Table 1 captures the salient features of the 1999 and 2006 backgrounds. The first column recalls what the issues at stake were in 1999, during the “take-off” period for Trade SIAs. It isolates the three sustainable development pillars, participation and market access issues, as briefly outlined above. The third column does the same with today’s – i.e. the 2006 – context. A development focus (e.g. inequality and poverty reduction) has replaced the sustainable development focus that prevailed in 1999. Participation issues have somehow been moved away from the WTO itself (the 1999 situation) towards third countries participation – and particularly “weak” or “poor” states – and whatever the WTO member country in question, towards domestic participation in defining the position of negotiations within countries. Finally, market access impediments, though still of concern, are now accompanied by harsh debate on policy space, own liberalization agendas and the overall effect of trade discipline on the design of domestic subsidies – what Pascal Lamy called in 2004 the “social fabric” or “collective preferences” issue, a concept we will return to in the following sections. Between these two columns, the second column displays some of the salient milestones that have paved the way from 1999 to today’s situation. The last row provides the implicit references or benchmarks against which the issues listed in

⁷ “The Quantum Leap of the Doha Round”, remarks by Pascal Lamy, WTO Director-General, at the Cairns Group 20th Anniversary Meeting, http://www.wto.org/english/news_e/sppl_e/sppl39_e.htm

⁸ See Joe Stiglitz and Andrew Charlton, *Fair Trade for All*, issued in December 2005 during the WTO Hong-Kong Ministerial Conference.

each of the three columns are expressed. The changes along the three rows of the table – i.e. from 1999 to 2006 issues – are developed in the coming sections.

Table 1: Issues at stake and achievements, from Seattle to Hong-Kong

1999, issues at stake	“Negotiation roller coaster” 1999-2005 achievements	2006, issues at stake
Three sustainable development pillars	The “institutionalization” of the environment: Doha Declaration on Trade and Environment; WTO Special Sessions of the Committee on Trade & Env. Focus on poverty: the Millennium Development Goals	Development (poverty and inequality) focus: Who gains, who loses? Dynamic effects of trade on growth and development?
Participation	WTO public symposia for non-governmental organizations (NGOs) Amicus curiae briefs from NGOs can be received by Panels (Dispute settlement) Cotton initiative exemplifies NGOs’ commitment and firmer grip on trade agenda	Weak state participation Within-country participation Participation in standard setting, public/private partnership
Market access	“Will International Rules on Subsidies Disrupt the World Trading System?” ⁹ . “Debunking the fallacies on agricultural market access” ¹⁰ “Own trade liberalization provides the highest gains” ¹¹	Collective preferences, disclosure and compatibility across countries Reconsidering market access gains: long-term (productivity effects) gains; services & investment.
References/benchmark: Uruguay Round, World Earth Summit	References/benchmark: Seattle collapse	References/benchmark: No reference: what should a fair development round look like?

Source: Authors

⁹ Bagwell K. and R.W. Staiger (2005). “Will International Rules on Subsidies Disrupt the World Trading System?” Mimeo, Columbia University, New York.

¹⁰ Panagariya A. (2004). “Agricultural Liberalization and the Developing Countries: Debunking the Fallacies”. Mimeo, Columbia University, New York.

¹¹ Anderson K. and W. Martin (eds.) (2006). *Agricultural Trade Reform & The Doha Development Agenda*. The World Bank, Washington DC and Palgrave Macmillan.

3. From “sustainable development” to a “development” focus

3.1. The story so far

The trade and sustainable development debate dates back further than 1999. One can recall the growing international concern regarding the impact of economic growth on social development and the environment in the early 1970s, leading in 1972 to the Club of Rome’s report *The Limits of Growth*¹²; the Stockholm Conference on the Human Environment and, ultimately, the creation of a Secretariat within the United Nations – the United Nations Environment Program (UNEP) – the same year.

A twofold change occurred in the 1990s. First, the 1992 World Earth Summit (WES), during the political birth of “sustainable development”, ranked environmental issues at the top of the agenda – suffice it to recall the three international conventions the WES led to: biological diversity, climate change, and desertification. Sustainability implicitly meant environmental sustainability¹³. The second change lies in the convergence of ideas further to the WES, stemming from UN bodies (UNEP, CTE) and GATT/WTO, towards the common belief that trade and environment could work hand in hand, or to put it in another way, that trade liberalization should be compatible with environmental protection provided that flanking measures targeted at environmental trade impacts accompanied trade liberalization. The so-called “win-win” scenarios (freer trade, better environmental protection) quickly flourished in academic literature in the wake of the inception of the WTO. “Win-win” solutions were and still are a common objective of the UN environmental bodies and the WTO.

Ten years after the World Earth Summit, The Plan of Implementation adopted at the World Summit on Sustainable Development in Johannesburg in 2002 thus reiterated the need 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 program contained in the Doha Ministerial Declaration”¹⁴. Conversely, the WTO integrated explicit references to sustainable development in its various texts, which had been far from the case under GATT. GATT-think originally rested upon the assumption that environmental policies could distort and hamper trade. The Director-General of the GATT secretariat submitted a document to the 1972 Stockholm Conference warning of the “real danger that in attempting to combat pollution, governments may unwittingly introduce new barriers to trade”¹⁵. But the WTO made a significant shift and adopted a more balanced approach to sustainable development issues. First, “sustainable development” appears as an objective of the Organization in the WTO Preamble. This objective was reiterated in the 2001 Doha Declaration whereby trade ministers told the world: “*We strongly reaffirm our commitment to the objective of sustainable development... We are convinced that the aims of upholding*

¹² Meadows D.H., Meadows D.L., Randers J. and W.H. Behrens (1972), *The Limits to Growth*, New-York: Universe Books.

¹³ Sampson G.P. (2005). *The WTO and Sustainable Development*. United Nations University Press.

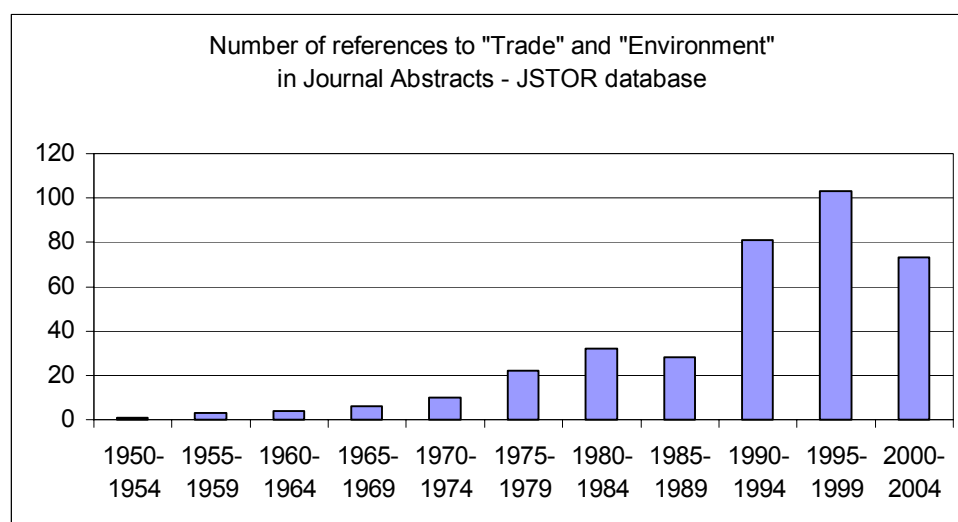
¹⁴ WTO (2002), “Report of the World Summit on Sustainable Development”, Geneva: WTO Secretariat, WT/CTE/W/220/Rev.1.

¹⁵ GATT (1971), *Industrial Pollution Control and International Trade*, GATT studies in International Trade, Geneva: GATT Secretariat.

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”¹⁶. Hence, within the WTO, sustainable development was no longer (or not only) a suspicious pretext governments could use to escape trade liberalization, but it also became an objective that trade could help them meet. In this regard, the 2001 Doha Conference, by launching negotiations on issues related to trade and environment, marked the ultimate culmination of the institutionalization of the environment (on behalf of sustainable development) within the world trading system.

When looking at ideas and knowledge, and not only at institutions, a similar shift may be seen, firstly towards a focus on environment and trade issues, while attempting secondly to demonstrate – in line with Bhagwati and Ramaswami’s arguments – that undistorted trade is compatible with sound and efficient national environmental policies¹⁷. The two volumes of the book “Fair Trade and Harmonization” by Bhagwati and Hudec¹⁸ are undoubtedly one of the benchmark references supporting this argument, along with Antweiler, Copeland and Taylor’s contributions in the early 2000s¹⁹.

Figure 1: “Trade” and “Environment” in academic literature, a statistical overview



Source: authors, JSTOR Database

When focusing on methodological aspects, it is striking to see that most of the breakthroughs in sustainable impact assessment occurred in the 1990s, during the environmental institutionalization phase within the world trading system, with the founding contributions of the OECD²⁰, UNEP²¹, the EU²² and the North American

¹⁶ WTO (2001), *Doha Declarations: The Doha Development Agenda*, WTO Secretariat.

¹⁷ Bhagwati J. and V.K. Ramaswami (1963). “Domestic Distorsions, Tariffs, and the Theory of Optimal Subsidy”, *Journal of Political Economy* 71: 44-50.

¹⁸ Bhagwati J. and R. Hudec, R. (Eds.) (1996): *Fair Trade and Harmonization: Prerequisites for Free Trade?* MIT Press, Cambridge.

¹⁹ Antweiler W., Copeland B.R. and M.S. Taylor (2001). “Is Free Trade Good for The Environment”, *The American Economic Review* 91(4): 877-908. See also Copeland B.R. and M.S. Taylor (2003). *Trade and the Environment*. Princeton, Princeton University Press.

²⁰ Organization for Economic Cooperation and Development (OECD), *Assessing the Environmental Effects of Trade Liberalization Agreements: Methodologies*. Paris: OECD 2000, available at <http://oecdpublications.gfi-nb.com/cgi-bin/OECDBookShop.storefront/EN/product/222000011P1>. Organization for Economic Cooperation

Commission for Environmental Cooperation (CEC)²³, most of them dealing first and foremost with environmental issues. A retrospective and chronological look at the academic contributions on “trade and the environment” from the 1950s onwards provides a striking insight into the way in which the aforementioned institutionalization of the environment in the world trading system was indeed accompanied – and partly caused – by a growing trend in academic papers on the subject, culminating between Seattle (1999) and Doha (2001) (figure 1). The tide then turned, along with the momentum on environmental issues within the WTO.

Conversely, in the wake of Seattle and Doha, literature on trade, poverty, and inequality experienced a fascinating expansion, with institutional bodies such as DFID²⁴, UNDP²⁵, UNCTAD²⁶, the World Bank²⁷ and the IMF²⁸ issuing their own reports on these subjects, firstly because poverty and inequalities reached the top of the agenda at this time, *Doha oblige*, and secondly because evidence provided so far on the positive relationship between trade and inequality had been made on too rough a basis, and particularly on cross-national regressions whose validity was weak and whose lessons could no longer hold when considering the disaggregated effects of trade on a country, on a case-by-case basis²⁹. Transmission channels from world trade down to poverty and inequality have been scrutinized and tentatively systematized within a comprehensive framework ever since³⁰.

The shift towards the prioritization of social impact assessments for trade liberalization does not mean of course that nothing happens on the environmental front any more. It nonetheless highlights the nerve center of today’s negotiations and methodological agitation. And it turns out that the priority given today to poverty and inequality reduction – or “development” in short – closes the circle opened by the Brundtland report in 1987 when it adopted the term “sustainable development” and drew attention to the link between the environment and development by identifying poverty as a principal cause of environmental degradation; what had become known as the “pollution of poverty”³¹.

and Development (OECD), *Assessing the Environmental Effects of Services Trade Liberalization: A Methodology*. Paris: OECD, 2002, available at [http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/com-td-env\(2000\)123-final](http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/com-td-env(2000)123-final).

²¹ United Nations Environment Programme (UNEP), *Reference Manual for Integrated Assessment of Trade Related Policies*. Geneva: UNEP, 2001, available at: <http://www.unep.ch/etu/etp/acts/manpols/rmia.htm>.

²² Colin Kirkpatrick, et al., *Further Development of the Methodology for a Sustainability Impact Assessment of Proposed WTO Negotiations*. University of Manchester. Institute for Development Policy and Management, 5 April 2002, available at: <http://europa.eu.int/comm/trade/issues/global/sia/past.htm>.

²³ North American Commission for Environmental Cooperation (2000) *Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA)*. Available at http://www.cec.org/pubs_docs/scope/index.cfm?varlan=english&ID=14.

²⁴ DFID (2000). *Eliminating World Poverty: Making Globalization Work for the Poor*. White Paper on International Development. <http://www.dfid.gov.uk/Pubs/files/whitepaper2000.pdf>. See also

²⁵ Rodrik D. (2001). *The Global Governance of Trade as if Development Really Mattered*. UNDP. See also UNDP (2001). *Making Global Trade Work for People*.

²⁶ UNCTAD Trade and Development Reports, issued on a yearly basis. See in particular Trade and Development Report 2004, Policy coherence, development strategies and integration into the world economy.

²⁷ The World Bank, World Development Report 2000/2001.

²⁸ Geoffrey J. Bannister and Kamau Thugge, 2001, *"International Trade and Poverty Alleviation."* IMF Working Paper No. 01/54 (Washington: International Monetary Fund).

²⁹ Francisco Rodriguez, Dani Rodrik (1999): "Trade Policy and Economic Growth: A Skeptic's Guide to Cross-National Evidence"; NBER Working Paper No. W7081.

³⁰ L. Alan Winters, 2000, "Trade Liberalization and Poverty," paper prepared for the United Kingdom's Department for International Development (Brighton, United Kingdom: University of Sussex).

³¹ See WCED (1987), *Our Common Future*, Oxford: Oxford University Press.

3.2. Challenges

The “development shift” obliges experts and scientists to answer the following question: what are the distributive impacts of trade that are worth documenting to better help governments integrate trade policies within a global policy framework so as to enhance growth and reduce poverty and inequalities. A recent ABCDE Conference paper, developed within the framework of this project, presented possible answers to this question, from which two key challenges stand out³².

The first deals with the identification of the winners and losers of trade liberalization within countries. Though politically and socially inescapable, the question of loss mitigation for losers has been given cautious and distant attention in multilateral trade debates, mainly because in a welfare economics approach, the common belief in international trade states that “the gains of the winners [...] are big enough to more than compensate the losers”³³. This initially confined losers’ fate to a domestic issue rather than a trade issue, until “development” and “fairness” were brought to the forefront in trade debates.

The second challenge arises from the division of labor across countries, and particularly along the value chains of traded products. The fairness of a development round, as determinedly stated by international NGOs such as Oxfam, implies answering a question rather more tricky than the one raised by Ricardo: the issue now is not so much what products a country should export, but at what stage of the value-adding process firms in any given country should specialize.

The third challenge is imposed by development itself, which is a dynamic process. Assessing the dynamic effects of trade openness on development – in both positive (growth for instance) and negative (unemployment, poverty) aspects, is a challenge still unmet.

³² Chabe-Ferret S., Gourdon J., Marouani M.A. and T. Voituriez (2006). “Trade-Induced Inequalities: Assessment Issues and Policy Implications for Developing Countries”. Paper presented at the World Bank ABCDE Annual Conference, Tokyo 29-30 May 2006.

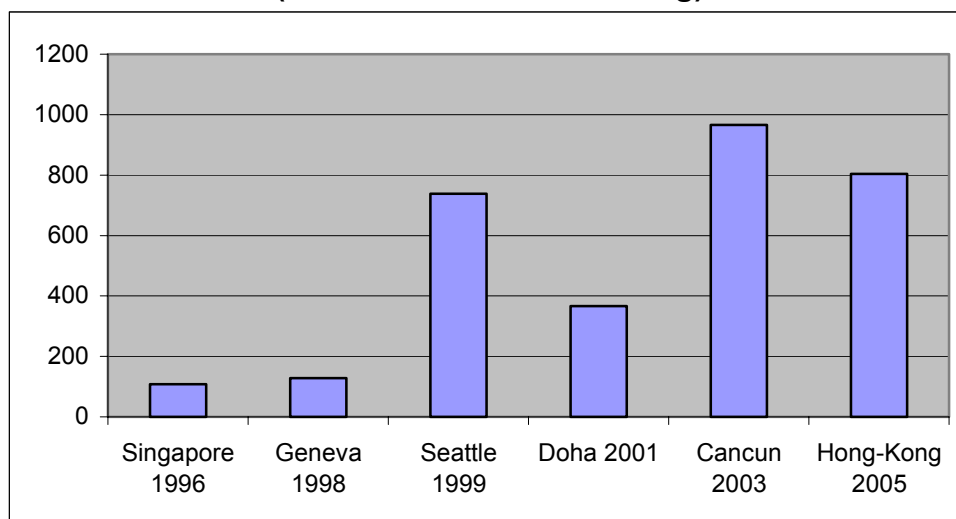
³³ Samuelson P. (2004). “Where Ricardo and Mill Rebut and Confirm Arguments of Mainstream Economists Supporting Globalization”. *Journal of Economic Perspectives* 18(3): 135-146.

4. From “more” to “better” participation

4.1. The story so far

The official story of NGO participation in the world trading system underlines the significant and positive changes that occurred after the WTO was created. According to the official WTO website, when Ministers adopted the Marrakesh Agreement in 1994, they also decided to include a specific reference to Non-Governmental Organizations (NGOs) in Article V:2. On 18 July 1996, the General Council further clarified the framework for relations with NGOs by adopting a set of guidelines (WT/L/62) that “recognizes the role NGOs can play to increase the awareness of the public in respect of WTO activities”. These guidelines are instrumental for both Members and the WTO Secretariat in maintaining an informal and positive dialogue with the various components of civil society. Since 1996, arrangements for NGOs have essentially focused on attendance at Ministerial Conferences, participation in issue-specific symposia, and the day-to-day contact between the WTO Secretariat and NGOs³⁴. Looking at participation in terms of approximate volume, the evolution of NGO participation in the most spectacular WTO events – the Ministerial Conferences – could undoubtedly be best described by a sharp and unprecedented increase between Singapore and Hong-Kong (figure 2).

**Figure 2: NGO participation in WTO Ministerial Conferences, 1996-2005
(number of NGOs attending)**



Source: Authors, WTO Database

But it could easily be argued that greater participation in WTO conferences gives very little information on the quality of such participation, and particularly that it says almost nothing as to whether WTO transparency and accountability has improved over this period. As pointed out by Charnovitz, “*The World Trade Organization (WTO) is frequently criticized for insufficient transparency and for a lack of participatory*

³⁴ WTO, “Relations with Non-Governmental Organizations/Civil Society”, http://www.wto.org/english/forums_e/ngo_e/intro_e.htm

*opportunities for private individuals and civic society*³⁵. Criticisms include the following: *“WTO business is conducted by committees and panels that meet behind closed doors in Geneva, Switzerland; [...] in sharp contrast to domestic courts and even other international agreements, at the WTO there is a startling lack of transparency, public disclosure or accountability; [...] [T]he WTO is intentionally designed to insulate against democratic pressure for change”*³⁶. It is therefore necessary to go beyond NGO participation in Ministerial Conferences and all the opportunities for debating and exchanging that the Organization has offered over the last 10 years in order to isolate past and new challenges.

An undisputed improvement of the WTO over GATT lies in the pressure the WTO agreements have brought to bear for increased civil society participation in national governance. In fact, provisions to grant private participatory rights and opportunities at the national level are present in many WTO sub-agreements, which was not the case with GATT. For example, the Agreement on Safeguards states that a government's investigation shall provide for public hearings (or other appropriate means) in which importers, exporters, and other interested parties can present evidence and views. The GATS states that where appropriate, WTO Members *“shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions”*. The Agreement on Technical Barriers to Trade (TBT) provides that before adopting a standard, a national standardizing body is to allow a period of at least 60 days for interested parties to submit comments on the draft standard (unless urgent problems arise). Furthermore, the standardizing body is required to “take into account” such comments. The Anti-dumping Agreement has an Article on “Public Notice and Explanation of Determinations” and also requires that the anti-dumping authorities provide opportunities for interested parties to present evidence and for consumer organizations to provide information. WTO member governments have gone even further in providing for private participatory rights in the context of accession agreements when governments join the WTO. In the negotiations with China, China agreed to provide an opportunity for public comment on all new draft laws and regulations affecting trade; this mandatory public comment period, Charnovitz adds, clearly exceeds the requirements of existing WTO rules.

To summarize, *“WTO law requires governments to maintain a large degree of transparency and some degree of participation for the benefit of traders and other interested persons, demonstrating an acknowledgement by governments that transparency and participation are important ingredients in good governance at the national level. [...] Unfortunately, WTO member governments have adopted a different and inconsistent position with regard to norms for WTO transparency and to the participation of nonstate actors in the policy and rulemaking activities of the*

³⁵ Charnovitz S. (2005), “Transparency and Participation in the World Trade Organization”, the George Washington University Law School, Public Law and Legal Theory Paper No 142, forthcoming in the Rutgers Law Review.

³⁶ Wallach L. and P. Woodall (2004), *Whose Trade Organization? A Comprehensive Guide to the WTO* 15-16.

WTO³⁷. Some progress has been made by the WTO at the national level, with deficiencies remaining at the WTO level³⁸.

Trade SIAs have emerged against this particular background in a rather coherent fashion. The WTO urged member countries to improve transparency and participation in their own governance; Trade SIAs supported and extended this push inside the EU with a focus (at least implicitly) on increasing intra-EU participation.

Let us now travel back seven years. Many NGOs welcomed the EU Trade SIA initiative *“as a necessary first step to ensure that the EU’s negotiating position at the WTO and in bilateral trade agreements was conducive to sustainable development, while enhancing transparency and accountability in EU trade policy-making”*³⁹.

*“A key advantage of SIA,” the WWF wrote in 2000, “is that it provides a platform for increased transparency and stakeholder involvement. SIA effectively provides a clear and structured approach that can be used to inform and involve stakeholders in the development of trade policies, in line with the EU’s international commitments. As well as enhancing the sense of public ownership and trust in resulting policies, greater participation often also opens up a new source for information for policy makers. SIAs can therefore benefit policy-makers and stakeholders, and thus help bridge the gap between EU policies, and their local impacts”*⁴⁰.

Though welcomed and acknowledged at the onset as a breakthrough in trade policy-making, monitoring and assessment, Trade SIAs have come short of fulfilling all NGO expectations. A careful reading of the NGO Joint Statements on Trade SIAs, issued in 2000, 2002, 2005 and 2006 confirms this point.

Hence, on 23 February 2000, NGOs jointly stated that *“To date, the European Commission’s SIA has not been effectively deployed to inform and foster inter-departmental discussions in any significant way, let alone to mobilise all the necessary expertise within the Commission. [...] Neither have the European Parliament nor the national parliaments of Member States been involved in the SIA process with a view to informing national debates on trade policy-making. [...] In short, we believe that the potential of the SIA process to make EU trade policy sustainable has not even begun to be used”*⁴¹.

The core objection raised in 2000, which was to pervade subsequent NGO statements, lies in the fragmentation of participation, with NGOs, civil society and non-decision-making EC officials on the one hand, and remote EC decision-makers behind closed doors on the other: *“SIAs are being conducted at arms length from policy-making, and policy makers are not sufficiently involved in the SIA process”*⁴². Read also, the same year: *“For SIAs to serve their purpose they must be at the heart*

³⁷ Charnovitz (2005) op cit.

³⁸ See for instance Charnovitz S. (2005), “Transparency and Participation in the World Trade Organization”, the George Washington University Law School, Public Law and Legal Theory Paper No 142, forthcoming in the Rutgers Law Review.

³⁹ “Joint NGO Statement on the Sustainability Impact Assessment of EU Trade Policy”, 8 July 2002.

⁴⁰ WWF (2002). “Changing the Balance of Trade”, WWF Briefing on Sustainability Assessment of EU Trade Policy, July 2002.

⁴¹ “Joint NGO Statement on the EU Sustainability Impact Assessment of WTO trade liberalization”, 23 Feb 2000.

⁴² “Joint NGO Statement on Sustainability Impact Assessment of EU Trade Policy”, 8 July 2002.

*of the policy-making process, otherwise they become little more than a bureaucratic exercise in greenwash*⁴³. The same assertion is made in 2006, simply more bluntly: *“Currently, the SIA programme and the trade policy-making process seem completely independent from each other”*.

In addition, what appeared constantly after the 2002 Statement was the limited involvement of the EU’s trading partners throughout the Trade SIA process: *“The exclusion of civil society and governments from non-EU countries makes it particularly difficult to assess the impacts of trade policies at a local level. SIAs are a starting point for an on-going process of consultation to allow informed responses from national and regional stakeholders. Only through an open and well structured consultation process can SIAs hope to bridge the gap between macro policy formulation and micro-level impacts”*.⁴⁴

In the 2005 NGO statement, all the aforementioned objections and arguments are reasserted and reorganized across three lines, or “needs”: *“primarily, the need to ensure that SIAs shape and reorient trade negotiations, and not vice versa; the need to improve the methodology; and finally the need to offer concrete solutions for ensuring high-level commitment of key decision-makers to, and involvement in, the SIA process, as well as its integration within decision-making”*⁴⁵.

4.2. Challenges

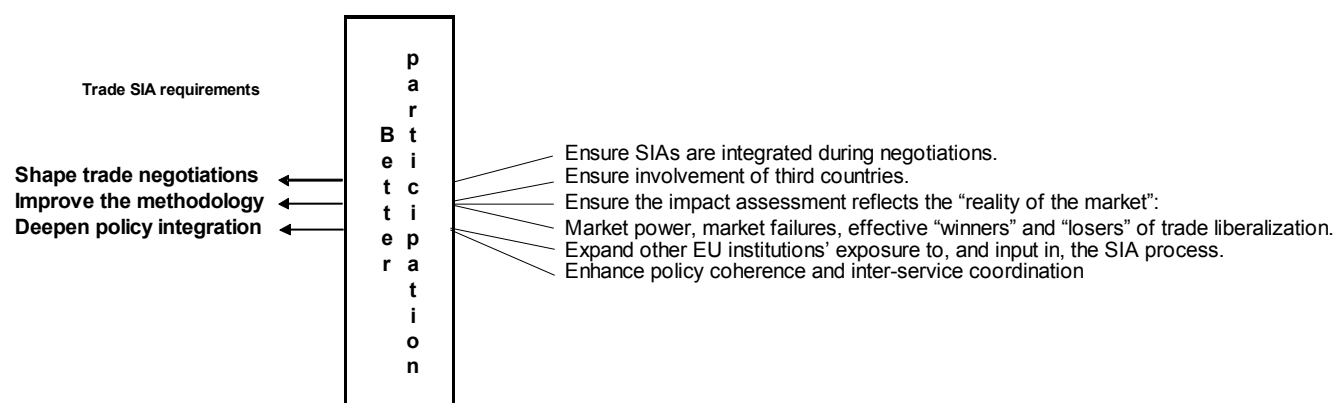
Shaping trade negotiations, improving methodology, particularly by ensuring third country involvement and by taking due consideration of market realities (market failure, winners and losers) and, finally, policy integration through the enhancement of inter-service coordination and the expansion of other EU institutions’ exposure to, and input in, the SIA process, remain three unmet challenges related to participation (figure 3).

⁴³ Id.

⁴⁴ Id.

⁴⁵ “NGO Statement on the Draft Handbook for Sustainability Impact Assessment”, April 2005.

Figure 3: “Better participation” is needed to meet Trade SIA requirements



Source: Taken from NGO Statements 2005 and 2006

5. From market access to collective preferences

5.1. The story so far

Trade SIAs were born the same year as the publication of the Economic Theory of GATT by Bagwell and Staiger. It is puzzling to see that no academic had ever exposed the economics of GATT before. Many papers dealt with the gains and consequences of freer trade, but none had worked within a unified theoretical framework to answer simple questions such as: if gains are expected from unilateral liberalization, why is multilateral liberalization both binding and necessary? What is the rationale for “reciprocity” and “non-discrimination”, which are core principles of GATT and the WTO? Bagwell and Staiger answered by demonstrating that GATT is an indispensable institution enabling large and overprotected countries to escape the prisoner’s dilemma by conceding market access to one another on a reciprocal basis and hence removing strategic tariffs⁴⁶. In their model, two components are put forward to explain a given tariff level. First, a strategic component, whereby a country aims to modify the export/import price ratio so as to minimize import expenses and/or maximize export revenues. A large importing country, for instance, should set a strategic tariff that would depress world prices and reduce the country’s import bill. The other component reflects political preferences concerning protection. The latter does not aim to manipulate world prices. The GATT rationale, according to Bagwell and Staiger, is to exhaust the strategic component of protection through reciprocal tariff cuts. Reciprocal exchange of market access between large countries is at the core of GATT.

“However”, Ederington added two years later, “as tariff barriers have fallen, attention has shifted to the use of domestic policies as secondary trade barriers. A primary concern is that, as countries sign trade agreements that constrain their ability to pursue trade goals through trade policy, there will be unilateral incentives for

⁴⁶ See Bagwell K. and R.W. Staiger (1999), “An Economic Theory of GATT”. *The American Economic Review* 89(1): 215-248.

*governments to distort their domestic policies as a secondary means of protection*⁴⁷. GATT contains several articles concerning the international regulation of domestic policies, but the question of how to fully incorporate domestic policies within GATT negotiations remains contentious. *“Indeed, at both the Ministerial Meeting in 1994 (at the close of the Uruguay Round) and the recent unsuccessful Ministerial Conference in Seattle, many GATT delegates renewed demands for the relationship between trade and various domestic policies (e.g., environmental policies, labor standards, or competition policy) to be examined”*⁴⁸.

What occurred in trade negotiations after Seattle makes the trade negotiation process look like an uneasy walk on two legs, the first one being conventional market access negotiations, particularly for developing countries’ products, the second one the full incorporation of domestic policies – or “behind-the-border” measures – within the trade liberalization agenda. The rationale for enlarging the scope of trade negotiations to behind-the-border measures may be found in the reciprocity principle itself. To work properly with more than 140 countries with heterogeneous protection structures, a logical strategy was to enlarge the bargaining forum that the WTO offered to its members. What a country could not concede on market access might be conceded on domestic policies, for investment or services, for instance, and vice versa. But the failure of the Cancun Ministerial Conference in 2003 shelved negotiations on behind-the-border measures (at least those related to the so-called Singapore issues⁴⁹) and refocused WTO talks on its primarily GATT-inherited objective of securing market access commitments⁵⁰. Back to GATT fundamentals then, and no big deal for Trade SIAs? Not exactly, because trade talks kept hitching and, in July 2006, ultimately led WTO talks that were deadlocked on the protection-free trade axis closer to free trade than they were after Seattle.

A second main difference with Seattle lies in the convergence of the Doha development objective and the growing competition between world trade general equilibrium models since the Doha Round was launched. The development objective required market access to be valuable to development. Simulation models ought to have proved this, and some did. But most did not. Overall simulated gains from trade shrank along with the emergence of new models and scenarios. Losses at the country and household levels clearly appeared as an immediate consequence of Doha’s most recent scenarios, sending out the worrying signal that some of the losing countries and households would be found among the poorest⁵¹.

“In the early years of this decade, as the World Trade Organization’s “Doha Round” of multilateral trade negotiations began to take shape, simulations carried out by the World Bank suggested that the world economy would be as much as \$800 billion richer with an ambitious and successful trade round, and approximately two-thirds of these gains would be appropriated by developing countries. The picture presented by

⁴⁷ Ederington J. (2001), “International Coordination of Trade and Domestic Policies”, *The American Economic Review* 91(5): 1580-1593.

⁴⁸ *Id.*

⁴⁹ Investment, Competition Policy, Transparency in Government Procurement and Trade Facilitation, for which negotiations should be engaged, as agreed upon during the 1996 WTO Singapore Conference.

⁵⁰ See for instance Bagwell K., Mavroidis P.C. and R.W. Staiger (2002), “It’s a Question of Market Access”, *American Journal of International Law* 96(1): 56-76.

⁵¹ See Chabe-Ferret S., Gourdon J., Marouani M.A. and T. Voituriez (2006). “Trade-Induced Inequalities: Assessment Issues and Policy Implications for Developing Countries”. Paper presented at the World Bank ABCDE Annual Conference, Tokyo 29-30 May 2006.

the models today is very different. The global increases in real income predicted from the Doha Round have shrunk, and the gains for developing countries appear now to be vanishingly small – raising doubts about the Round's very reason for being” (Subsidy Watch, Issue 2, July 2006).

A careful reading of the most enthusiastic World Bank simulations was made by Mark Weisbrot in fall 2005. The director of the CEPR corrected some of the misleading untruths contained in a World Bank Press Release published after the World Bank research study, *Agricultural Trade Reform and the Doha Development Agenda*, edited by Anderson and Martin⁵² a few weeks before the Hong Kong Ministerial Conference. The exact content of the study is rather different from what was claimed in the World Bank press release⁵³. Gains for developing countries stemming disproportionately from greater access to developed economies were already questioned by trade economists such as Panagariya in 2004⁵⁴.

The fact that overall estimated gains shrank over time along with the updating of, and competition between, different CGEs, combined with the fact that according to all latest simulations half of the gains from liberalization occur thanks to developing countries' own trade liberalization, would together support the argument that the world trading system is much less indispensable to developing countries and to “development” than claimed. We will not get involved in controversy over this issue. What we would however like to stress, sticking to Bagwell and Staiger's theoretical GATT/WTO model, is that the rationale for a multilateral trading system given by large and overprotected countries caught in a prisoner's dilemma situation may have eroded between 1947, when GATT principles were enacted, and 2006, when the number of member countries had swelled, average tariffs had sharply declined, and consequently the case for large and overprotected countries representing WTO archetypal members had weakened.

We seem to be close to the “breakeven” point that some countries seemed to argue over after Hong Kong, especially the EU, suggesting that going beyond would imply going against domestic political preferences. If the claim is true, such countries would be closer in 2006 than they were in 1999 to the point where efficiency gains (in market terms) brought about by *strategic* trade liberalization might be outweighed by collective losses – what Bagwell and Staiger call the political preferences for protection. Uncertainty about this situation, more than the occurrence of this situation itself, could convincingly explain why negotiations derailed. On what basis should a country actually believe that other countries have exhausted the “strategic” or “aggressive” part of their tariff, so that the remaining protection only mirrors the political preferences of the society?

5.2. Challenges

This question is crucial, for the capacity to answer will determine the future direction of the world trading system, either towards a conservative institution dealing with

⁵² The study was finally issued in 2006. See Anderson K. and W. Martin (eds.) (2006). *Agricultural Trade Reform & The Doha Development Agenda*. The World Bank, Washington DC and Palgrave Macmillan.

⁵³ CEPR Press Release, November 22, 2005. http://www.cepr.net/pressreleases/2005_11_22.htm

⁵⁴ Panagariya A. (2004). “Agricultural Liberalization and the Developing Countries: Debunking the Fallacies”. Mimeo, Columbia University, New York.

market access, and market access only, or towards a flexible one integrating different countries' collective preferences into a common framework. How can we assess whether or not a country has exhausted the "strategic" part of its tariff, so that the remaining protection only mirrors the political preferences of the society? This is the first challenge raised in this respect. It implies isolating collective preference motives for departing from free trade from strategic motives.

The last challenge relates to the widening of the bargaining forum and its extension to services trade and investment in an attempt to overcome the agricultural protectionist bias while making the reciprocity principle still deliver.

6. Conclusion: A summary of challenges

If we streamline and reorganize the challenges listed under "development shift", "better participation" and "collective preferences", the issues at stake in the trade liberalization and sustainable development debate, we end up with a list of seven new, interrelated challenges. Participation opens and closes the list (table 2).

Table 2: A summary of challenges

Challenges
Challenge 1: Policy integration within a SD framework
Challenge 2: Understand country preferences towards trade-related SD issues
Challenge 3: Who gains who loses (household level)
Challenge 4: Who gains who loses (over time, eg dynamic effects)
Challenge 5: Who gains who loses (value chain stages)
Challenge 6: Sector specific issues : services trade
Challenge 7: Sector specific issues : Investment
Challenge 8: "Better" participation

At the core of the new challenges lie distributional issues. Between the too-limiting assumptions of trade SIAs over the variables of political choice scattered throughout economic, environmental and social effects on the one hand, and the political economy approach on the other, wherein all preferences should be conveyed through organised lobbies competing for public support, a bridge has to be built. Bridging these two strands of expertise and literature would lead to integrating more political economy into trade SIAs, meaning focusing more on gainers and losers, and, conversely, opening up our understanding of the political economy of trade negotiations through the integration of non-market impact variables that have been explored by trade SIAs. To help do so, it seems required to explore the possible extension of Trade SIAs to controversial sectors or "issue areas", while correlating them with different governments' motives to engage in trade liberalisation or protection.