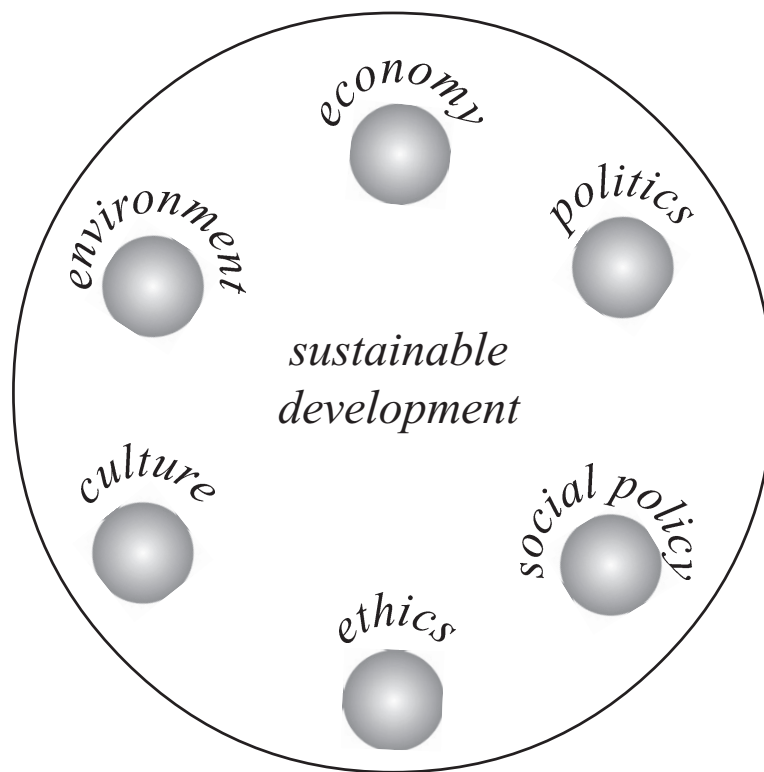


Sustainability Impact Assessment of the Earth Summit @ 10 A Canadian Perspective



CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU
DROIT ET DE LA POLITIQUE
DE L'ENVIRONNEMENT

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Executive Summary

The 2002 World Summit on Sustainable Development is billed as being about the implementation of and governance for sustainable development. At the Summit, country delegations and representatives of major groups will meet to endorse a political declaration and plan of action implementing the commitments made by governments at the Earth Summit in Rio in 1992 and aimed at creating mechanisms to enable the conditions for sustainable development. But a deadlock remains, particularly over finance and trade issues, with the draft plan of action “Means of Implementation” section still full of disputed text.

Despite the many flaws with the draft plan, it is important to note at the outset that it does acknowledge the purpose of these efforts is to: “promote the three components of sustainable development – economic development, social development and environmental protection – as interdependent and mutually reinforcing pillars. Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of and essential requirements for sustainable development”. Our research indicates that sustainability now includes economic, environmental, social policy, political, cultural and ethical considerations.

While still in bracketed text, the plan does allude to the need for Sustainable Impact Assessment of trade agreements but specifies simply that they are to be conducted at national levels. There remains only indirect reference on the need to conduct such reviews for policy coherence at the international institutional level as well. Whether the task is to balance, integrate or simultaneously improve other societal goals, including environmental protection, with finance and trade ambitions is not a critical difference. The important observation is the growing widespread use of sustainability assessment frameworks by which both governments and civil society are beginning to use to monitor major global and regional events.

The purpose of this research paper is to outline the main elements considered necessary for effective and creditable sustainable assessment of trade agreements. SIA is developing into an important exercise for many reasons. SIAs can be a key instrument for identifying where trade liberalization and environment policies can be inherently supportive (so-called ‘win-win’ solutions), where they can be made mutually supportive and how, and where they are not and cannot be mutually supportive.

A properly scoped domestic and a regional/international framework for assessment can provide the public and the relevant institutions with an ability to identify and assess more accurately the transboundary, global and national effects of regional and multilateral trade agreements in a more integrated and coherent manner.

Importantly as well, the assessment can articulate basic principles, highlight sustainability concerns, and establish a minimum standard against which a final negotiated agreement can be measured.

After reviewing both European and North American initiatives from a government, inter-governmental and civil society organization perspective, it can be observed that some of the major elements in a good SIA of current and proposed trade rules are as follows:

- Assess regulatory capacity effects – the loss of political sovereignty
- Avoid a pro-trade bias – consider alternatives
- Ensure Equal treatment for all components of sustainability
- Address scale and causal effects
- Choose a meaningful baseline
- Define significance, rely on prevention and precaution
- Build various scenarios
- Choose robust sustainability indicators
- Avoid after-the-fact mitigation measures
- Make trade compatible with other values
- National flanking measures are not enough
- Retain national capacity to build on international standards
- Be prepared to abandon the trade policy
- Take into account the very long term
- Provide sensitivity analysis for developing countries
- Avoid environmental injustice
- Consider regional and global impacts
- Measure progress and test evidence
- Achieving sustainability is more than just avoiding impacts

Fundamental to any creditable SIA design is to ensure transparency, public participation and enough flexibility to permit iterative examination of new options and governance architecture. The main caution is that sustainability assessment should not just be an exercise in articulating and avoiding negative impacts but rather an effort to achieve by the process and the substance, sustainable communities both at the local and global levels.

As for how to move forward, environmental and other civil society groups might wish to seriously consider a strategy based on a common demand that governments engage in participatory national and global SIA of the WSSD outcomes (and regionally, e.g. on the FTAA). This goal could be based on broadly recognized principles, the public interest and common expectations. Not only might this approach assist with the identification and monitoring of trade and other developments, but more importantly, a commonly agreed-upon approach to assessment might just end the practice of governments and the private sector conducting public consultations with separate groups within civil society, according to the perceived narrow interest. CIELAP would be interested in hosting a Canadian workshop to consider appropriate elements, options and methodologies for conducting common SIAs.

That the urgency of the task is clear can be gleaned from the WSSD draft Plan of Implementation that is sprinkled very liberally with language exhorting the virtues of the WTO Doha Declaration, with negative implications for the integrity of Multilateral Environmental Agreements, and “public-private partnerships” to implement the WSSD programmes, including in the important area of water. Moreover, the U.S. administration has recently obtained fast track authority to negotiate new trade agreements, providing momentum for the Free Trade Area of the

Americas project as well as the “built in” WTO agenda for free trade in agricultural products and services. Attempts by developed countries to shift the governance of international trade and finance away from the UN system towards the Bretton Woods institutions and the WTO, and efforts to transfer the responsibility of achieving sustainable development goals to private corporations through public-private partnerships pose extraordinary challenges to ensure the political capacity of governments in both the south and the north to determine their development paths, both nationally and internationally.

It is important for the UN WSSD outcomes to recall the main principles and public expectations stemming from Rio in 1992 and to move forward with a restructured international architecture to ensure there is no retreat from Rio. It might be necessary, for example, that the UN Environment Programme become a specialized UN agency. If so UNEP could seek an opinion from the International Court of Justice on how to conduct a SIA of free trade in fossil fuels within the context of Kyoto Protocol obligations to address climate change.

With a sound understanding of trade impacts on environmental and social conditions made more clear by common approaches to SIA, it might be possible to measure political and regulatory responses for their ability to integrate and simultaneously reconcile ever growing sustainability concerns. Given the stakes, a fresh approach to the impact assessment of major global undertakings is worth the effort.

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Foreword

SUSTAINABLE DEVELOPMENT AND TRADE AGREEMENTS

If sustainable development is our goal, then we need to understand that trade is not an end in itself but rather an instrument to achieve just and sustainable communities. Global trade agreements should not undermine the ability of each nation, state or local community to meet its citizens' social, environmental, cultural or economic needs. International development should not be export driven but rather should prioritize food security, sustainability and democratic participation.

These are not new or novel thoughts. Yet, as we approach the World Summit on Sustainable Development (WSSD) in the second year of the 21st century, trade seems to be more likely to make the rich richer than to bring about more just and sustainable communities. In 1976, the Group of 77 countries at the 7th Special Session of UNCTAD called for a New International Economic Order of fairer terms of trade. Julius Nyerere of Tanzania gave his well-known illustration of how many bushels of wheat Tanzania needs to sell to buy one tractor. And as we know, as so-called development occurred, Tanzania needed to sell progressively more bushels of wheat to buy the tractor.

The issues remain. How do we harness the power of trade to achieve just and sustainable communities?

One way is to ensure that trade agreements do not trump environmental, labour or human rights agreements. In addition, we need to ensure that it is the United Nations that is the superior body and not a body linked to trade alone, such as the World Trade Organization. It is time to empower the United Nations and its agencies to ensure that in the name of trade the negotiations made on behalf of the world's peoples are not overtaken by negotiations made on behalf of the world's transnational corporations.

We have become accustomed to risk assessments and even to environmental assessments. What we need now is a comprehensive sustainability assessment of trade agreements to ensure that the hard-won treaties and agreements of the past several decades are not superceded by trade-based agreements of the already rich.

So, how would we design a sustainability assessment for trade agreements? Again, many people are doing work in this area. The purpose of this paper is to review the main elements of a credible sustainability assessment of trade agreements for the consideration of both the Canadian government and civil society. The urgency of the task has never been greater.

**Anne Mitchell, Executive Director
Canadian Institute for Environmental Law and Policy**

1. Introduction

The World Summit on Sustainable Development (WSSD) will be taking place in Johannesburg, South Africa, from August 26 to September 4 this year. Country delegations, along with representatives of major interest groups, will meet to endorse a plan of action implementing the commitments made by governments at the Earth Summit in Rio in 1992¹ The WSSD process has not attracted the attention of many development groups and organisations monitoring trade and finance so far, but the drafting and implementing of a global programme for poverty alleviation, nature conservation, environmental sustainability and economic and social development is an urgent task. New tools and strategies around the use of Sustainable Impact Assessment (SIA) hold great promise to move forward on all agendas.

This paper will highlight some of the most important elements of SIA and apply them to an analysis of the Advanced Unedited June 12, 2002 text of the WSSD Draft Plan of Action. We invite the Canadian government and other civil society groups to undertake a common methodology in the design and use of SIA to further its development, both at the global level and regionally in the context of the Free Trade Area of the Americas (FTAA) project. With a sound understanding of trade impacts on environmental and social conditions, it might be possible to measure political and regulatory responses for their ability to integrate and simultaneously reconcile sustainability concerns. Given the stakes, a fresh approach to the impact assessment of major global undertakings is worth the effort.

Indeed, the world's present path of development is not sustainable. Trade-based efforts to meet the needs of a growing population in an interconnected but unequal world are undermining the Earth's essential life-support systems²; yet world trade and foreign investment have expanded dramatically over the past 25 years. Globalization integrates national economies into a single market for goods and services and for capital and investment flows, and has increased, bringing down national market boundaries, as free trade and investment policies have been adopted by most economies throughout the world.

Through globalization, many developing countries have witnessed growing trade deficits and falling annual growth rates. From an environmental perspective, increased trade and investment in natural resource-based sectors is placing unprecedented pressures on the world's ecosystems. Many countries have found that rapidly expanding trade can result in serious environmental degradation³.

The implementation of trade-related policies or free trade agreements can have wide-ranging effects on the economy, the environment and society. Multilateral, bilateral or regional agreements can directly promote or deter trade in environmentally beneficial goods or methods of production. However, this can indirectly reinforce patterns of comparative advantage and lead to increased specialization, which in turn may have the unwelcome consequence of concentrating economic activity in sectors, firms or geographic areas unsupported by adequate management or physical infrastructure or where environmental stress is already acute. Most seriously it reduces local and regional diversity, flexibility and adaptability in a world full of change and surprise.

It is important for the UN WSSD outcomes to recall the main principles and public expectations stemming from Rio in 1992 and to move forward with a restructured international architecture to ensure there is no retreat from Rio. It might be necessary, for example, that the UN Environment Programme become a specialized UN agency. If so UNEP could seek an opinion from the International Court of Justice on how to conduct a SIA of free trade in fossil fuels within the context of Kyoto Protocol obligations to address climate change.⁴

Another important environmental strategy might be for governments and civil society groups to engage in participatory national and global SIA of the WSSD outcomes, including the final Plan of Action.

This goal could be based on broadly recognized principles and a checklist of appropriate elements, options and methodologies for conducting common SIAs. While not an exhaustive treatment, this paper hopes to contribute in that regard.

Sustainability implies limits

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The term came into popular use following the 1987 report of the World Commission on Environment and Development (WCED), *Our Common Future*. The WCED, headed by Gro Harlem Brundtland, was set up as an independent body in 1983 by the United Nations. Its mandate was to re-examine critical environment and development problems on the planet and to formulate realistic proposals to address them, so that human progress would be sustained without bankrupting the resources of future generations.

The concept of sustainable development requires that limits be imposed on the use of environmental resources. These limits are dictated by the present state of technology, the nature of social organization and by the ability of the biosphere to absorb the effects of human activities⁵. Sustainability refers to the ability of an ecosystem to maintain itself in a healthy state, given likely pressures and support in the future. The environment is initially threatened when increasing pressures overwhelm the existing natural regenerative capacity of an ecosystem, and although human intervention can support the environment to some extent, further threats arise with additional pressures that overwhelm these supports. The limits of sustainability are reached when pressures overwhelm supports to the degree that they cause a compounding, irreversible deterioration in the state of the ecosystem, and carry it below the level where it can recover its earlier state and sustain the life that depends upon it. This analysis also incorporates the extent of people's ability to cope with future shocks as a key aspect of sustainability⁶.

A core question of sustainability science is whether “scientifically meaningful “limits” or “boundaries” [can] be defined that would provide effective warning of conditions beyond which the nature-society systems incur a significantly increased risk of serious degradation?”⁷ According to the sustainability program at Harvard University, “[the] challenge of complex outcomes from multiple stresses may be addressed by integrated place-based models that employ semi-qualitative representations of entire classes of dynamical behaviour rather than seeking to predict exact trajectories into the future. Inverse approaches that start from outcomes to be avoided and work backwards to identify relatively safe corridors could eventually circumvent many difficulties in standard environmental assessment and cost-benefit accounting.”⁸ In other words, to develop a sound baseline and formulate guiding principles on sustainability limits, it is useful to identify the multiple and various harms that could be experienced. Consequently it is scientifically valid to begin by identifying what trade agreements ought not to do and work backwards to what a sustainable trade regime might look like.⁹

Sustainable development acknowledges that meeting essential needs requires economic growth, but requires that this be done while ensuring environmental protection and enhancing and promoting social equity. A key tool for achieve this is impact assessment. The practice of conducting environmental assessments of projects as well as policies has grown and has evolved into sustainability assessment. In the Canadian context, ‘strategic assessments’ are conducted in reviewing government policies, such as the negotiation and implementation of trade agreements. En-

vironmental assessment is a systematic and interdisciplinary identification, prediction, evaluation, mitigation and management of impacts from a proposed development and its reasonable alternatives. The results of the assessment are presented to decision makers and stakeholders in a report known as an environmental review or statement, and this is used in the decision-making process on the future of the proposal.

As illustrated below, the environmental assessment (EA) of proposed projects generally, and of strategic trade agreements in particular, has begun to evolve into sustainability assessment and this has significant implications for the Canadian approach. The evidence from other jurisdictions seems to support the argument that the purpose of EAs has changed from identifying significant environmental changes and offering measures to mitigate environmental harm, to requiring that the project/policy bring about net improvements in sustainability, for example, in environmental, social and regulatory capacity and conditions. If such positive contributions to sustainability are seen as the new objective or test in EAs, this clearly implies that the minimization of negative effects is no longer enough of a goal. The implication of a shift to sustainability-based criteria has the essential effect of expanding the central concern from the avoidance of significant adverse effects to the expectation of a positive contribution to society and the planet, however vaguely this is specified. Such assessment requirements should encourage positive steps towards greater community and ecological sustainability and towards a future that is more viable, pleasant and secure¹⁰. This may be a high standard but it would seem to be the logical and appropriate one by which to assess the results of Rio@10, and thus it is important to set out the rationale for this new approach in more detail.

In undertaking this research, a literature review was conducted of publicly available government documents, civil society publications and scientific, ecological, economic and legal journals, together with news reports and other materials. Whenever possible additional references are provided to assist with further background information and fruitful avenues for future research in developing environmental strategies, that ensure the public interest.

While the scope of this enquiry into SIA is chiefly for application in a Canadian context, much of the underlying approach is also relevant to a global sustainability assessment of WSSD 2002 outcomes and regional FTAA negotiations. CIELAP welcomes the opportunity to work with other groups to further elaborate and apply an appropriately Canadian SIA framework to these two major developments, especially now that the U.S. administration has obtained fast-track trade authority.

2. What is SIA, and what are its strengths and weaknesses?

After the Rio conference in 1992, the second session report of the UN Commission on Sustainable Development urged “the importance of developing a framework to facilitate the assessment of the environmental impacts of trade policies, taking into account the special needs and conditions of developing countries”. It also stated that “any such assessment should be carried out within the overall perspective of promoting sustainable development”¹¹.

In response, a narrowly construed 1994 methodology for environmental assessment of trade agreements was offered by the Organization for Economic Cooperation and Development (OECD) that became an important, while primitive, benchmark in the emergence of modern SIA¹².

The OECD recognized that trade agreements may have a positive effect on environmental policies by enhancing environmental cooperation and by raising environmental protection standards. However, countries may be reluctant to adopt more stringent environmental policies because of competitiveness concerns. In general, positive regulatory effects were said to be assured from trade liberalization *if* the ability of governments to pursue appropriate and effective environmental policies is not undermined.

Further, the OECD recommended four main sequences or stages for linking trade liberalization in a specific sector and the environmental implications: economic impacts (described above as scale, structural and/or product effects); social effects; environmental effects (including cumulative effects over the long term); and regulatory/policy effects.

In analyzing the environmental effects, the OECD further defined four main types of physical environmental effects that an environmental review could focus on. These are pollution

effects, health effects including nutritional effects, safety effects, and effects on natural resources (such as the impact of trade on biodiversity); these effects can vary in their geographical reach, in scope (national, transboundary or global) and in time.

Assessing regulatory capacity effects – loss of political sovereignty

The OECD describes regulatory effects as a stage of assessment associated with the legal and policy effects of a trade agreement. They refer to changes in social, environment and health legislation and their enforcement, as well as issues relating to the management of common goods and resources, environmental expenditures and waste disposal. In some respects, these should be considered as a separate category of effects, because they do not directly depend on the economic effects of trade liberalization but more on its political and legal impacts¹³. The observation of pollution havens is an example of a regulatory effect of trade agreements.

Cause and effect?

Importantly, the OECD commented on the causal connection between trade agreements and environmental effects. A pervasive difficulty in the conduct of impact assessment is distinguishing between the overall effects of economic

OECD's four main categories of questions on environmental effects of trade:

- ❖ Scale effects – What is the impact of trade liberalization on the level of economic activity (growth) and subsequently on the level of resources devoted to the environment?
- ❖ Structural effects – What is the impact of trade liberalization on the pattern of economic activity, since trade may cause the relocation of polluting industries in countries either with low environmental standards or lax enforcement of their standards, i.e. “industrial flight to pollution havens”?
- ❖ Product effects – What is the impact of trade liberalization on the level of trade flows of environmentally sound or harmful products and technologies?
- ❖ Regulatory effects – What is the impact of trade liberalization on environmental policies and standards since trade agreements have important legal implications for the use of different environmental policies and instruments in setting rules for permissible trade restrictions on imports and exports?

activity and the specific effects of trade liberalization; the latter consisting of a complex process of deregulation, privatization and favourable foreign investment conditions combined with the limited availability of environmental data. The OECD observed that the “generalization of the dynamic linkages between trade liberalization and the environment [is] difficult to do and of questionable value [and] any environmental assessment has to be conducted on a sector-by-sector basis and subsequently aggregated”.

The United Nations Environment Programme agrees that the results of SIA will not have the ability to demonstrate conclusively that an impact is due to a trade initiative alone, but

the balance of probability could be determined, one way or the other, to the satisfaction of the policy community¹⁴.

The OECD also provided a “menu” of possible policy responses generated from assessments. In general, the OECD points to three levels of policy response:

- modification of some aspects of the trade measure or agreement;
- safeguards within a trade agreement;
- the implementation of complementary economic, environmental and social policies (“flanking measures”).

While the OECD’s work was helpful at the time, an early application of it in an environmental review of the failed OECD Multilateral Agreement on Investment (MAI) was critiqued by World Wildlife Fund (WWF) International as being partial in scope, limited in assessing impacts of crucial environmentally sensitive sectors, narrowly focused on direct pollution from industrial processes, and suggestive of simplistic relationships between higher income levels and tighter environmental controls¹⁵.

Civil society models of SIA emerge

In any event, the WWF applied a modified SIA framework to the effects of trade liberalization in the yellow corn sector of the Philippines. Under the agricultural agreement of the 1994 WTO Uruguay Round, quota restrictions in the yellow corn sector were replaced by a sliding scale of tariffs, and OECD projections estimated that the wholesale price of imported corn would be available at prices 39% lower than existing domestic wholesale price. In their assessment, the WWF found that when domestic production competes with imported yellow corn and prices fall there would be a loss of income for local farmers and food insecurity is aggravated. In response, farmers could resort to more intensive farming practices, provided that they have relatively easy access to fertilizers, and this would lead to land degradation. Alternatively, farmers could switch to crops that require less water and are less erosive than corn, or go out of business. Such scenarios would increase rural poverty and social dislocation and precipitate further economic problems. Without specifying it, the WWF identified an environmental justice impact related to trade as well; while the OECD modelling found that free trade in agricultural products may help the developing world on a macro level, the WWF suggests that it may not help small farmers and poor households at the micro and mesa levels.

The overall conclusion of the WWF was that free trade may spark strong export demand or significantly increase

import flows in situations where there is insufficient policy, regulatory or technological infrastructure to deal with the associated environmental and social impacts of new export and import flows. In this regard, the increased inflow of cheap food imports in certain developing countries such as the Philippines, Argentina, Mexico and Yemen, has resulted in the further marginalisation and migration to urban centres of small farmers who can no longer maintain their activities. Canadian farmers have experienced similar fates.¹⁶

Importantly the WWF exercise proved that an SIA is a key instrument for identifying where trade liberalization and environment policies are mutually supportive (so-called ‘win-win’ solutions), determining if and how they can be made mutually supportive if they are not, and recognizing policies that are not and cannot be made mutually supportive¹⁷.

The North American Commission for Environmental Cooperation’s (CEC) methodology offers a way to link the processes of production, management and technology, physical infrastructure, social organization and government policy. This effort is limited, however, by a consideration only of environmental issues as opposed to sustainability.¹⁸

Taking SIA to the European stage

Following the developments at these international institutions, regional organizations and civil society groups, a major European governmental initiative emerged to assess trade-related policies and impacts. In 1999 the European Commission commissioned the University of Manchester to conduct a Sustainability Impact Assessment of the WTO’s proposed Millennium Round. Recall that this Round was the one abruptly aborted at Seattle because of the opposition of developing countries to the process and content of the intended negotiations, and because of wide civil society protests against globalization. In the lead-up to Seattle, it was considered important for the European Commission and EU member states to develop a common methodology for SIAs, as they were thought to be essential for improving transparency and accountability in EU trade policy-making.

The Manchester study aimed to develop a methodology for carrying out SIAs and to use this methodology to make a broad assessment of the potential impacts (positive and negative) of the proposed New Round on sustainability¹⁹. In addition, the Phase II portion of the study contained a preliminary and illustrative list of mitigatory and enhancing measures that might be adopted in order to diminish

potential negative impacts and enhance positive ones. The study established a qualitative assessment framework to identify priority environmental problems, assess the significance or share of sector responsibility in these priority problems, cross-check these problems with those attributable to trade policy, and identify the existence of environmental policies to attack the problems²⁰.

The framework developed was forward-looking and based on the assumption that a comprehensive new round of WTO negotiations would be launched in Seattle. The study was commended for taking up the difficult task of undertaking an *ex-ante* (before the fact) assessment of a proposed new round of multilateral trade negotiations. It began at a very early stage in the process and prior to the decision to launch a new round. As such it was designed with the possibility of helping the EU shape the negotiating agenda. Further, such a move was expected to implicitly encourage outside parties to do similar assessments, thereby incorporating sustainability concerns directly into the negotiation process.

While major European civil society groups, including the WWF, commended the study for its timing and its attempt to be comprehensive in including and considering the long term economic, environmental and social impacts flowing from trade liberalization, generally speaking the main elements of the framework were considered to be disappointing²¹.

Avoid a pro-trade bias – consider alternatives

Alarming, the framework was built on the assumption that growth will be promoted by multilateral trade liberalization and that this is desirable²². As such, “a pro-liberalization bias was built into the analysis from the start, limiting consideration of alternative scenarios such as no-further trade liberalization or trade in a different form”²³. Thus, the study ignored the fact that there are limits to sustainability, in some cases effects are irreversible, and in some instances policy intervention is urgent. There was a further implicit assumption that an indefinite future is available in which impacts can be identified and remedial action can be taken.

Even in the treatment of proposed mitigation and enhancement steps (so-called “flanking measures”), there was no allowance for integrated policy options, or an allowance for policy options that suggest less trade liberalization, or different trade liberalization.

Equal treatment for all components of sustainability

According to this critique, the conception of a relatively resilient global environment and society in which trade liberalization is largely free to negatively impact leads to the neglect of a key component of sustainability. That is, the proposed SIA did not accord equal weight to the values of trade liberalization, environmental protection and social well being, or integrate the three areas by emphasizing measures “that provide joint gains and avoid joint losses”. There was also limited attention paid to the range of environmental and social agreements and institutions outside the trade sphere, and no evaluation of how they might be integrated into the analysis in a more balanced way.

Address scale and causal effects

Indeed, the OECD and the Manchester study offered no rigorous process for the consideration of impacts related to the scale of development induced by trade-related growth and did not link the impacts of trade-induced change to indicators of sustainability. Reforms that promote trade will often raise the overall level of economic activity – the “scale effect” – and this translates into a higher rate of use of natural and environmental resources. In their studies, there was no systematic recognition or treatment of the impact population and trade-generated growth can have on the scale effect of increased consumption, and the accompanying, potentially important, drain on renewable and non-renewable natural resources, or any discussion of how this can have environmental, social and economic effects.²⁴

Despite the admitted difficulty in disaggregating causal effects, it is still problematic that non-WTO drivers of trade liberalization, influenced by global financial issues such as exchange rates, portfolio and direct investment flows, were not considered. The study was also weak in its ability to identify trade-induced effects in a broader economic context and thereby further trace causality or correlation with regard to any of the identified impacts.

Choose a meaningful baseline

Another weakness in the proposed SIA was the failure of the study to offer a set of baseline data, either for 1994 when the prior WTO Uruguay Round took formal effect or for 1999 when the study was undertaken to identify the current state of the global environment and social well-being. Such a baseline would provide a foundation against which change, including change that could soon surpass critical sustainability thresholds, could be assessed. The

necessity of establishing credible baselines for a successful SIA is taken up below.

Define significance, rely on prevention and precaution

As well, there were ambiguities surrounding the concept of “significant” impacts in the SIA. What is of little significance for some groups within countries may be highly significant for others, and, further, the criteria that define “significant” do not include “irreversibility”. From a precautionary and preventative perspective, a rapid rate of change may be important even if the level is low²⁵. Again, it is difficult to know what changes are significant unless one first knows the existing state of the environment or social norms and sustainability thresholds.

Leading Canadian academics and practitioners have explored the question of significance. It has been observed that usually the significance of undertakings and their effects in environmental assessments has been too narrowly focussed on the avoidance or mitigation of unacceptable biophysical effects. Consequently, the relevant deliberations have concentrated on how to determine which predicted adverse effects are truly significant, and on what mitigation measures may be sufficient to reduce the effects below the significance threshold. Lessons from such applications are helpful. But when an environmental assessment further addresses positive contributions to sustainability, the significance issues become quite different.²⁶ The evolution of the environmental assessment of trade agreements into a sustainability assessment thus requires modifying the view of significance.

Build various scenarios

Importantly, the Manchester study focused on various trade-outcome scenarios. As such, the technique captured the uncertainty inherent in negotiations that had not yet begun, let alone been completed. As reviewed below, this aspect of the EU design is superior to the current United States approach to environmental assessment of trade agreements, in which it is assumed that the U.S. position prevails in all of the negotiations (see below). But given their relatively unsystematic grading and the “full trade liberalization” scenario that was somewhat disembodied in the Manchester study’s context, a “modest trade liberalization” scenario with specified flanking measures was concluded to be sustainable and accordingly favoured. However, when the underlying assumptions and lack of rigour are taken into account, it became apparent that the methodology and its findings would still be viewed in some cir-

cles as an attempt to secure support for a particular position, rather than provide a more neutral method which all parties and stakeholders could trust, develop and apply²⁷.

Choose robust sustainability indicators

There is a wide range of indicators available to study sustainability impacts. Indicators can provide useful early identification of trends and suggest causal relationships, and their use can reduce the amount of information that needs to be collected to monitor a situation and may also provide a simplified way of presenting results.

The Manchester study chose to focus on various indicators for each of the three key areas of sustainable development (economic impacts, environmental impacts and social impacts). It was unclear, however, what rationale was used to choose the group of indicators, or how the selected indicators were determinants for the significance of potential impacts. Critiques of the study noted in particular that there was little reference to gender, poverty, and children, despite their importance to the issue of inter-generational equity. As well, other indicators identified in the preliminary assessment of the trade measures were ignored in the final methodology²⁸.

Avoid after-the-fact mitigation measures

In the Phase II Report, the Manchester study included overall principles to guide the use of policy measures in mitigating the negative impacts of free trade. These principles included sustainable development, regulatory harmonization, development interests and policy coordination and coherence.²⁹ But the guiding principles and the selection criteria associated with the mitigatory and enhancing measures also tended to suggest a pro-liberalisation bias built into the analysis.

Make trade compatible with other values

For example, the requirement for a policy measure to be “WTO compatible” was not paralleled by a similar consideration of multilateral environmental agreements (MEAs), social conventions, or International Human Rights agreements. Such a principle ignores the fact that MEAs, for example, are the result of lengthy negotiations among countries, and that their status is equal to any WTO agreement. The critics further observed:

“The analysis thereby accepted implicitly the existing multilateral trade regime as the legitimate and adequate standard with which all mitigating policy options must be

compatible. In this way, it omits at the outset, consideration of policy options that might either slow the pace of liberalization, amend the terms of the liberalization against the existing trade regime to incorporate sustainable development concerns, or indeed a no-trade option in certain circumstances. A similar bias appears in the “Guiding Principles” where references to sustainable development and policy coherence are related back to their specific inclusion in the Uruguay Round Agreements, as opposed to their place as legitimate avenues for broader incorporation *in their own right*.” (emphasis added)

National flanking measures are not enough

Except for proposals to engage in capacity building at the regional and international levels, there was little consideration in the SIA study of international or integrated processes. The design of international and integrated processes is one of the key benefits of conducting an ex-ante analysis, and cannot be accomplished with after-the-fact flanking processes at the national level.

Retain national capacity to build on international standards

On the issue of regulatory capacity and impacts the principles suggested for policy measures spoke to the advantage of “as much coherence and harmonization as possible” as a means of facilitating trade, without specifying the need for upward harmonization, stronger national standards, or the advantages of diversity in standards among countries as a means for protecting and enhancing both the environment and social structures at the national level.

Given the fundamental difficulties underlying the principles suggested to guide government policy measures to mitigate negative trade effects, the need to consider sustainable trade policies at the beginning of a contemplated negotiation becomes critical, as opposed to weak and after-the-fact flanking measures. Indeed, for sustainable development to be a viable theory it is necessary to build in all relevant policies to produce integrated decision-making and solutions.

Be prepared to abandon the trade policy

Rather than rely upon limited national flanking measures, it should be possible to design sustainable trade policies in the first place. UNEP has considered a wider range of policy responses available to policy makers-at the national, regional, and international levels, to complement the purposes of an SIA and to promote related economic, environ-

mental and social goals. The importance in this task is in achieving regulatory consistency such that trade policy is consistent with domestic and international legal regimes. For example, a dispute resolution process could allow for a significant environmental or social input and create exceptions designed to promote sustainability by protecting environmental and social priorities. In an extreme case, the results of an SIA might suggest that environmental and social issues cannot effectively be considered within the negotiating framework. Then, in theory, it might be necessary to seek an agreement to abandon the proposed trade policy altogether and revisit it once appropriate consideration has been given to its impact on sustainability.³⁰

Another recommended policy response includes voluntary measures aimed at eco-labels and energy efficiency standards. While the WTO principle of “like products” may not recognize the environmental implication of different non-product related process and production methods (PPMs), eco-labelling informs consumers of an industry’s voluntary initiatives and processes that go beyond existing environmental laws and regulations. It will raise consumer awareness to create niche markets for environmentally friendly products and add premiums in the competitive market when accompanied by an effective marketing strategy.

Take into account the very long term

Despite the need for improvement, the Manchester study and consequent European approach did take into account the fact that sustainable development is something that must be considered over the long term. As such, it incorporated concerns for inter-generational equity by considering how impacts can vary over time, and includes those in the very long term.

Sensitivity analysis for developing countries

The EU framework also attempted to deal with the distributional effects of trade liberalization. In other words, it recognized that the benefits of economic development are often not shared equitably.³¹ The study considered impacts for three groups of countries: (i) developing countries and least developed countries, (ii) the European Union, and (iii) the world as a whole. Unlike the current Canadian *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, where the impacts of trade agreements are limited to domestic concerns³², the approach adopted by the Europeans recognises the importance of identifying differences between trade impacts in developing and developed countries, and to take into account those important variations in levels of development.

Avoid environmental injustice

Given the impact on local farmers and biodiversity when free trade surges of cheap agricultural imports flood a local economy, it is fundamental that SIA consider environmental justice. While proponents and other decision makers may wish to use net gain and no net loss calculations in assessing whether a positive contribution to overall sustainability is likely, this should not be done at the expense of local sustainability. Consider the major damages to the interests of First Nations displaced by a new dam that cannot be easily balanced against more material security for larger numbers of poor farmers downstream or in order for others to avoid greenhouse gas emissions from the use of fossil fuels. The question is whether or not the benefits and costs of an impact are evenly distributed, that is who the major beneficiaries are and who bears the largest burdens of impact.

Over a relatively short period of time, the concept of SIA has grown from narrow considerations of environmental impact assessment to something more embracing, more refined. That its appeal is significant can best be evidenced by how often wider sustainability assessment is referred to in new inter-governmental agreements³³, including the draft WSSD Implementation Plan reviewed below. World Wildlife Fund and the Centre for Environmental Law also continue to apply their approach to SIA. Their most recent contribution is in the area of assessing current *General Agreement on Trade in Services* (GATS) negotiations for free trade in services at the WTO.³⁴ While the U.S. and Canadian approaches have so far been confined to EA of trade agreements, important lessons can also be taken from that experience for application within a North American context.

The U.S. approach

Again just prior to the Seattle WTO ministerial, the United States, like the Europeans, responded to the perceived need to conduct environmental impact assessment of trade agreements. This took the form of the 1999 Executive Order number 13141 (EO), issued by former President Clinton³⁵. The mandate commits the government to conduct narrow environmental reviews of trade agreements and provide policy-makers with the general guidelines from which to proceed, that U.S. NGOs have supplemented with important due process guarantees. The environmental review is conducted under this regime by both the U.S. Trade Representative (USTR) and the inter-agency Council on Environmental Quality, with the advice

of various stakeholder working groups and opportunity for public comments at each stage. The EO is meant “to fully integrate environmental considerations into the development of U.S. positions in trade negotiations”.

The environmental stage of the assessment is performed at two levels. First, the sectoral analysis examines the environmental effects of the economic changes that were estimated in the economic stage of the review. Second, a regulatory assessment seeks to identify text in the proposed agreement that could potentially affect the ability of the country to enact, maintain, or enforce its regulations pertaining to the environment.

In the USTR’s draft environmental review of the proposed U.S.-Chile FTA, for instance, it was determined that the U.S.-Chile FTA would lead to small changes in the production in hazardous wastes. It was then determined that the U.S. *Resource, Conservation, and Recovery Act* had the capacity to address those small changes³⁶.

Achieving sustainability is more than just avoiding impacts

As U.S. environmental groups have emphasised, however, at each stage due process must be assured. That process begins with the requirement that existing baseline conditions be examined before proceeding; what are the environmental effects of or conditions associated with current trade policies and market behaviours?³⁷ The demand is that reviews should not “be limited to identifying and mitigating impacts of the agreement itself, but should examine how trade agreements can help address existing policy and market failures that harm the environment”. Such an analysis entails an articulation of the present points of departure between trade rules and environmental protection and conservation.

It has also been noted that it will be very useful for the future to begin to develop an environmental and regulatory baseline for the United States as this analysis can serve as a control, representing what would have happened without a trade policy change.³⁸

Measure progress and test evidence

Importantly U.S. environmental groups also seek effective legal mechanisms so that the results of the review will be incorporated into negotiating positions. One option is to require USTR to adopt the most environmentally beneficial policy approaches, as determined by the review proc-

ess, unless it provided a written explanation of the decision not to pursue such policies. Requiring the government to explain its reasoning in accepting or rejecting the public comments received, together with the evidence upon which the government's rationale relies, provides yet another baseline. It measures how other views and other societal goals are being taken into account.

Consider regional and global impacts

In addition to the difficulty of evaluating a “moving target” as trade negotiations progress taken up below, many impacts may be missed because they are excluded from the scope of assessment itself. Unlike the European framework, both the U.S. and Canadian approaches to environmental assessment of trade agreements intentionally exclude analyses of impacts outside the country. This prevents the compiling and examination of evidence about the “pollution haven” effect; i.e. that polluting activities are relocating to countries that have less strict regulation.³⁹ Since the argument for trade agreements is usually that they benefit all parties together, it seems appropriate to analyze their environmental impacts on all participating countries. Recall that the European approach does consider impacts on other regions and developing countries in particular.

UNEP's *Reference Manual for the Integrated Assessment of Trade-Related Policies* addresses this point: “A consideration in choosing the scope of the analysis is the extent of environmental externalities. Where the impacts are localized, then a national model may be sufficient, but where there are significant cross-country effects, a regional analysis may be more appropriate.”⁴⁰ The OECD also recognizes the need for trade agreements to take into account trans-boundary and global environmental externalities.

Four main reasons are often given to consider the potential environmental impacts on proposed trading partners⁴¹ First, because free trade can change the composition of production between trading partners, estimations of “cleaner” outcomes in one country could indeed be a direct result of “dirtier” outcomes in another country. Second, a trade agreement may cause trans-boundary environmental effects that could spill over into regional territories and therefore increase environmental problems domestically. Third, a trade agreement could alter the impact of trading partners on global environmental problems such as global warming, biodiversity loss, and so forth. Fourth, identifying more localized effects in partner countries can help pinpoint where appropriate policy responses might be

targeted to alleviate the negative costs of free trade in those countries. While the U.S. approach is limited to domestic environmental considerations, an important practice is emerging to ensure due process and government accountability for the purpose of a rational discussion.

It will be interesting to see if U.S. environmental groups begin to conduct common EAs/SIAs of trade developments, and begin to measure indicators of sustainability against agreed baselines, as is the emerging practice in Europe. The urgency of the task is apparent now that the U.S. administration has successfully obtained fast-track authority to negotiate trade agreements.

Canadian approaches

The government of Canada issued the 1999 *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*.⁴² Unlike the U.S. model, in Canada the Department of Foreign Affairs and International Trade (DFAIT) is the sole leader, despite its limited competence in environmental or public health matters. This flaw raises fundamental questions about transparency, fairness and credibility. As in most environmental reviews, the “scoping out” of the main environmental issues includes three principal components:

- evaluation of the likely outcome of trade negotiations;
- identification of potential resulting environmental impacts; and
- selection and prioritization of identified environmental impacts for review.

As in the case of the U.S., the directive limits the scope of assessment to the environmental impacts for Canada, thereby inhibiting the gathering of evidence on issues such as the pollution haven effect, for example.

But a shift in practice to sustainability-based criteria has been observed under the *Canadian Environmental Assessment Act* (CEAA), which applies to domestic project and program approvals. In the Voisey's Bay Mine and Mill case (a joint panel) and the Red Hill Valley Expressway (exclusively CEAA panel) case, panel guidelines for environmental impact statements required the proponents involved to provide evidence that their undertakings would make a positive contribution to sustainability and respect the precautionary principle. As well the Quebec Ministry of Environment has issued generic sectoral impact study guidelines (directives) for different types of projects, and all have a common section on sustainable development (*development durable*).⁴³

As with the European and U.S. methodology, how cross-sectoral effects and different levels of assessment (local, national, regional/international) can be synthesized and related to each other in an integrated, comprehensive and comprehensible matrix remains to be developed within a Canadian context.

While both the Canadian and U.S. approach to EA of trade agreements is limited to environmental considerations, an important practice is emerging to ensure due process, government accountability and sustainability considerations. The sustainability literature and adjacent work, however, have much more to say about the factors to address sustainability, than about how to aggregate, evaluate and compare findings. Beyond a few specific topics, and despite the developments in sustainability assessment of trade to date, there has been little discussion of possibly acceptable trade-offs between positive contributions in some areas and negative effects in others. To assist with this gap, there are increasingly creditable approaches to the valuation of environmental and social goals, taken up below.

To summarize the lessons learned from European and North American experience in trade impact assessment, it can be observed that some of the major elements in a good SIA of current and proposed trade rules are as follows:

- Assess regulatory capacity effects – the loss of political sovereignty
- Avoid a pro-trade bias – consider alternatives
- Ensure Equal treatment for all components of sustainability
- Address scale and causal effects
- Choose a meaningful baseline
- Define significance, rely on prevention and precaution
- Build various scenarios
- Choose robust sustainability indicators
- Avoid after-the-fact mitigation measures
- Make trade compatible with other values
- National flanking measures are not enough

- Retain national capacity to build on international standards
- Be prepared to abandon the trade policy
- Take into account the very long term
- Provider sensitivity analysis for developing countries
- Avoid environmental injustice
- Consider regional and global impacts
- Measure progress and test evidence
- Achieving sustainability is more than just avoiding impacts

Fundamental to any SIA design must also be to ensure transparency, public participation and enough flexibility to permit iterative examination of new trade rule options and governance architecture. Key issues in sustainability assessments are likely to centre *on the valuation of cost and benefits*, compromises and trade-offs that are undesirable in theory, but often unavoidable in practice. A major and largely new role for significance judgments in sustainability assessments will be in the evaluation of such compromises and trade-offs. But the main focus is to ensure that sustainability assessment is not just an exercise in articulating and avoiding negative impacts but achieves by the process and the substance sustainable communities both at the local and global levels.

Canadian civil society demands

From June 5-9, 2002, people from across Canada and around the world gathered at Queen's University in Kingston, Ontario for the People and the Planet Conference. At the conference, participants examined progress since the first U.N. Conference on the Human Environment in 1972 (Stockholm) and the U.N. Conference on Environment and Development in 1992 (the Rio "Earth Summit"), and formulated recommendations to governments and society. These recommendations appear in the Kingston Declaration.⁴⁴ Importantly, the civil society organizations see the environmental crisis as a symptom of a democracy deficit and called upon Canadian government leadership to embrace the Earth Charter as a workable framework for a new set of values to govern human relations to each other and to the biosphere.

3. How is SIA applied to trade agreements?

In this section a review is provided on how SIA is applied to three of the main components of sustainable development: economics, social policy and environmental protection. In addition to the difficulty in considering cross-sectoral effects and different levels of assessment in an integrated matrix, there remains the problem of assigning values to identified sustainability effects.

Economic aspects

Many governments support a broad agenda in free trade negotiations in the belief that the economic and development benefits outweigh the risks both to the environment and to social stability. But many groups and citizens challenge this view and wonder if new agreements do in fact contribute to poverty reduction, particularly in the poorest countries.⁴⁵ Conducting an economic analysis of the alleged benefits of free trade can be a daunting task at best. Especially within an SIA framework, requiring proponents to make the economic case for free trade presumably should be of first order importance.

Economic forecasting is difficult at best

When the U.S. was considering whether to enter into the *North American Free Trade Agreement* (NAFTA), exports from the U.S. to Mexico were forecasted to increase by \$4.2 billion per year, while imports from Mexico were expected to grow at only \$3.5 billion per year⁴⁶. However, an *ex post* assessment showed that these forecasts were gross underestimates, and, moreover, wrong about the balance of trade. In fact, U.S. exports to Mexico grew by an average of \$8.3 billion per year, while imports from Mexico grew by \$13.5 billion per year. The result was that the U.S. trade deficit with Mexico almost quadrupled, jumping from \$16.6 billion in 1993 to \$62.8 billion in 2000. Although NAFTA was not solely responsible for these changes, the results dramatize the extent to which general economic models can provide misleading forecasts.

In addition to difficulties with accurate forecasting, there is also the “moving target” problem when trying to assess ongoing trade negotiations. As a result, any economic assessment is in constant danger of being rendered irrelevant should the direction of negotiations or economic conditions change. This was an issue for early NAFTA modellers because in the late 1980s and early 1990s the

Mexican economy was changing so rapidly that models calibrated to any fixed base year soon became inaccurate⁴⁷.

Economic and environmental impacts are not constant

Typically at the national level governments will identify the economic effects of the major proposed measures in the trade agreement; concentrate on one or two economic sectors which are (1) of importance for the country’s overall economic development, (2) where trade liberalization is likely to have significant implications in terms of economic growth and reallocation of resources, and (3) resource/pollution intensive.

Although it has been argued that environmental effects usually flow from a range of economic effects, the impacts of free trade on the environment do not necessarily follow a pattern or happen in a fixed sequence. Rather, trade may have direct effects on the environment, which in turn leads to further social and economic changes. In other circumstances, trade will have an effect on the environment via its impact on the scale of economic activity, production and consumption patterns or existing regulations. Indeed, much less attention has been paid to the possible marginal environmental cost of agreements. Too often environmental assessments claim that since changes in economic activity will be small, the resulting environmental changes will be insignificant⁴⁸.

This problem is endemic; establishing clear linkages between economic trade related changes and the resulting direct and indirect environmental effects is complicated by the mismatch of the optimal scale for studying the two subjects. In a review of economic and environmental model methodologies for the OECD, Dale Ervin observes:

“Economic analyses conducted at the local/watershed level may omit important forces that are determined in the larger market context; for example, product and input price changes that alter land rents, or shifts in output mix that alter processing patterns. In contrast, environmental analyses have more integrity if they are conducted in disaggregated fashion, usually for the watershed or ecosystem that shares common environmental processes.”⁴⁹

In other words, he argues that economic analyses are best performed at a level that is too aggregated to capture many important environmental impacts.

The difficulties that have been observed in linking economic and environmental models highlighted do not mean that this exercise is invalid. Rather, they show that this is

an evolving science and that there are limits inherent in the nature of the models that have created formidable methodological obstacles to overcome. Nevertheless, progress has been made in recent years. It has been observed that one activity that would help promote this recent progress would be to conduct more *ex post* assessments of the environmental effects of earlier trade agreements, and compare the outcomes to the *ex ante* environmental reviews in order to determine which models worked well, and for which sectors and environmental issues⁵⁰. All of this effort at more accurate EA will assist in SIA development.

Social policy – the poverty-environment linkage

Sustainability implies limits not only in natural resource use but also in the extent of people’s ability to cope with drastic change and future shocks. An early 1998 WWF International paper specifically recognized that environmental reviews of trade agreements necessarily involve an assessment of social effects. By changing production and consumption patterns and inducing growth, free trade affects not only the economy but also society and politics. In order to understand the full range of environmental impacts and to ensure that the agreements support sustainable development, economic and socio-political factors have to be accounted for⁵¹. Social effects can be assessed via a number of socio-economic indicators, which for example include employment, income level and income distribution, migratory patterns and rate of urbanization⁵². Social effects, like environmental effects, are usually more indirect than the economic impacts of free trade.

The WWF paper illustrated the need to analyze together the broad developmental, social and environmental impacts of trade, and examine their inter-linkages. Reference was made to the Oxfam-WWF study on trade liberalization in the corn sector in the Philippines, where it was found that there were significant social effects resulting from a fall in corn prices, and the subsequent loss of income. The effects included worsening poverty, food insecurity, diminished access to health care (and thus higher infant mortality), and an inability to meet the costs of primary education and, as a result, increased child labour⁵³. The deterioration of social indicators because of rapid trade liberalization and, furthermore, deregulation had serious environmental implications through the poverty-environment linkage.

Specify time frames for labour adjustment

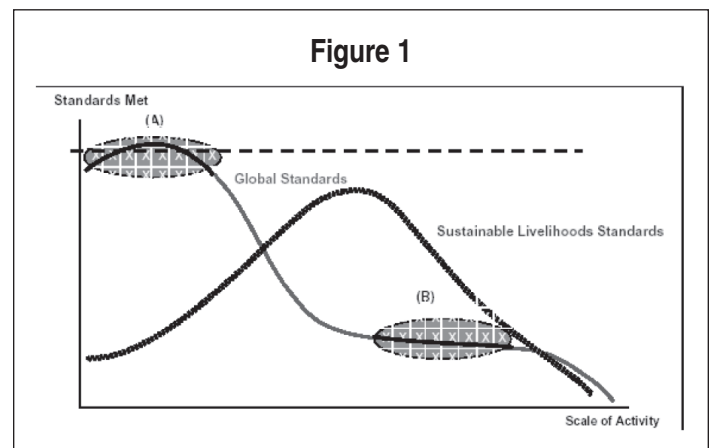
Despite the economic theory that labour will adjust to new industries following free trade, (in practice) evidence is required about the process of adjustment following the

introduction of a new policy. If labour, for example, is eventually going to end up in new industries (in a new “general equilibrium”), knowing whether it takes 10 weeks, 10 months, or 10 years for workers to change occupations following a shift in economic structure makes a great deal of difference. Lacking the ability to model the pace of change in labour markets or elsewhere, comparative static analyses might prove to be most useful for examining short-term issues⁵⁴.

Consider a sustainable livelihood approach

A promising assessment exercise based on the sustainable livelihoods (SL) approach would take a community or a local area as the subject of analysis, and inquire about the impact of the change on the overall assets of the community⁵⁵. The key concept here is the impact on the strategies for coping and adaptation. While such an approach is focused on a restricted area, it can provide an indication of a larger pattern.

An example of the different results that can be produced through the SL approach is provided in Figure 1. This figure plots the dispersion of firms, for example forestry entities, according to their adherence to global/universal and to SL standards. The solid line shows the adherence to global standards (environmental quality standards, labour rights standards, human rights).



It shows that a small number of large firms (A) adhere to virtually all standards, while the mass of small firms (B) do very poorly. In contrast, the hash line shows the contribution of the same entities to the enhancement of secure and sustainable livelihoods for the poor. On these standards, the larger firms do not fare very well, nor many of the small, subsistence-level activities. However, a middle group is far more conducive to livelihood enhancement than either of the two extremes.

Avoid losing community assets

Policy prescriptions that derive from a SL approach pertain to the trade policies themselves, ensuring that the policy changes do not undermine the assets of the poor communities or affect ancillary policies aimed at enabling the poor to take advantage of emerging opportunities and protecting themselves against adverse impacts. In principle, these actions need to be taken prior to the change itself, rather than as a corrective exercise once the adverse impacts have already manifested. The approach may also help to identify environmental justice concerns on local people and their environments.

Given the developments in SIA, there can be no serious strategy for preserving and enhancing ecosystem integrity that does not also involve improving social well-being. Canadian academics have now articulated up to five main components of sustainable development – ecological, social, economic, cultural and political conditions – that imply a positive contribution to each in order to achieve sustainability. The sustainability agenda must seek positive effects in general and over the long term. Persistent negative effects in any one area mean that the potential for sustainability is being compromised.”⁵⁶

Human rights

CIELAP maintains that human rights include a safe and healthy environment, achieved through respect for, and preservation of nature’s integrity and diversity. Indeed, human rights should be a central principle for all new policies on world sustainable development. And while international human rights law constitutes a well accepted framework for policies aiming to significantly reduce poverty, the WSSD draft political declaration contains no reference to human rights. According to the International Centre for Human Rights and Democratic Development, an independent Canadian institution which promotes, advocates and defends the democratic and human rights set out in the International Bill of Human Rights: “The omission of any

UNEP’s suggested criteria for selecting priority sectors for SIA

- ❖ The sector is important to the national economy and in particular in its contribution to export revenues.
- ❖ The sector relates directly or indirectly to major environmental media and natural resources.
- ❖ The sector relates directly or indirectly to important issues of equity and social well-being.
- ❖ The sector provides a strategic natural resource (such as a certain foodstuff) that a large proportion of the population depend upon for their livelihood.
- ❖ The sector has been, or might become, the subject of changes in economic rules induced by trade-related policies.
- ❖ The sector is one with significant trade flows in both volume and financial terms and is experiencing changes in trade flows.

The sector is one where one might expect, a priori, that there are important sustainability effects attributable to trade-related policies.

mention of human rights would be a serious setback for the international community...A strong explicit reference calling upon states to meet their obligations under international human rights law would be appropriate, as well as a statement of support for the deep connections that exist between many human rights and environmental protection.”⁵⁷ But as we reveal below the draft WSSD plan of action contains very little reference to ensuring international human rights.

Environmental effects

Trade effects on the environment take many forms. To the extent that tariffs are used to protect domestic production and markets, they can have

additional important socio-economic impacts related to employment, innovation, and production practices. The practice of tariff escalation can encourage countries to export raw materials, as opposed to processed goods, resulting in the depletion of a country’s natural resource base and removing the social and economic benefits (for example in terms of employment, of processing those raw materials domestically)⁵⁸.

Non-tariff measures that relate to mandatory regulations and other standards are called technical barriers to trade. Other kinds of non-tariff measure include those related to food standards, to ensure food safety and to protect human health from plant- or animal-spread diseases, and regulations to protect plant and animal health from pests and diseases.

Free trade agreements designed to promote less restricted trade involve the broadest assessment because they have a wide range of effects and generally involve changes to all types of trade measures, including tariffs, non-tariff measures, and subsidies. Trade agreements purport to impose legal constraint on the policy options available to governments and civil society to ensure environmental protection. A good SIA will reveal these potential regulatory effects and suggest priority policy responses, including less trade or different trade.

Monetizing environmental and sustainability impacts

In addition to integrating analysis, a most challenging limitation on the value of SIA is the difficulty of quantifying some important impacts, such as nature conservation or human access to adequate health care. This can be contrasted with the narrow consideration of, for example, increases in sulphur emissions from industry associated with economic growth, one of the best cases for quantification.⁵⁹ Whatever the merits of any specific indicator or coefficient, it is clearly meaningful to talk about a numerical value for quantity of emissions per unit of production.

Now consider the different situation that arises with unquantifiable impacts, such as loss of biodiversity. A study of the corn trade under NAFTA found that U.S. exports, which are displacing traditional Mexican producers, threaten the survival of ancestral genetic stocks of maize which originated in Mexico and Central America.⁶⁰ If this is true, an important but unquantifiable impact has been identified. Presently there is no agreed upon way to attach a “biodiversity loss coefficient” to Mexico’s imports of corn; but loss of biodiversity could nonetheless be a crucial impact of trade.⁶¹

The problems that arise in evaluating or putting a number on broader social or political questions or impacts of sustainability are parallel to those for biodiversity – the impacts are important, but they are difficult to attach to economic model results with a simple coefficient, as in the case of sulphur emissions. Indeed, would it be in the public interest to attach a dollar figure to the pain and suffering of children deprived of basic health care, for example? Does the task seem more urgent and less unappealing if the health effect is related to increases in the use of local hazardous waste facilities by waste importers⁶²?

Over the past decade, efforts at SIA have been supported by UNEP’s development of methodologies and guidelines for environmental impact assessment; for the valuation of natural and environmental resources; integrated environmental and economic accounting; and for the selection, design and implementation of economic instruments to sustainably manage natural resources⁶³. In practice, most Environmental Impact Assessments have not placed a monetary value on environmental impacts, but there is a trend amongst some multilateral lenders for such an evaluation to be undertaken.

4. When is an SIA conducted?

An *ex ante* assessment is one that is undertaken prior to the negotiation of a trade agreement or a decision to adopt a trade-related policy, while an *ex post* assessment is one that is taken after the negotiation.

It has been noted that an inherent weakness of impact assessment is that it is applied to an already identified project and trade policy and rarely modifies the design more than marginally⁶⁴. Recall the Oxfam-WWF study on yellow corn demonstrating the importance of a comprehensive sustainability assessment before rushing into liberalization⁶⁵. Indeed, the lack of a proper social and environmental impact assessment, before the 1994 WTO agricultural agreement was signed, led to an underestimation of the effects of the agreements. One of the key conclusions was that many of the initial predictions made were based on doubtful assumptions and were thus inaccurate. Consequently, some of the more negative environmental and social effects that could have been foreseen were not taken into consideration and addressed prior to drafting, finalizing and implementing the agreement.

It should be noted that both the U.S. and Canadian environmental reviews are *ex ante* evaluations occurring before the proposed changes are implemented.

5. Who should undertake an SIA?

This is a question of process both at the domestic and international levels. It raises other procedural issues such as the scope, timing, participants, monitoring and follow-up of the environmental review of trade policies. Given the developments since Rio Principle 10, individual governments in cooperation with relevant international organizations and civil society stakeholders have a responsibility to undertake sustainability assessments of the free trade agreements at the relevant level.

Governments also have to ensure that all individuals and groups with an interest in the issues covered by the assessment are encouraged to participate in the process – and that the end product is both credible and useful to policy makers. In order for a SIA to be perceived as legitimate,

credible and independent, it is vital to build in a strong component of public participation⁶⁶. A wide range of actors from government and civil society should be brought into the assessment process.

Where trade-offs between conservation and development goals exist, UNEP suggests that multi-criteria analysis (MCA) is a useful tool to take into account the preferences of stakeholders in the use of natural and environmental resources. The process is participatory, as stakeholders themselves make decisions about how an environmental resource should be managed. These decisions are arrived at by identifying alternative options for the use of the resource, developing criteria to evaluate the options, and by setting weights for each criterion⁶⁷.

At the international level, the UN Commission on Sustainable Development recognized and reiterated the importance of developing a framework for assessment, and the need for cooperation between the relevant international institutions, such as WTO, UNEP, UNCTAD, UNDP, FAO and World Bank. Indeed it is the CSD position that: “The WTO would assess the trade/economic effects of trade liberalization in co-operation with the World Bank and UNCTAD; UNEP the environmental effects; UNCTAD and UNDP the developmental effects; WHO and ILO the broader social and health effects; regulatory effects will be a jointly undertaken issue, although the *CSD may have a special role to take in terms of institutional coordination*.”⁶⁸ (emphasis added).

Note that the 1994 OECD study also observed that assessment could be carried out in a cooperative procedure in a multilateral framework⁶⁹.

Despite certain language in the draft WSSD Action Plan (see below), the assessment of the environmental effects of trade is not held within the exclusive jurisdiction or even the competence of the WTO. While the objectives of sustainable development and environmental protection are stated in the preamble to the Marrakech Agreement that established the WTO in 1995, other intergovernmental bodies and national environmental ministries are called upon by the CSD to take the lead, albeit in active collaboration with the WTO.

Public participation at the Earth Summit, 1992

Principle 10 of the 1992 Rio Declaration states that “environmental issues are best handled with the participation of all concerned citizens at the relevant level,” and that to advance such participation, emphasis should be placed on (1) access to information; (2) access to process; and (3) access to justice. In Agenda 21 governments pledged to pursue broader public participation in decision-making processes and policy formulation for sustainable development, understood as development that meets our present needs without compromising the ability of future generations to meet theirs. *Source: UNCED. Rio Declaration on Environment and Development (online).*

Designing new institutional architecture

It is hopeful that there has been wide recognition of this institutional imperative for sustainable development. As the WTO Director-General Renato Ruggiero noted in his opening speech of the NGO symposium on Trade, Environment and Sustainable Development held in Geneva in March 1998:

“[Globalization] is pushing all of us to develop an interna-

tional architecture to manage the linkages not only between trade and the environment, but among all the other policies which now spill across borders and jurisdictions. How we shape this architecture will go a long way to determining how we confront the challenges as well as opportunities of this new global age”⁷⁰ (p. 5)

At Marrakech, the WTO Committee on Trade and Environment (CTE) was asked to ‘address trade and sustainable development and to make recommendations on whether any modifications of the provisions of the multilateral trading system are required’. But rather than rely on the CTE, WWF International, *inter alia*, stressed the importance of building upon recommendations in Agenda 21 and the UN CSD recognition of the need to develop a new multi-dimensional framework to facilitate the assessment of the environmental impact of trade policies⁷¹.

Civil society has a role

As Rio 1992 made clear, in addition to intergovernmental institutions and national governments, civil society has a stake in the assessment of trade agreements too. UNEP suggested the establishment of formal advisory committees of non-governmental experts on environmental matters and related social issues to allow consultation on an ongoing basis. **Indeed, there is a continuous duty on non-governmental actors to articulate and provide the evidence about areas of concern, advise on technical matters and possible solutions, raise diverse interests and generally to identify and monitor local effects of trade and financial pressures on sustainability.**

Environmental and other civil society groups might wish to seriously consider a strategy based on a common demand that governments engage in participatory national and global SIA of the WSSD outcomes (and regionally, e.g. on the FTAA). Their input could be based on broadly recognized principles and public expectations. Not only might this approach assist with the identification and monitoring of trade and other developments, but more importantly, a commonly agreed-on approach to assessment might just end the practice of governments and the private sector conducting public consultations with separate groups within civil society, according to the perceived narrow interest. CIELAP would be interested in hosting a Canadian workshop to consider appropriate elements, options and methodologies for conducting common SIAs.

6. How would an SIA be applied to 2002 WSSD prospects?

Now that a review of the main elements of a good SIA have been explored, it is possible to apply the lessons learned to a preliminary Rio@10 review. The WSSD is billed as being about the implementation of and governance for sustainable development.⁷² At the Summit, country delegations and representatives of major groups will meet to endorse a plan of action implementing the commitments made by governments at the Earth Summit in Rio in 1992 and aimed at creating mechanisms to enable the conditions for sustainable development. At the last preparatory committee meeting at Bali in May, 2002 before the Johannesburg Summit, a deadlock remained, particularly over finance and trade issues, with the draft plan of action “Means of Implementation” section still full of disputed text.

Recognizing need for SIA

Despite the many flaws with the draft plan (see below), it is important to note at the outset that it does acknowledge the purpose of these efforts is to: “promote the three components of sustainable development – economic development, social development and environmental protection – as interdependent and mutually reinforcing pillars. Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for

sustainable development.” (Para. 2) It is interesting to note in the agreed paragraph 67 under the heading of Other Regional Initiatives a reference to the “ethics of sustainable development”, possibly opening a new branch of sustainable development enquiries.⁷³

While still in bracketed text, the plan does allude to the need for SIA of trade agreements but specifies simply that they are to be conducted at national levels.⁷⁴ There remains only indirect reference on the need to conduct such reviews for policy coherence at the international institutional level as well⁷⁵. It is noteworthy that Countries are directed to implement the new convention by the International Labour Organization (ILO) on eliminating child labour⁷⁶, however there is still hesitation to accept common mechanisms to promote high social and environmental standards⁷⁷, including consumer labelling, despite UNEP’s reference to it as an appropriate policy response to free trade⁷⁸. Further, there is little reference to international human rights dialogues⁷⁹.

It is also important to note that the critics of the WSSD draft plan at least implicitly recognize and practise SIA. The Third World Network explained its approach to assessing the WSSD outcomes: “This would mean drafting a plan of action which will frame national and international development policies in light of a sustainable development agenda – i.e. taking into account the social and economic needs of the population and balancing it with ecological sustainability and environmental protection”⁸⁰. Whether the task is to balance, integrate or simultaneously improve other societal goals with finance and trade ambitions is not a critical difference. The important observation is the widespread use of the SIA framework by which both government and civil society use to monitor major global and regional events. Indeed, as it turns out, “Johannesburg may turn out to be less about the technicalities of environmental protection and sustainable use of natural resources than about the trade and financial mechanisms helping or hindering these objectives.”

Johannesburg maybe a chance to rectify the concessions made at the WTO Ministerial Conference in Doha in November 2001. In addition to the sustainability concerns should the WTO succeed in removing the remaining tariffs on the trade of exhaustible natural resources such as wood and fish products, Article 31,i, of the Doha text struck a blow to the integrity of multilateral environmental agreements (MEAs). This article attempts to clarify and codify the relationship between the WTO and MEAs but includes a “non-party carve-out” so that the trade measures within MEAs are only to be applied to MEAs members, undermining the effective enforcement of MEA objectives. U.S.

officials said the restriction is significant because it protects the U.S. from trade actions by other countries under the Kyoto Protocol dealing with climate change.⁸¹

Given Doha, it is not surprising that WSSD talks were deadlocked at Bali because developed countries, particularly the U.S.-led Juscanz group (Japan, U.S., Canada, Australia and New Zealand), refused to commit to crucial paragraphs addressing the relationship between globalization and sustainable development and using language firmly committing developed countries to concrete action on debt, financial contributions and fair trade.

Avoid imposing the WTO Doha obligations

The draft WSSD text is full of generalized references about the implementation of the provisions of the Doha Ministerial Declaration, and alludes to the conclusions of negotiations by a set date, without the benefit of a creditable SIA before doing so⁸². Developing countries are concerned about ensuring access to critical HIV medications in the presence of trade-protected intellectual property rights and resist a commitment to begin negotiations (after the next WTO Ministerial Conference in 2003) on the ‘new issues’ of investment, competition policy, transparency in government procurement and trade facilitation. Fortunately a saving clause was inserted in the Doha Declaration, to the effect that the launch of any new negotiations would have to be on the basis of explicit consensus. However, this still leaves developments on the “built-in” WTO agenda in services and agriculture to be monitored closely.

Private-public partnerships dominate the draft WSSD text. Given the ongoing negotiations under the *General Agreement on Trade in Services* (GATS), and the new U.S. Fast Track trade authority, it is imperative that groups monitoring the Bretton Woods institutions to keep a close eye on the WSSD outcomes. The Draft Plan of Implementation is sprinkled very liberally with language exhorting the virtues of “public-private partnerships” and calling for public-private partnership implementation of WSSD programmes. At Johannesburg the emphasis will likely be on market-based, private-sector financing of the Summit’s programmatic outcomes, reflecting an implicit endorsement of the policy prescriptions imposed by the World Bank and the IMF in their lending programmes. The stress on private sector participation in the delivery of services in the five priority areas of the plan of action – water⁸³, energy⁸⁴, health, agriculture and biodiversity – will, lend credibility to the GATS and the World Bank’s Private Sector Development Strategy and increase its role in the financing of projects in these areas⁸⁵.

Through the Business Action for Sustainable Development (BASD), transnational corporations are in the same role they played at Rio through the Business Council for Sustainable Development (BCSD). Through the developed countries, not only are TNCs blocking efforts to frame regulatory mechanisms governing their activities within the WSSD official agreements, they are presenting themselves as viable partners in the delivery of sustainable development programmes, especially in the areas of essential social and environmental services⁸⁶.

According to the TWN, the shift towards private-public partnerships in both the Type I (obligatory) and Type II (voluntary) agreements of the WSSD “represents part of a wider abdication of responsibility on the part of developed countries to fulfil their commitments to facilitate sustainable development in the south”.⁸⁷ Type II or other informal partnerships will most likely be used by developed countries as substitutes for formal commitments on their part to improve the current abject situation in both environment and development spheres, and driven by private corporations’ drive for profits rather than by the goal of meeting public interests and a further outflow of foreign exchange from the developing countries to the North. Further, allowing the World Bank to initiate the implementation of crucial programmes, including through its role as lead agency of the Global Environmental Facility (GEF), would once again limit the policy choices of developing countries in their attainment of sustainable development.

Attempts by developed countries to shift the governance of international trade and finance away from the UN system towards the Bretton Woods institutions and the WTO, and efforts to transfer the responsibility of achieving sustainable development goals to private corporations through public-private partnerships will further limit governments’ capacity in the South and the North to determine their development paths, both nationally and internationally.

There is a demand not only for the contribution of substantial financial resources to aid developing countries in bearing the adjustment costs of sustainable development, but “a commitment to reorienting current unsustainable production and consumption patterns and reforming the global economic system which form the basis of the present ecological devastation and human misery”.

Dilution of the Rio principles

In addition to the U.S. and Canada resisting the attempt to revisit the Doha Declaration, the U.S. is also reported to be attempting to reverse the commitments it made at the 1992 Earth Summit, including the two main principles of Rio-

the “principle of common and differentiated responsibility” and the “precautionary principle”⁸⁸. In the context of developments in the post-Rio global economy, this WSSD outcome would place more onerous obligations on developing countries in order to meet multilateral environmental agreements and achieve sustainable development. Developing countries need special consideration in order to meet global agreements.

To conclude this preliminary assessment of the WSSD prospects and outcomes, it is interesting to note that the TWN began its impact analysis by articulating the effects on developing countries of current patterns of global economic integration. A main focus of the Network is to ensure development choices in the South in the context of a wider political agenda for global sustainable development. New developments in the trade and finance areas can then be identified, measured and articulated. The pre-eminence of the WTO in the multilateral system and the extensive control of the Northern-controlled World Bank and the IMF over the economies and socio-political policies of developing countries today, suggest that any effort to shift the governance goalposts towards these institutions will invariably result in the severe confinement of democratic space in the global policymaking arena. Indeed the aspirations of the South for a new political discourse are also clearly expressed by Canadian civil society in the North.

Civil society groups of all levels are called upon to contribute in the monitoring and advancement of a comprehensive WSSD plan of action based on a common understanding of how to conduct a creditable and meaningful SIA. Surely the purpose of the exercise is to enable the fair and equitable sharing of the world’s resources between the rich and the poor, the North and the South, and to protect the earth’s ecology for the benefit of the planet.

The draft action plan ends on the Role of International Institutions and expresses a sentiment that all would agree on in paragraph 140: “Strengthening of the international institutional framework for sustainable development is an evolutionary process. It is necessary to keep under review relevant arrangements, identify gaps, eliminate duplication of functions and continue to strive for greater integration, efficiency and coordination of the economic, social and environmental dimensions of sustainable development aiming at the implementation of Agenda 21.” A robust, creditable and participatory SIA would seem to be a good place to start.

7. Conclusion

To summarize the lessons learned from European and North American experience in trade impact assessment, it can be observed that some of the major elements in a good SIA of current and proposed trade rules are as follows:

- Assess regulatory capacity effects – the loss of political sovereignty
- Avoid a pro-trade bias – consider alternatives
- Ensure Equal treatment for all components of sustainability
- Address scale and causal effects
- Choose a meaningful baseline
- Define significance, rely on prevention and precaution
- Build various scenarios
- Choose robust sustainability indicators
- Avoid after-the-fact mitigation measures
- Make trade compatible with other values
- National flanking measures are not enough
- Retain national capacity to build on international standards
- Be prepared to abandon the trade policy
- Take into account the very long term
- Provider sensitivity analysis for developing countries
- Avoid environmental injustice
- Consider regional and global impacts
- Measure progress and test evidence
- Achieving sustainability is more than just avoiding impacts

Fundamental to any SIA design must also be to ensure transparency, public participation and enough flexible enough to permit iterative examination of new options and governance architecture. But the main focus is to ensure that sustainability assessment is not just an exercise in articulating and avoiding negative impacts but achieves by the process and the substance sustainable communities both at the local and global levels.

SIA is developing into an important exercise for many reasons. SIAs can be a key instrument for identifying where trade liberalization and environment policies can be inherently supportive (so-called ‘win-win’ solutions), where they can be made mutually supportive and how, and where they are not and cannot be mutually supportive.

A properly scoped domestic and a regional/international framework for assessment can provide the public and the relevant institutions with an ability to identify and assess more accurately the transboundary, global and national effects of regional and multilateral trade agreements in a more integrated and coherent manner.

Importantly as well, the assessment can articulate basic principles, highlight sustainability concerns, and establish a minimum standard against which a final negotiated agreement can be measured.

Strategically, civil society might consider seeking a common outcome in which governments engage in participatory national and global SIA of the WSSD outcomes (and regionally, for example, with respect to the FTAA). Goals could be based on broadly recognized principles, the public interest and expectations. This effort will assist with the comprehensive compilation of information, provide for cross-checking of developments and avoid public consultations that engage civil society as separate interest groups. The urgency of the task suggests that the effort is worth it.

References

¹ For official information on the WSSD, including the draft plan of action and other official documents, check the website www.johannesburgsummit.org

² Kofi Annan, *We, the Peoples: The Role of the United Nations in the 21st Century* (UN, New York, 2000), <http://www.un.org/millennium/sg/report/full.htm>.

³ T. Panayotou, "Globalization and the Environment", *C.I.D. Working Paper No. 53*. (Harvard University, Center for International Development, 2000, online).

⁴ Christine Elwell, "Energy" in *Summit of Plummet? A call for Canadian Leadership Ten Years After Rio*, Canadian Environmental Network's Forum on the WSSD, www.cen-rce.org/wssd.

⁵ United Nations Environment Programme, *Reference Manual for the Integrated Assessment of Trade-Related Policies* (2001), online www.unep.ch/org, p.2 (hereinafter UNEP).

⁶ Sarah Richardson, "A Critique of the EC's WTO Sustainability Impact Assessment Study and Recommendations for Phase III" March 2000, p. 19. Report commissioned by: Oxfam GB, WWF-European Policy Office, Save the Children, ActionAid, see www.panda.org/epo.

⁷ Robert Kates *et al.*, "Sustainability Science" (*John F. Kennedy School of Government Harvard University Faculty Research Working Papers Series*, April 2001, p. 2) <http://sust.harvard.edu>. Another important question is: "What systems of incentive structures - including markets, rules, norms and scientific information - can most effectively improve social capacity to guide interactions between nature and society toward more sustainable trajectories?"

⁸ *Ibid*, p. 3 and see "Synthesis and integration of the sciences of sustainability are a major focus of the global change" Open Science Conference (Amsterdam, July 2001), <http://www.sciconf.igbp.kva.se/fr.html>.

⁹ Canadian civil society began to practice SIA in preparation for the 2001 Quebec City F.T.A.A. Ministerial. See for example, "5 Environmental Reasons to Oppose the FTAA" (*Canadian Alliance on Environment and Trade*, Christine Elwell ed., online at www.sierraclub.ca/national). See also Frank Ackerman, Kevin Gallagher and Alejandro Nadal, (2001). "The Limits of Economic Modeling in the FTAA Environmental Review" (Global Development and Environment Institute, Tufts University and online at <http://ase.tufts.edu/gdae>). For a participatory approach, see the Organization of American States, *Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development (ISP)*, (available online), and the United States Trade Representative's *Report of the Quantitative Analysis Work-*

ing Group to the F.T.A.A. Interagency Environment Group (Washington DC: U.S. Government Printing Office, 2000, online at <http://www.ustr.gov/environment/analysis.pdf>).

¹⁰ Robert Gibson "Specification of Sustainability-based Environmental Assessment Decision Criteria and Implementations for Determining "Significance" in Environmental Assessment", Supported by Canadian Environmental Assessment Agency, see www.ceaa-acee.gc.ca, p. 1. (Gibson)

¹¹ See also recommendations from the C.S.D. on a framework for assessment: E/CN.17/1994/20, *Report of CSD Second Session*, 16-27 May 1994, New York, paragraph 33; E/CN.17/1995/36, *Report of the CSD Third Session*, 11-28 April 1995, New York, paragraph 67. (p. 9)

¹² See OECD/GD (94)(103),p. 19 (OECD).

¹³ Questions to be addressed by the regulatory assessment include: How will increased trade in specific products affect provisions regarding the harmonization of environmental product standards? Will trade liberalization lead to greater harmonization in product standards, and what will the individual or combined effects of such harmonization be on the environmental effectiveness of those standards? How will trade liberalization in a specific product affect existing environmental legislation and its future development? How will trade liberalization affect domestic process and product standards? How will trade liberalization, including any revision of the Technical Barriers to Trade Agreement, affect the ability of national and international eco-labelling initiatives to facilitate a shift of production and consumption patterns underpinning international trade to a more sustainable basis?

¹⁴ UNEP, *supra* fn.5, p. 51.

¹⁵ WWF, "Developing a Methodology for the Environmental Assessment of Trade Liberalization Agreements" WWF International Discussion Paper, 1998, (WWF International) www.panda.org.

¹⁶ *Free Trade: Is It Working for Canadian Farmers?*, 2002, see www.nfu.ca

¹⁷ WWF International, *supra* fn. 16, p.11.

¹⁸ See *Assessing Environmental Effects of the NAFTA, Analytic Framework*, http://www.cec.org/files/pdf/ECONOMY/engframe_EN.pdf and see Papers Presented at a Symposium that applied framework to a number of issues http://www.cec.org/files/pdf/ECONOMY/symposium_e.pdf, and see Robert B. Gibson and Anita Walker, "Assessing Trade: an evaluation of the Commission for Environmental Cooperation's analytic framework for assessing the environmental effects of the North American Free Trade Agreement," *Environmental Impact Assessment Review* 21 (2001), pp.449-468.*

¹⁹ Colin Kirkpatrick and Norman Lee. "WTO New Round Sustainability Assessment Study, Phase Two Main Report" (University of Manchester: Institute for Development Policy and Management and Environmental Impact Assessment Centre, 1999) see www.idpm.man.ac.uk/sia-trade (Manchester Study)

²⁰ The methodology recommends a number of social science techniques such as checklists, surveys, matrices, scoring, consultative and participatory approaches, stakeholder analysis, social survey and interviewing methods, cross-country regression analysis and case studies. It contemplates the possibility of extending economic models by including, for example, a social accounting matrix. For regulatory appraisal, methods suggested include socio-economic impact analysis, distributional analysis, cost-benefit analysis or regulatory competition effects, fiscal analysis, budget-cost analysis, and other rule-specific analysis

²¹ Sarah Richardson, *supra* note 6.

²² See Manchester Study's Terms of Reference: "For this exercise, it is taken as a basic working assumption that non-inflationary growth world-side will be boosted by multilateral trade liberalization and rule making, and that this is desirable." *Supra*, fn.20, p. 3.

²³ Richardson, *supra* note 6, p. 2.

²⁴ *Ibid*, p. 5: "This variable is of particular importance in assessing impacts on developing countries for which large changes in economic and population growth can have dramatic scale effects."

²⁵ *Ibid*, p. 6.

²⁶ Robert Gibson, *supra* note 10, p. 1.

²⁷ Richardson, *supra* note 6, p. 9.

²⁸ *Ibid*, p. 8.

²⁹ Manchester Study, *supra* fn. 20, p. 7.

³⁰ UNEP, *supra* fn. 5, p.46

³¹ The gap between rich and poor continues to widen and excessive amounts of wealth are concentrated in too few hands. Indeed, the average income in the richest 20 countries is 37 times the average in the poorest 20 countries – a gap that doubled in the past 40 years. World Bank Development Report, 2001, www.econ.worldbank.org/wdr.

³² See *infra* fn. 48.

³³ See for example Biosafety Protocol to the Convention on Biodiversity, 1992, Article 26: (Socioeconomic Considerations) The Parties, in reaching a decision on import under this Protocol or under its domestic measures implementing the protocol, may take into account, consistent with their international obligations, socioeconomic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities. The Parties are encouraged to cooperate on research and information exchange on and socioeconomic impacts of living modified organisms, especially on indigenous and local communities. (UN Environment Programme, 2000)

³⁴ ee CIEL, www.ciel.org (reference to June 13th press release)

³⁵ United States Trade Representative (USTR) and Council on Environmental Quality (CEQ), "Guidelines for implementation of Executive Order 13141, Environmental Review of Trade Agreements" (2000, online), see regulations at 40 C.F.R.1501.7.

³⁶ Cited by Kevin Gallagher, Frank Ackerman, and Luke Ney, "Economic Analysis in Environmental Reviews of Trade Agreements: Assessing the North American Experience", *Global Development and Environment Institute Working Paper No. 02-01*, April 2002, Tufts University, <http://ase.tufts.edu/gdae>, p. 10. (Gallagher).

³⁷ Open Letter from 11 major U.S. environmental groups, September, 5, 2000, see www.ciel.org (add) fix

³⁸ Gallagher, *supra* note 38, p.10.

³⁹ See Mark Winfield, *Open for Toxics* (Canadian Institute for Environmental Law and Policy, 2000) for an account of the increase in imports of hazardous waste from the U.S. to Canada, and Ontario in particular, because of lower pre-treatment requirements before the land filling of toxic waste, www.cielap.org.

⁴⁰ UNEP, fn. 5, p.30.

⁴¹ Gallagher, *supra* note 38, p.23.

⁴² Department of Foreign Affairs and International Trade, (2001), *Framework for Conducting Environmental Assessments of Trade Negotiations* (Ottawa: Government of Canada) online at <http://www.dfait-macci.gc.ca/tna-nac/sociale>. Also see Mike Beale, "Lessons from Past Environmental Reviews of Trade Agreements in Canada", *Assessing the Environmental Effects of Trade Liberalisation Agreements* Paris, OECD, 2000.

⁴³ See http://www.menv.gouv.qc.ca/programmes/eval_env/industr.rtf, cited by Gibson, fn. 10, p. 3.

⁴⁴ See Kingston Declaration and reference to the proposed Earth Charter at www.sierraclub.ca/national.

⁴⁵ See for example "A New Round of WTO Trade Negotiations: A Tool for Poverty Reduction?" North-South Institute, Ottawa, 2001, www.nsi-ins.ca where World Bank data was used to estimate the costs and benefits per country to implement three of the Uruguay Round agreements.

⁴⁶ Gallagher, *supra* fn. 38, p. 17.

⁴⁷ L. Waverman, "Mini-Symposium: Modelling North American Free Trade." *The World Economy*, 1992, vol. 15 no. 1, 1-10, cited in Gallagher, *supra* fn. 38, p. 13.

⁴⁸ Gallenger, *supra* 38, fn. p. 18.

⁴⁹ Dale Ervin, "Taking Stock of Methodologies for Estimating the Environmental Effects of Liberalised Agricultural Trade", in *Methodologies for Environmental Assessment of Trade Liberalisation Agreements*, 117-132. (Paris: OECD, 1999).

⁵⁰ Gallagher, *supra* fn. 38, p19.

⁵¹ WWF International, *supra* note 16, p. 3

⁵² R. -U. Sprenger, "Globalization, Employment and Environment" in T. Panayotou, *Globalization and the Environment. CID Working Paper No. 53*. (Harvard University, Center for International Development, 2000, online).

⁵³ See WWF International, *supra* fn. 16 and see Robert Scott, "NAFTA's Hidden Costs." In *NAFTA at Seven: Its Impact on Workers in All Three Nations*. Jeff Faux, ed. (Washington DC: Economic Policy Institute), 2000. Available online at <http://epinet.org> and see Jim Stanford, "Estimating the Effects of North American Free Trade: A Three-Country General Equilibrium Model with 'Real-World' Assumptions," (Ottawa, Canadian Centre for Policy Alternatives, 1993).

⁵⁴ K. Munk, "The Use of General Equilibrium Models for the Assessment of the Impact of Agricultural Trade Liberalization" and W. Tims, "Issues in Modeling". In *Agricultural Trade Liberalization: Implications for Developing Countries*, 456-460. Ian Goldin and Odinn Knudsen, eds. (Paris and Washington DC: OECD and the World Bank, 1990). Cited in Gallagher, *supra* note 34, p.13.

⁵⁵ Robert Chambers and Gordon R. Conway, "Sustainable Rural Livelihoods: Practical Concepts for the 21st Century", *IDS Discussion Paper, No. 296* (1992); Robert Chambers, "Vulnerability, Coping and Policy", *IDS Bulletin*, (20(2): 1-7 (1989); also see A. Agarwal and Sunita Narain "It is possible to Deal With Poverty: A New Paradigm for Poverty Eradication, Employment and Natural Resources Management", (1997) and *United Nations Development Programme, Productive Employment and Poverty Reduction: How Can Livelihoods be More Sustainable?* (New York, BPPS/UNDP 1997), cited in UNEP, p.38-40.

⁵⁶ Gibson, *supra* note 10, p. 7.

⁵⁷ July 23, 2002, Press Release "World Summit on Sustainable Development - Human Rights must be Guiding Principle", see www.ichrdd.ca

⁵⁸ UNEP, *supra* fn. 5, p 9.

⁵⁹ Gallagher, fn. 38, p. 21

⁶⁰ Alejandro Nadal, *The Environmental and Social Impacts of Economic Liberalization on Corn Production in Mexico*, Great Britain: Oxfam and World Wide Fund for Nature International, cited in Gallagher, *supra* fn. 38, p. 22.

⁶¹ Gallagher, *supra* fn. 38, p. 22.

⁶² See for example Norman Lee, "The E.U. Sustainability Impacts Assessment Study: Purpose and Working Method" in *Assessing the Environmental Effects of Trade Liberalisation Agreements*. Paris, OECD, 2001 and see Christine Elwell, Human Rights, Labour Standards and the New World Trade Organization: Opportunities for a Linkages, www.ichrdd.ca, both of which seek to identify potential socio-environmental impacts, and how such variables could also be included.

⁶³ UNEP, *supra*, fn. 5, p. 33. This is a comparison of various valuation tools used to monetize costs and benefits of an activity, project, or policy. It is a useful way of converting all the information into a comparable form, however the main difficulty is putting a monetary value on the environmental and social costs/benefits for which no market prices generally exist. Some form of shadow pricing for both marketed and non-marketed commodities and services therefore becomes necessary. See, for example, the benefits transfer process developed by Desvousges, Naughton and Parsons in 1992, that transfers the monetary values of environmental effects from the sites where original valuation studies were conducted to the study site under consideration (Environmental Protection Authority: Australia, *ENVALUE: NSW EPA Environmental Valuation Database Handbook*. 1995, online). This procedure can be used where time and budget constraints prohibit the conduct of original studies. Various databases providing environmental valuations exist online.

⁶⁴ R. Goodland, "Social and Environmental Assessment to Promote Sustainability", presented at the International Association of Impact Assessment, Glasgow, 15-19 June 1999, p. 14, cited in Gallenger, *supra* fn p. 9.

⁶⁵ WWF International, *supra* fn. 16, p. 7.

⁶⁶ UNEP, *supra*. Fn. 5, p.15.

⁶⁷ UNEP, *supra*. Fn. 5, p. 34.

⁶⁸ WWF, *supra* note 16, as quoted at pgs. 17-18.

⁶⁹ OECD Procedural Guidelines, OECD/GD(94)103.

⁷⁰ As quoted in WWF, *supra* note 16, p. 5.

⁷¹ In its third report (paragraphs 209 & 210), the Commission specifically requested WTO cooperation on the analysis of the implications of the Agreement on Agriculture in the 1994 Uruguay Round for sustainable agriculture and rural development. See WWF, *supra* note 16, p. 6.

⁷² For official information on the WSSD, including the draft plan of action and other official documents, check the website www.johannesburgsummit.org

⁷³ See Peter Robinson, CEO, Mountain Equipment Co-op, in *Partnering for Sustainability*, <http://www.cielap.org/partnering/dayoneframes.html>

⁷⁴ See paragraph 119: "Further develop and promote sustainability impact assessment methodologies at the national level as a tool to better identify trade, environment and development linkages, as well as appropriate mitigating and enhancing measures, and encourage countries and international organizations with experience in this field to provide assistance to developing countries, for this purpose". Also, paragraph 45 (n) "Provide assistance to developing countries to promote impact assessments that identify trade, environment and development linkages and related policy measures".

⁷⁵ See paragraph 122: "... (c) Promote initiatives to ensure coherence/complementarity/coordination, no hierarchy and mutual supportiveness between the rules of the multilateral trading systems and the rules of multilateral environment agreements consistent with the goals of sustainable development and with, and in support of, the work programme agreed through the WTO. Promote a better understanding, including through policy dialogue, of the relationship of economics between trade/finance, environment and social development and, thereby, a better appreciation of their implications for implementation of sustainable development at the national level and promote initiatives to ensure coherence/complementarity, no hierarchy and mutual supportiveness between the rules of the multilateral trading system and the rules of multilateral environment agreements and multilateral trading agreements consistent with and in support of the work program agreed through the WTO". In this context, further collaboration with the WTO and other relevant agencies, such as ILO, UNCTAD, UNDP and UNEP, should be promoted. Also, "... (g) Strengthen and better integrate the social dimension in sustainable development policies and programs, as well as ensure that sustainable development objectives are fully integrated in policies and programmes of bodies that have a primary focus on social issues. In particular, the social component of sustainable development would benefit from implementation ... [this] requires an enhanced global capacity to implement the ILO conventions on core labour standards, and support social policy concerning labour market and social protection systems". Finally, see paragraph 85: "... (d) Promote a constructive and sustainable relationship between globalization and social development, through support for the work of the ILO's World Commission as well as through providing technical assistance, including through ILO mechanisms, to help developing countries improve the effective implementation of core labour standards."

⁷⁶ See paragraph 11 and note paragraph 12: "Promote international cooperation to assist developing countries, upon request, in addressing child labour and its root causes, *inter alia*, through social and economic policies aimed at poverty conditions, while stressing that labour standards should not be used for protectionist trade purposes". (Agreed).

⁷⁷ See paragraph 14 on avoiding environmental degradation "through improving efficiency and sustainability in the use of resources and production processes, and reducing resource degradation, pollution and waste. (a) Identify specific activities, tools, policies, measures and monitoring and assessment mechanisms, including where appropriate, life-cycle analysis and national indicators for measuring progress bearing in mind that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries." (emphasis added) (Agreed).

⁷⁸ See paragraph 14. “...(e) Develop and adopt, on a voluntary basis (where appropriate), effective, transparent verifiable, non-misleading and non-discriminatory consumer information tools to provide information relating to sustainable consumption and production including human health and safety aspects. These tools should not be disguised as trade barriers. In addition, eco-labelling should be developed and implemented in an open participatory manner and should be voluntary/ in accordance with the WTO rules. Action should be taken to assess and improve such tools in order to minimize adverse effects they may have on the sustainable development of other countries, especially developing countries”. (emphasis added).

⁷⁹ See paragraph 152. “Acknowledge the importance of the inter-relationship between human rights promotion and protection and environmental protection for sustainable development, and invite further consideration of these issues in the relevant fora, including by continued cooperation between UNEP and UNHCHR”. Also see paragraph 45 “... (m) Promote corporate responsibility and accountability and the exchange of best practices, including through public/private partnerships and voluntary initiatives based on international agreements on human rights, environment and labour standards, building, *inter alia*, on the United Nations Global Compact, UNEP’s global reporting initiative and the OECD Guidelines for Multilateral Enterprises, as appropriate”.

⁸⁰ Celine Tan, “Johannesburg Watch: Why Trade and Finance Groups Should Get Involved in the World Summit Process”, Third World Network, July 2002, www.twinside.org.sg.

⁸¹ EU Assures US It Will Not Pursue “Precautionary Principle” in New Talks, WTO Reporter, November 21, 2001, ISSN 1529-4153. and see www.wto-ministerial.org/english

⁸² For example, see the irony contained in paragraph 45: “... (c) Create an/Continue to promote the open, equitable, rule-based predictable and non-discriminatory multilateral trading and financial system that benefits [all] countries in the[ir] pursuit of sustainable development”.

⁸³ See paragraph 25: “... (b) Employ the full range of policy instruments, including regulation, monitoring, voluntary measures, market and information-based tools, land-use management and cost recovery of water services, without cost recovery objectives becoming a barrier to access to safe water by poor people, and adopt an integrated water basin approach; ... (g) Facilitate the establishment of public-private partnerships and other forms of partnership that give priority to the needs of the poor, within stable and transparent national regulatory frameworks provided by governments, while respecting local conditions, involving all concerned stakeholders, and monitoring the performance and improving accountability of public institutions and private companies”. (Emphasis added) (Agreed). Also, Christine Elwell, *Trade Implications of Governance Changes to Public Monopolies and Services*, CIELAP (forthcoming).

⁸⁴ Christine Elwell, “Energy” in *Summit of Plummet? A call for Canadian Leadership Ten Years After Rio*, Canadian Environmental Network’s Forum on the WSSD, www.cen-rce.org/wssd.

⁸⁵ Most of the contentious paragraphs can be found in ‘Section IV: Sustainable Development in a

Globalising World’ and in Section IX on the ‘Means of Implementation’. In Section IV, eight of out 16 paragraphs remain bracketed and Section IX, which spells out the means of implementation for the proposed plan of action, 13 key paragraphs on trade, debt and finance, all are bracketed.

⁸⁶ A large group of NGOs have been strongly advocating for corporate accountability through a binding code of conduct and regulation of corporate behaviour. Despite recent corporate accountability concerns, the only reference to this is in WSSD paragraph 17: “Enhance corporate environmental and social responsibility and accountability”. (Agreed)

⁸⁷ Again according to the TWN: “Privatization of water, energy and health sectors, and the inevitable imposition of user fees for services, will undermine access of consumers (especially the poor) to essential services. Private sector involvement in the agricultural sector invariably means the promotion of large agribusiness, leading to the displacements of large numbers of small-scale farmers and farming communities, and this will be accompanied by the push (especially by the U.S.) for the promotion of genetically-modified food crops, with health and environmental implications”, p. 5.

⁸⁸ *Ibid*, p. 6.



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