

**Balancing Trade, Environment and Development for  
Sustainability**

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**Kariuki Muigua**

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**Abstract**

*This paper discusses the connection between trade and environment in light of the sustainable development agenda. The author argues that the countries' efforts towards achieving sustainable development require the concerted efforts of all stakeholders including commerce and trade community. This is because the long term sustainable growth requires far-reaching changes to produce trade, capital, and technology flows that are more equitable and better synchronized to environmental imperatives. The paper thus affirms the central role that trade polices play in the quest for achieving the sustainable development agenda.*

**1. Introduction**

The United Nations observes that the global understanding of development has changed over the years, and countries now have agreed that sustainable development-development that promotes prosperity and economic opportunity, greater social well-being, and protection of the environment-offers the best path forward for improving the lives of people everywhere.<sup>1</sup> Much of the global environmental damage has been attributed to the increased scale of global economic activity, where international trade constitutes a growing portion of global economic activity, making it an increasingly important driver of environmental change.<sup>2</sup> This is justified on the fact that, at the most basic level, all economic activity is based on the environment. Natural resources such as metals and minerals, soil, forests, and fisheries are basic inputs to production of any goods, and also provide the energy needed to process them.<sup>3</sup>

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<sup>1</sup> United Nations, 'What We Do: Promote Sustainable Development,' available at <http://www.un.org/en/s.s/what-we-do/promote-sustainable-development/index.html> [Accessed on 19/08/2018].

<sup>2</sup> International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook* (International Institute for Sustainable Development, Geneva, 2014), p.3. Available at <http://www.unep.org/roe/Portals/139/documents/trade-green-economy-handbook-third-edition-en.pdf> [Accessed on 19/08/2018].

<sup>3</sup> Ibid.

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The Report of the World Commission on Environment and Development, *Our Common Future*, asserts that economic growth always brings risk of environmental damage, as it puts increased pressure on environmental resources.<sup>4</sup> Thus, policy makers guided by the concept of sustainable development should necessarily work to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support growth over the long term.<sup>5</sup> This is due to the fact that environmental protection is inherent in the concept of sustainable development, as is a focus on the sources of environmental problems rather than the symptoms.<sup>6</sup>

Trade is considered as one of the driving forces of economic development for all countries, usually aimed at development and the eradication of poverty.<sup>7</sup> On the one hand, environmental law, both national and international, and environmental policies—such as promotion of renewable energy, environmental taxation and conservation measures—help define how countries will structure their economic activities.<sup>8</sup> On the other hand, trade law affects the way in which countries design their laws and policies in areas—such as subsidies, technical regulations, investment policy and taxes—that are integral to environmental policy.<sup>9</sup>

Recalling that some of the significant goals of sustainable development are eradication of poverty and economic growth, and that it is now a recognised precondition for ensuring a long-term perspective for the economy, these two concepts, trade and sustainable development, are arguably inextricable.<sup>10</sup> The Report of the World Commission on Environment and Development, *Our*

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<sup>4</sup> World Commission on Environment and Development, *Our Common Future*, United Nations 1987, "Report of the World Commission on Environment and Development," General Assembly Resolution 42/187, 11 December 1987, A/42/427, para. 50.

<sup>5</sup> *Ibid*, para. 50.

<sup>6</sup> *Ibid*, para. 50.

<sup>7</sup> 'The Link between Trade and Development: What Role for the EU Trade Policy?' AIF Conference, Christiansborg, 12 September 2000; See also Preamble, World Trade Organization, "Marrakesh Agreement Establishing the World Trade Organization, Annex 1A: Multilateral Agreements on Trade in Goods-Agreement on Trade-Related Investment Measures", The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (World Trade Organization, Geneva, 1995), pp. 163-167.

<sup>8</sup> International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook*, op cit, pp. 3-4.

<sup>9</sup> *Ibid*, pp. 3-4.

<sup>10</sup> Glover, F., et al, 'Reinforcing the Links between Trade, Sustainable Development and Gender: an Overview of the Papers of the Expert Workshop,' United Nations Conference on Trade and Development. Papers prepared in support of the themes discussed at the Pre-UNCTAD X Expert Workshop on Trade, Sustainable Development and Gender (Geneva, 12-13 July 1999).

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*Common Future*, rightly points out that previously, responsibility for environmental matters had been placed in environmental ministries and institutions that often had little or no control over destruction caused by agricultural, industrial, urban development, forestry, and transportation policies and practices.<sup>11</sup> As such, society failed to give the responsibility for preventing environmental damage to the 'sectoral' ministries and agencies whose policies cause it. Accordingly, environmental management practices focused largely upon after-the-fact repair of damage: reforestation, reclaiming desert lands, rebuilding urban environments, restoring natural habitats, and rehabilitating wild lands.

To correct this, the World Commission on Environment and Development, therefore, suggested that the ability to anticipate and prevent environmental damage would require that the ecological dimensions of policy be considered at the same time as the economic, trade, energy, agricultural, and other dimensions.<sup>12</sup> Thus, long term sustainable growth would require far-reaching changes to produce trade, capital, and technology flows that are more equitable and better synchronized to environmental imperatives.<sup>13</sup>

The recommendation by the World Commission on Environment and Development has since seen a paradigm shift in the global approach to the relationship between trade and environment. Indeed, this shift has been reflected in many trade and economic policies, which have incorporated such issues as the concept of internalisation of environmental costs as an incentive for the states and multinationals to be conscious of environmental matters in their business transitions. The concept of internalisation of environmental costs implies that market prices should reflect the environmental costs of the production and use of a product in terms of natural resource utilisation, pollution, waste generation, consumption, disposal and other factors.<sup>14</sup> This is believed to be a focal point of environmental economics.<sup>15</sup>

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<sup>11</sup> Report of the World Commission on Environment and Development, *Our Common Future*, op cit., para. 46.

<sup>12</sup> Ibid, para. 46.

<sup>13</sup> Ibid. para. 52.

<sup>14</sup> OECD, *Environmental Principles and Concepts*, (Organisation For Economic Co-Operation And Development, Paris, 1995), op cit., para. 33.

<sup>15</sup> Ibid.

This paper generally discusses the connection between trade and environment in light of the sustainable development agenda. While it is beyond the scope of this paper to discuss in detail the particular trade measures that countries should or have been applying, the same have been highlighted with the recognition that they are so deep and complicated that they can form the basis for further research.

## **2. International Trade as a Tool for Sustainable Development**

It has been argued that the main link between trade and sustainable development is the use of non-renewable raw materials to earn foreign exchange.<sup>16</sup> This, it has been suggested, is a result of a scenario where the dependence of the developed market economies on other mineral imports from the developing countries has also grown, and non-renewable resources like fuels and minerals, as well as manufactured goods, are now far more important than tropical products and other agricultural materials in the flow of primary products from developing to industrial countries.<sup>17</sup> This has been such a serious problem which has continually affected third world countries that the Agenda 2030 for Sustainable Development aims at ensuring that there is significant increase in the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020.<sup>18</sup> The Agenda 2030 also affirms that international trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development.<sup>19</sup> As such, it seeks to continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading

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<sup>16</sup> Report of the World Commission on Environment and Development, *Our Common Future*, op cit., para. 41. However, this is not to say that it is the only link. There are other links between trade and sustainable development; if protectionism raises barriers against manufactured exports, for example, developing nations have less scope for diversifying away from traditional commodities. And unsustainable development may arise not only from overuse of certain commodities but from manufactured goods that are potentially polluting. The Commission also observed that the increase in protectionism in industrial countries stifles export growth and prevents diversification from traditional exports. Consequently, if developing countries are to reconcile a need for rapid export growth with a need to conserve the resource base, it is imperative that they enjoy access to industrial country markets for non-traditional exports where they enjoy a comparative advantage. (para. 51).

<sup>17</sup> Ibid, para. 40.

<sup>18</sup> United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, op cit., para. 17.11.

<sup>19</sup> Ibid, para. 68. This is a restatement of para. 281 of the Rio+20 Conference outcome document (The Future We Want) which reaffirmed that international trade is an engine for development and sustained economic growth, and also reaffirmed the critical role that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalisation, can play in stimulating economic growth and development worldwide, thereby benefiting all countries at all stages of development as they advance towards sustainable development. In this context, the participants in the conference expressed their focus on achieving progress in addressing a set of important issues, such as, inter alia, trade-distorting subsidies and trade in environmental goods and services.

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system under the World Trade Organization, as well as meaningful trade liberalisation. It also calls upon all members of the World Trade Organization to redouble their efforts to promptly conclude the negotiations on the Doha Development Agenda.<sup>20</sup>

The international community came together in July 2015 for the Third International Conference on Financing for Development, held in Addis Ababa, Ethiopia, and agreed on a set of concrete policies and actions for enhancing the effectiveness of trade as a means of implementation of sustainable development. The Addis Ababa Action Agenda, the resultant document, states<sup>21</sup>: “With appropriate supporting policies, infrastructure and an educated work force, trade can also help to promote productive employment and decent work, women’s empowerment and food security, as well as a reduction in inequality, and contribute to achieving the sustainable development goals.”<sup>22</sup>

It also stated that the Heads of State would continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organisation (WTO), as well as meaningful trade liberalisation.<sup>23</sup>

It has been suggested that equitable international trade can enable countries to achieve food security, generate decent employment opportunities for the poor, promote technology transfer<sup>24</sup>, ensure national economic security and support infrastructure development, not only for moving goods to and from ports, but also for basic services such as health, education, water, sanitation and energy.<sup>25</sup> As such, it is suggested that equitable trade may be more effectively harnessed in

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<sup>20</sup> Ibid, para. 68.

<sup>21</sup> ‘Trade Policymaking and the Sustainable Development’ *Trading into Sustainable Development: Trade, Market Access, and the Sustainable Development Goals*, Chapter I (United Nations, 2016).

<sup>22</sup> *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)* (A/RES/69/313), Resolution adopted by the General Assembly on 27 July 2015, para. 79.

<sup>23</sup> Ibid.

<sup>24</sup> Art. 7 of the TRIPS states that: “The protection and enforcement of intellectual property should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

<sup>25</sup> Galmés, G.V., ‘Trade as an enabler of sustainable development and poverty eradication,’ in United Nations, *The Road from Rio+20: Towards Sustainable Development Goals*, Issue 4, September 2014, p. 10. UNCTAD/DITC/TED/2014/1 Available at [http://unctad.org/en/PublicationsLibrary/ditcted2014d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditcted2014d1_en.pdf) [Accessed on 19/08/2018].

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delivering sustainable development when integrated into the SDG framework as an SDG enabler, where it would serve as a promoter for potential goals such as poverty eradication, job creation, universal healthcare and education, and a healthy environment.<sup>26</sup>

International trade comprises so many issues that the international community has to address the same in various forums, sometimes only handling only one of them. For instance, the participants of the *United Nations Conference on Sustainable Development - or Rio+20*, which took place in Rio de Janeiro, Brazil on 20-22 June 2012,<sup>27</sup> emphasised that well-designed and managed tourism can make a significant contribution to the three dimensions of sustainable development, has close linkages to other sectors and can create decent jobs and generate trade opportunities.<sup>28</sup> Further, they recognised the need to support sustainable tourism activities and relevant capacity building that promote environmental awareness, conserve and protect the environment, respect wildlife, flora, biodiversity, ecosystems and cultural diversity, and improve the welfare and livelihoods of local communities by supporting their local economies and the human and natural environment as a whole.<sup>29</sup> As a result, participants called for enhanced support for sustainable tourism activities and relevant capacity-building in developing countries in order to contribute to the achievement of sustainable development.<sup>30</sup>

Further, in order to promote trade in legally harvested forest products, the Rio +20 conference participants called for increased efforts to strengthen forest governance frameworks and means of implementation, in accordance with the non-legally binding instrument on all types of forests, in order to achieve sustainable forest management. To this end, they committed to improve the livelihoods of people and communities by creating the conditions needed for them to sustainably

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<sup>26</sup> Ibid, p.10.

<sup>27</sup> The Rio+20 Conference had two themes: a green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development (World Trade Organisation, 'Harnessing Trade for Sustainable Development and a Green Economy,' p. 2.

Available at [https://www.wto.org/english/res\\_e/publications\\_e/rio20\\_e.htm](https://www.wto.org/english/res_e/publications_e/rio20_e.htm) [Accessed on 19/08/2018].

<sup>28</sup> United Nations, *The Future We Want*, A/RES/66/288, Sixty-sixth session Agenda item 19, Resolution adopted by the General Assembly on 27 July 2012, para. 130.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid. As one of the means of promoting sustainable tourism, RIO +20 participants further encouraged the promotion of investment in sustainable tourism, including ecotourism and cultural tourism, which may include creating small and medium sized enterprises and facilitating access to finance, including through microcredit initiatives for the poor, indigenous peoples and local communities in areas with high ecotourism potential. In this regard, they underlined the importance of establishing, where necessary, appropriate guidelines and regulations, in accordance with national priorities and legislation, for promoting and supporting sustainable tourism (para. 131).

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manage forests, including by strengthening cooperation arrangements in the areas of finance, trade, transfer of environmentally sound technologies, capacity-building and governance, as well as by promoting secure land tenure, particularly with regard to decision-making and benefit-sharing, in accordance with national legislation and priorities.<sup>31</sup>

Based on the foregoing, it is arguable that participating in international trade can widen the economic space needed to create new job opportunities, promote efficient use of resources, increase access to food, energy and basic services, and improve productive, managerial and entrepreneurial capacity required for economic diversification, growth and development.<sup>32</sup>

It has also been acknowledged that trade can have negative, as well as positive, impacts on economic, environmental, and social systems. Economic activities supporting rapidly expanded trade can result in serious environmental degradation when complementary environmental policies are not in place; pollution of air, water, and soil, and unrestrained natural resource exploitation causing desertification, deforestation, sea level rise and fisheries depletion may grow to levels that jeopardize sustainable development efforts; and unmanaged, trade liberalisation can also have negative social impacts including brain-drain and cultural erosion.<sup>33</sup>

### **3. The World Trade Organization (WTO), Trade and Sustainable Development**

It is noteworthy that despite the major impact of trade and investment on economic activities that impact the environment – and responses to related problems like climate change – there is no single institution at the global level tasked with ensuring the mutual supportiveness of the international trade regime with sustainable development.<sup>34</sup> Most aspects of trade – from intellectual property rights to agricultural policy – are addressed by different international processes, such as multilateral environmental agreements including the UN Framework Convention on Climate Change (UNFCCC), organizations like the WTO or the International Maritime Organization

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<sup>31</sup> Ibid, para. 193.

<sup>32</sup> Ibid, p. 10.

<sup>33</sup> Ibid, p.10.

<sup>34</sup> IISD, 'A Brief History of Trade, Finance and Sustainable Development.' Available at [http://www.iisd.ca/process/trade\\_invest-intro.htm](http://www.iisd.ca/process/trade_invest-intro.htm) [Accessed on 19/08/2018].



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(IMO), and UN processes and institutions like the UN Environment Programme (UNEP), the UN Development Programme (UNDP) and the UN Food and Agriculture Organization (FAO), with varying degrees of attention to the links with sustainability.<sup>35</sup> However, considering that the other bodies deal with a whole range of issues, unlike WTO which is mainly involved in trade matters, this paper does not dwell much on the work of the other institutions as far as international trade and sustainable development matters are concerned but instead singles out WTO.

The World Trade Organization is the international body dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field for all its members. Sustainable development is one of the objectives of the WTO, as reflected in the Preamble of the Marrakesh Agreement which establishes the WTO, putting it at the intersection of trade and sustainable development.<sup>36</sup> Sustainable development and protection and preservation of the environment complement the WTO's objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations.<sup>37</sup>

The WTO notes that while there is no specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions to avoid the misuse of such measures for protectionist ends are fulfilled. The WTO contributes to protection and preservation of the environment through its objective of trade openness, through its rules and enforcement mechanism, through work in different WTO bodies, and through ongoing efforts under the Doha Development Agenda. The Doha Agenda includes specific negotiations on trade and environment and some tasks assigned to

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<sup>35</sup> Ibid.

<sup>36</sup> 'Harnessing Trade for Sustainable Development and a Green Economy' (World Trade Organization, 2012); *Marrakesh Agreement Establishing the World Trade Organization* "The Parties to this Agreement, Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development...."

<sup>37</sup> World Trade Organization, 'Trade and environment,' available at [https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_e.htm) [Accessed on 19/08/2018].

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the regular WTO Trade and Environment Committee.<sup>38</sup> The Doha Round was a round of trade negotiations among the WTO membership. Its aim was to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The work programme covers about 20 areas of trade. The Round is also known semi-officially as the *Doha Development Agenda* as a fundamental objective is to improve the trading prospects of developing countries.<sup>39</sup>

Thus, it has been contended WTO aims to make trade policies and environmental policies mutually supportive and to promote their compatibility so as to contribute to sustainable development.

The World Trade Organization's description of sustainable development equates the pillar of economic development to trade liberalisation<sup>40</sup>. It has asserted that the goals of sustainable development and trade liberalisation are mutually supportive. Some environmental and social welfare advocates have disputed this mutuality, as in their view, trade liberalisation creates a race to the bottom in terms of standards, by globalizing markets and encouraging more exploitation of resources.<sup>41</sup> However, this position has been challenged on the ground that WTO rules do not prevent countries from adopting environmental policies; instead, they allow complementary trade measures that are conducive to effective implementation of domestic environmental policies, but

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<sup>38</sup> Ibid. The Trade and Environment Committee is the standing forum dedicated to dialogue between governments on the impact of trade policies on the environment, and of environment policies on trade. Created in 1995, the Committee has followed a comprehensive work programme. Under the Doha Development Agenda, the regular committee is also looking at the effects of environmental measures on market access, the intellectual property agreement and biodiversity, and labeling for environmental purposes. (Available at [https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_e.htm) [Accessed on 19/08/2018].

<sup>39</sup> Doha Round of trade negotiations (Doha Development Agenda). Available at [https://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](https://www.wto.org/english/tratop_e/dda_e/dda_e.htm) [Accessed on 19/08/2018].

In the Doha Round, WTO members are negotiating certain aspects of the link between trade and the environment, particularly the relationship between the WTO's agreements and those of other agencies, and market access for environmental goods and services. These talks take place in "Special Sessions" of the Trade and Environment Committee.

<sup>40</sup> Lydgate, E.B., 'Sustainable Development in the WTO: From Mutual Supportiveness to Balancing,' *World Trade Review*, Vol. 11, No. 4, 2012, pp. 621-639.

<sup>41</sup> Ibid.

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aim to prevent such measures from creating unnecessary obstacles to trade.<sup>42</sup> They are seen as the guardian against protectionism and discrimination in international trade.<sup>43</sup>

The relationship between trade liberalisation and economic development is arguably the most important common area of policy concern for both trade and sustainable development.<sup>44</sup> Trade liberalisation is one of the key goals of WTO, under the working hypothesis that trade liberalisation removes restrictions in the market, efficiently allocates resources and contributes to their optimal use. This results in increased production and income, promotes economic development, and makes more resources available for economic development, environmental management and improving social conditions, thereby contributing to sustainable development.<sup>45</sup>

Generally, trade liberalisation can have both positive and negative effects on sustainable development.<sup>46</sup> To maximize the positive contribution from liberalisation, it is necessary to have increased environmental safeguards, as lack of adequate environmental safeguards leads to

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<sup>42</sup> UNCTAD, 'Trade and Environment in the Multilateral Trading System,' Module 2, *Trade for Trade 2000*, para. 191. Available at

<http://www.oas.org/dsd/Toolkit/Documentos/ModuleIII/doc/Trade%20and%20Environment%20in%20the%20Multilateral%20Trading%20System.pdf> [Accessed on 19/08/2018]. For instance, in the case of *United States — Import Prohibition of Certain Shrimp and Shrimp Products, the “shrimp-turtle” case*, (WTO case Nos. 58 and 61, Ruling adopted on 6 November 1998. Case brought by India, Malaysia, Pakistan and Thailand), the Appellate Body's ruling recognized that under WTO rules governments have every right to protect human, animal or plant life and health and to take measures to conserve exhaustible resources. The WTO does not have to “allow” them this right. Initially, the US lost the case because it applied its import measures in a discriminatory manner; it then revised its measures to introduce flexibilities in favour of developing countries. The Appellate Body subsequently concluded that the US ban was consistent with WTO rules. This was also the position in *United States — Standards for Reformulated and Conventional Gasoline*, (WTO case Nos. 2 and 4. Ruling adopted on 20 May 1996. Case brought by Venezuela and Brazil.) where it was affirmed that the US had every right to adopt the highest possible standard to protect its air quality so long as it did not discriminate against foreign imports. The US lost the case because it discriminated — its requirement on domestic producers was less stringent than that imposed on imported gasoline (in this case from Venezuela and Brazil). (WTO, 'Environmental disputes in GATT/WTO,' available at [https://www.wto.org/english/tratop\\_e/envir\\_e/edis00\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/edis00_e.htm) [Accessed on 19/08/2018])

<sup>43</sup> United Nations Conference on Trade and Development, *Towards an enabling multilateral trading system for inclusive and sustainable development*, Trade and Development Commission Multi-year Expert Meeting on Enhancing the Enabling Economic Environment at All Levels in Support of Inclusive and Sustainable Development, Second session Geneva, 8–9 December 2014, Item 3 of the provisional agenda, Note by the UNCTAD secretariat, TD/B/C.I/MEM.5/5, para. 48. Available at [http://unctad.org/meetings/en/SessionalDocuments/cimem5d5\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/cimem5d5_en.pdf) [Accessed on 19/08/2018].

<sup>44</sup> Gary P. Sampson, 'The WTO and Sustainable Development' p. 3.

<sup>45</sup> Ibid.

<sup>46</sup> OECD Roundtable on Sustainable Development, Fourth Meeting, Paris 27-28 June 2008, 'Trade Liberalisation and Sustainable Development' Background Paper.

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environmental deterioration, which is likely to be on a massive scale.<sup>47</sup> Another positive effect is the increased revenues it brings which is essential for sustainable development.

Trade liberalisation has not, however, benefitted all regions of the world or all layers of society in an equal manner.<sup>48</sup> One of the concerning developmental effects of trade expansion is that international trade may have strong unequalizing tendencies, both between and within nations.<sup>49</sup> Agenda 21 recommends that for developing countries to benefit from the liberalisation of trading systems, they should implement the following policies, as appropriate: Create a domestic environment supportive of an optimal balance between production for the domestic and export markets and remove biases against exports and discourage inefficient import-substitution; and promote the policy framework and the infrastructure required to improve the efficiency of export and import trade as well as the functioning of domestic markets.<sup>50</sup> Further, it recommends that the following policies should be adopted by developing countries with respect to commodities consistent with market efficiency: expand processing, distribution and improve marketing practices and the competitiveness of the commodity sector; diversify in order to reduce dependence on commodity exports; and reflect efficient and sustainable use of factors of production in the formation of commodity prices, including the reflection of environmental, social and resources costs.<sup>51</sup>

It has been contended that there is an alarming split between industrialized countries who are successful participants of global trade and developing countries, who are largely excluded from it.<sup>52</sup> There is, thus, a need to take this disparity into account as we consider the steps to be taken by various countries towards sustainable development.

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<sup>47</sup> The World Trade Organization and Sustainable Development: An Independent Assessment. A Report by the International Institute for Sustainable Development, 1996.

<sup>48</sup> 'The Link between Trade and Development: What Role for the EU Trade Policy?' AIF Conference, Christiansborg, 12 September 2000.

<sup>49</sup> Joeke, S., 'A Gender-Analytical Perspective on Trades and Sustainable Development' op cit.

<sup>50</sup> *United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992*, Agenda 21, para. 2.13.

<sup>51</sup> *Ibid*, para. 2.14.

<sup>52</sup> 'The Link between Trade and Development: What Role for the EU Trade Policy?' op cit.

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Trade is deemed instrumental for growth and development under appropriate conditions. Trade provides a means to overcome constraints posed by small domestic markets and allows countries to access larger external markets, as well as skills, technology and capital, which in turn enable a better use of productive resources to catalyse structural transformation.<sup>53</sup>

It has been argued that the links between trade and the environment are multiple, complex and important. Further, trade liberalisation as such is neither good nor bad for the environment. Its effects on the environment depend on the extent to which environment and trade goals can be made complementary and mutually supportive. A positive outcome requires appropriate supporting social, economic and environmental policies at the national and international levels.<sup>54</sup>

It has been observed that there is no “one-size-fits-all” prescription to create the appropriate policy environment. In making the shift to sustainable development considerations, the approach countries will take will depend on their institutions, level of development and resource endowments, and particular environmental challenges they face.<sup>55</sup> While environmental standards set in developed countries are of keen interest to developing countries, they are hard to know, hard to meet, sometimes unreasonable, but all the same, imperative to export success. They end up frustrating sustainable development in developing countries.<sup>56</sup>

There is a difference in agenda between developed and developing countries. With regard to trade, developed countries’ agenda is to establish or maintain worldwide free trade, while that of developing countries’ is to gain access to new markets and to build capacity for stronger participation in international trade.<sup>57</sup> With regard to sustainable development, developed countries

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<sup>53</sup> United Nations Conference on Trade and Development, *Towards an enabling multilateral trading system for inclusive and sustainable development*, op cit, para. 5.

Available at [http://unctad.org/meetings/en/SessionalDocuments/cimem5d5\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/cimem5d5_en.pdf) [Accessed on 19/08/2018].

<sup>54</sup> International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook* op cit., p.3.

<sup>55</sup> ‘Harnessing Trade for Sustainable Development and a Green Economy’ (World Trade Organization) 2012.

<sup>56</sup> Cosbey, A., ‘Lessons Learnt on Trade and Sustainable Development: Distilling Six Years of Research from the Trade Knowledge Network,’ *International Institute for Sustainable Development*, 2005.

<sup>57</sup> Glover, F., et al, ‘Reinforcing the Links between Trade, Sustainable Development and Gender: an Overview of the Papers of the Expert Workshop,’ op cit.

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seek to ensure global environmental stability while developing countries seek to ensure development and avoid further destruction of local environments.<sup>58</sup>

One of the rules of international trade is that countries cannot discriminate against the products of other countries on the basis of how those products were made. Regulating Process and Production Methods (PPMs) gives governments an opportunity to protect their industries unfairly against foreign competition.<sup>59</sup> PPMs specify how products are to be produced and what kinds of impact they may have on the environment. Applied to traded goods, they have been accused of amounting to the importing country regulating activities that take place outside its borders.<sup>60</sup> From the environmental perspective, how a good is made is of central importance. From a developing country perspective, dictating how a good is produced may be seen as an intrusion on sovereignty.<sup>61</sup>

In environmental terms, the essence of sustainable development is to move from the old style of cleaning up environmental problems after they occur to the new style of closed cycle facilities, cleaner production concepts and waste minimisation. Most countries and consumers will want to reward companies who produce according to these new methods.<sup>62</sup>

This, may however, create the situation where standards imposed might be inappropriate for foreign investors. Another argument against PPMs is that developing countries have different social priorities than developed states, such as a higher concern for clean water than for global warming.<sup>63</sup>

It is noteworthy that developing countries face many challenges especially as far as regulation of international trade in light of environmental degradation is concerned. Multinational Corporations are arguably important players in the quest for sustainable development in international trade

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<sup>58</sup> Ibid.

<sup>59</sup> International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook*, (International Institute for Sustainable Development, Geneva, 2014).

<sup>60</sup> Ibid.

<sup>61</sup> Halle, M., 'WTO and Sustainable Development' (A chapter in "The WTO and East Asian Regional Integration").

<sup>62</sup> Runnals, D., 'Trade and Sustainable Development- the Emerging Issues' *Policy Matters* Issue no. 2, Spring 1998.

<sup>63</sup> International Institute for Sustainable Development & United Nations Environment Programme, *Trade and Green Economy: A Handbook*, op cit.

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matters. The Report of the World Commission on Environment and Development pointed that transnationals play an important role as owners, as partners in joint ventures, and as suppliers of technology in the mining and manufacturing sectors in many developing countries, especially in such environmentally sensitive areas as petroleum, chemicals, metals, paper, and automobiles. They also dominate world trade in many primary commodities.<sup>64</sup> There is, thus, a need to hold them accountable in their activities in a bid to achieve the right equilibrium between international trade and sustainable development agenda. Considering that many of the developing countries may not have an effective framework to contain these multinationals, this is where the multilateral trading system comes in to fill in the gaps in the regulatory framework especially with regards to environmental sustainability.

*Agenda 21* points out that international cooperation in the environmental field is growing, and in a number of cases trade provisions in multilateral environment agreements have played a role in tackling global environmental challenges. Trade measures have thus been used in certain specific instances, where considered necessary, to enhance the effectiveness of environmental regulations for the protection of the environment.<sup>65</sup> Such regulations should address the root causes of environmental degradation so as not to result in unjustified restrictions on trade. The challenge is to ensure that trade and environment policies are consistent and reinforce the process of sustainable

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<sup>64</sup> Report of the World Commission on Environment and Development, *Our Common Future*, op cit., chapter 3, para. 58.

<sup>65</sup> For Instance, The *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (27 UST 1087; TIAS 8249; 993 UNTS 243) is an international agreement which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival by regulating trade in such animals and plants (e.g. Elephant tusks). Further, in the *US—Gasoline case* (, the Appellate Body stated as follows (WTO Appellate Body Report, DSR 1996, p. 28): “It is of some importance that the Appellate Body point out what this does not mean. It does not mean, or imply, that the ability of any WTO Member to take measures to control air pollution or, more generally, to protect the environment, is at issue. That would be to ignore the fact that Art. XX of the General Agreement contains provisions designed to permit important state interests—including the protection of human health, as well as the conservation of exhaustible natural resources—to find expression...”; See also GATT Panel Report, *United States – Restrictions on Imports of Tuna*, DS29/R, 16 June 1994, unadopted. The Panel noted that the objective of sustainable development, which includes the protection and preservation of the environment, has been widely recognized by the contracting parties to the General Agreement. The Panel observed that the issue in this dispute was not the validity of the environmental objectives of the United States to protect and conserve dolphins. The issue was whether, in the pursuit of its environmental objectives, the United States could impose trade embargoes to secure changes in the policies which other contracting parties pursued within their own jurisdiction. The Panel therefore had to resolve whether the contracting parties, by agreeing to give each other in Art. XX the right to take trade measures necessary to protect the health and life of plants, animals and persons or aimed at the conservation of exhaustible natural resources, had agreed to accord each other the right to impose trade embargoes for such purposes. (para. 5.4.2).

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development. However, account should be taken of the fact that environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries.<sup>66</sup>

During the *United Nations Conference on Environment & Development, Rio de Janeiro, Brazil, 3 to 14 June 1992*, some of programme areas that led to the adoption of Agenda 21 were promoting sustainable development through trade Basis for action; Making trade and environment mutually supportive Basis for action; and encouraging economic policies conducive to sustainable development, amongst others. Agenda 21 also points out that economic policies of individual countries and international economic relations both have great relevance to sustainable development.<sup>67</sup> It also recommends that the international community should aim at finding ways and means of achieving a better functioning and enhanced transparency of commodity markets, greater diversification of the commodity sector in developing economies within a macroeconomic framework that takes into consideration a country's economic structure, resource endowments and market opportunities, and better management of natural resources that takes into account the necessities of sustainable development.<sup>68</sup> Further, governments should strive to meet the following objectives, through relevant multilateral forums, including General Agreement on Tariffs and Trade (GATT)<sup>69</sup>, United Nations Conference on Trade and Development (UNCTAD) and other international organizations: to make international trade and environment policies mutually supportive in favour of sustainable development; to clarify the role of GATT, UNCTAD and other international organizations in dealing with trade and environment -related issues, including, where relevant, conciliation procedure and dispute settlement; and to encourage international

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<sup>66</sup> *United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992*, Agenda 21, para. 2.20.

<sup>67</sup> *United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992*, Agenda 21, para. 2.1.

<sup>68</sup> *Ibid*, para. 2.11.

<sup>69</sup> The General Agreement on Tariffs and Trade (GATT) was a multilateral agreement regulating international trade. It was created in 1948 and lasted until 1993 when the World Trade Organization (WTO) was formed as a replacement for GATT in 1995. GATT went out of existence with the formal conclusion of the Uruguay Round on April 15, 1994. Its principles and the many trade agreements reached under its auspices were adopted by the WTO. (<https://www.britannica.com/topic/General-Agreement-on-Tariffs-and-Trade>). It is worth mentioning that the original GATT text (GATT 1947) is still in effect under the WTO framework, subject to the modifications of GATT 1994. World Trade Organisation, 'Uruguay Round Agreement General Agreement On Tariffs And Trade 1994,' available at

[https://www.wto.org/english/docs\\_e/legal\\_e/06-gatt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm) [Accessed on 19/08/2018].



productivity and competitiveness and encourage a constructive role on the part of industry in dealing with environment and development issues.<sup>70</sup>

#### **4. United Nations Conference on Trade and Development**

UNCTAD is a permanent intergovernmental body established by the United Nations General Assembly in 1964, with its headquarters located in Geneva, Switzerland, and have offices in New York and Addis Ababa.<sup>71</sup> UNCTAD is part of the UN Secretariat and it reports to the UN General Assembly and the Economic and Social Council but have their own membership (194 members as at 2015), leadership, and budget.<sup>72</sup>

Working at the national, regional, and global level, UNCTAD's efforts are aimed to help countries to: diversify economies to make them less dependent on commodities; limit their exposure to financial volatility and debt; attract investment and make it more development friendly; increase access to digital technologies; promote entrepreneurship and innovation; help local firms move up value chains; speed up the flow of goods across borders; protect consumers from abuse; curb regulations that stifle competition; and adapt to climate change and use natural resources more effectively.<sup>73</sup>

UNCTAD's work on harnessing international trade in promoting sustained growth and inclusive development includes as a key aspect, support to developing countries in taking advantages of emerging opportunities for trade associated with the protection, promotion and preservation of the environment and sustainable development objectives generally, while minimizing potential adverse impacts.<sup>74</sup> It has been engaging in initiatives that are meant to achieve its objectives. For instance, UNCTAD launched the BioTrade Initiative in 1996 and it has been promoting sustainable BioTrade<sup>75</sup> in support of the objectives of the Convention on Biological Diversity. Since 2003 the

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<sup>70</sup> *United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992*, Agenda 21, para. 2.21.

<sup>71</sup> UNCTAD, (ECOSOC res. 917 (XXXIV) OF 1962 & RES 1995 (XIX) (1964) 'About UNCTAD,' available at <http://unctad.org/en/Pages/aboutus.aspx> [Accessed on 19/08/2018].

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> UNCTAD, 'Trade, Environment, Climate Change and Sustainable Development,' available at <http://unctad.org/en/Pages/DITC/Trade-and-Environment.aspx> [Accessed on 19/08/2018].

<sup>75</sup> BioTrade refers to those activities of collection, production, transformation, and commercialization of goods and services derived from native biodiversity under the criteria of environmental, social and economic sustainability.

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BioTrade Initiative has also hosted the BioTrade Facilitation Programme (BTFP) which focuses on enhancing sustainable bio-resources management, product development, value adding processing and marketing. The BTFP complements the UNCTAD BioTrade Initiative activities.<sup>76</sup> In 2015, UNCTAD launched the third phase of the BioTrade Facilitation Programme, which helps developing countries to strengthen their institutional capacity and policy frameworks.<sup>77</sup>

UNCTAD observes that biodiversity is the source of many products and services utilized by society and its sustainable use is thus fundamental for long-term sustainable development. They also highlight the fact that natural resources are located mainly in rural areas, where over 70 per cent of the world's poor live and directly depend on these resources to cover 90 per cent of their needs in terms of food, fuel, medicine, shelter and transportation. As such, the BioTrade Initiative of the United Nations Conference on Trade and Development (UNCTAD) seeks to generate additional economic opportunities and income through the sustainable commercialization of biodiversity-based products and services. BioTrade encompasses activities ranging from the production to the sale of products and services derived from native biodiversity. Its implementation is based on compliance with a set of environmental, economic and social sustainability criteria aimed at generating economic growth and sustainable livelihoods for rural populations while conserving biodiversity.<sup>78</sup>

Another laudable initiative by UNCTAD, in collaboration with the UN Global Compact, the UN Environment Program Finance Initiative (UNEP FI), and the Principles for Responsible Investment (PRI), is the Sustainable Stock Exchanges (SSE) initiative which is a peer-to-peer learning platform for exploring how exchanges, in collaboration with investors, regulators, and

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[UNCTAD, 'About BioTrade,' available at <http://unctad.org/en/Pages/DITC/Trade-and-Environment/BioTrade.aspx> [Accessed on 19/08/2018].

<sup>76</sup> Ibid.

<sup>77</sup> UNCTAD, 'UNCTAD Annual Report 2015: Delivering On A Sustainable Agenda,' (UNCTAD, Geneva, 2015), p. 29. Available at

[http://unctad.org/en/PublicationsLibrary/dom2016d1ipub\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dom2016d1ipub_en.pdf) [Accessed on 19/08/2018].

<sup>78</sup> UNCTAD, *Training Manual on Developing Joint BioTrade and REDD+ Projects*, UNCTAD/DITC/TED/2015/1. Available at

<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1558>[Accessed on 19/08/2018].

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companies, can enhance corporate transparency – and ultimately performance – on ESG (environmental, social and corporate governance) issues and encourage sustainable investment.<sup>79</sup>

The participating stock exchanges commit to sustainability in their markets. They make a voluntary public commitment to promote improved ESG disclosure and performance among listed companies.<sup>80</sup> SSE works with all of its Partner Exchanges through dialogue, capacity building and research to continue the momentum and to promote sustainable and transparent capital markets worldwide.<sup>81</sup>

Nairobi Securities Exchange (NSE) is also a member of SSE. Kenyan private sector is already taking advantage of this initiative, with reports that Kenyan bankers are working to develop a Green Bonds (GBs) Market in collaboration with the NSE.<sup>82</sup> A GB is a debt instrument that is issued to raise capital in support of environmental and climate related projects. This has been commended as one of the ways that can enable Kenya transition to low carbon development and climate resilient growth.<sup>83</sup>

The highest decision-making body of UNCTAD is the quadrennial conference, at which member States make assessments of current trade and development issues, discuss policy options and formulate global policy responses.<sup>84</sup> The conference also sets the organization's mandate and work priorities, and it is a subsidiary organ of the United Nations General Assembly. The conferences serve an important political function: they allow intergovernmental consensus building regarding the state of the world economy and development policies, and they play a key role in identifying the role of the United Nations and UNCTAD in addressing economic development problems.<sup>85</sup>

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<sup>79</sup> Sustainable Stock Exchanges (SSE) Initiative, 'About the Sustainable Stock Exchanges (SSE) initiative,' available at <http://www.sseinitiative.org/about/> [Accessed on 19/08/2018].

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Nyandika P., 'Green Bonds Value in Financial Investments,' *The Standard*, Tuesday, September 13, 2016, p. 15 (The Standard Group, Nairobi, 2016).

<sup>83</sup> Ibid.

<sup>84</sup> UNCTAD, 'UNCTAD Conferences,' available at <http://unctad.org/en/Pages/Meetings/UNCTAD-Conferences.aspx> [Accessed on 19/08/2018].

<sup>85</sup> Ibid.

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The member States of the United Nations Conference on Trade and Development (UNCTAD), gathered in Nairobi from 17 to 22 July 2016 for the fourteenth session of the Conference (UNCTAD XIV), under the theme “From decision to action: Moving towards an inclusive and equitable global economic environment for trade and development”, resulted in the Nairobi Consensus document, known as *the Maafikiano*.<sup>86</sup> The conference resulted in concrete progress including the launch of a new e-trade initiative, the first UN statistical report on the Sustainable Development Goals (SDGs) indicators, the launch of a multi-donor trust fund on trade and productive capacity, and the commitment of more than 90 countries for a roadmap on fisheries subsidies.<sup>87</sup>

This is one of the commendable initiatives of UNCTAD that are meant to promote sustainable development, making this body an important player in promoting fair and environmentally conscious trade practices for sustainable development. These initiatives are commendable especially because they can go a long way in enhancing technology transfer efforts in trade matters, necessary for sustainable development.

### **5. Conclusion**

Linking development and environment is the central idea behind sustainable development. In practice, this implies opening environmental debates to the development dimension and vice versa,

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<sup>86</sup> UNCTAD, *Nairobi Maafikiano*, ‘From decision to action: Moving towards an inclusive and equitable global economic environment for trade and development,’ Fourteenth session Nairobi, 17–22 July 2016, TD/519/Add.2, 5 September 2016. The Document states, inter alia, ‘*in moving from decisions to actions, UNCTAD should undertake the following actions: (a) Give due account to cross-cutting issues such as good governance at all levels, freedom, peace and security, respect for human rights, including the right to development, gender equality and women’s empowerment, youth and an overall commitment to just and democratic societies, which are essential to all countries to attain sustainable and equitable growth and development; (b) Continue its efforts in all its work to mainstream cross-cutting issues of gender equality and the empowerment of women, and the promotion of sustainable development and full and productive employment; (c) Continue and strengthen its engagement with Governments, in particular those of developing countries, and all relevant stakeholders including civil society, academia and the private sector; and (d) Continue its efforts to enhance its efficiency, effectiveness, transparency and accountability, including through effective results-based management and ensuring a member State-driven process through the intergovernmental machinery.* (para. 14).

<sup>87</sup> United Nations Conference on Trade and Development, ‘Negotiators at UNCTAD14 reach consensus, strengthen UNCTAD work programme,’ 22 July 2016. Available at <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1301> [Accessed on 19/08/2018].

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and seeking ways to better integrate them.<sup>88</sup> The relationship between trade and sustainable development is manifested in the impact of trade on the environment and the effect of environmental policies on international trade. The impact of trade on the environment is indirect, mediated by its effects on consumption and production, rigour and suitability of environmental policy.<sup>89</sup> The impact of environment policies on trade depends on the amount and frequency of the transaction, conditioned by the degree of trade liberalisation.<sup>90</sup>

Some of the positive impacts of trade on the environment include the facilitation of international transfer of 'green' technologies, convergence of environmental standards of products and processes to the highest levels in the world, encouraging the development of organic products markets, elimination of subsidies and distorted prices in closed economies including the alignment of world prices, encouragement of international cooperation regarding the environmental protection, amongst others.<sup>91</sup>

The World Commission on Environment and Development recommended that in order to achieve sustainable development, changes are required in the attitudes and procedures of both public and private-sector enterprises. Moreover, environmental regulation must move beyond the usual menu of safety regulations, zoning laws, and pollution control enactments; environmental objectives must be built into taxation, prior approval procedures for investment and technology choice, foreign trade incentives, and all components of development policy.<sup>92</sup>

Trade is now considered one of the tools to implement sustainable development. There is, thus, the move towards integration of environmental and poverty alleviation goals into macro-economic policies, including trade policies.<sup>93</sup> Environment, trade and development are clearly linked. An

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<sup>88</sup> The World Trade Organization and Sustainable Development: An Independent Assessment. A Report by the International Institute for Sustainable Development, 1996.

<sup>89</sup> Timbur, M. & Pralea, S., 'International Trade – Environment' Relationship in the Context of Sustainable Development,' CES Working Papers.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Report of the World Commission on Environment and Development, *Our Common Future*, op cit., chapter 2, para. 79.

<sup>93</sup> 'Enhancing Capacity Building for Environment, Trade and Sustainable Development,' Draft Working Paper. *Capacity Building Meeting on Environment, Trade and Sustainable Development for the Latin American and Caribbean Region, Mexico City, Mexico, 27<sup>th</sup> -28<sup>th</sup> March 2003.*

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integrated approach that fully incorporates environmental concerns, fair trade and sustainable development is desirable.

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