

Trade Policy for the New International Economic Order: A Sustainable Development Model for Trade in the Midst of International Protectionism and Decentralization

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Changes in the international economic order have brought to the forefront two divergent trends in global trade that will continue to play out over the course of 2020. On one end, the World Trade Organization (WTO) is facing significant reforms following the U.S. Administration's decision to block new Appellate Body judges. At the same time, according to the WTO and the Financing for Development Report 2019, the incidence of trade-restrictive measures imposed by G-20 governments has reached historically high levels.² In light of this, today's appeals for mutually beneficial gains from trade ring increasingly hollow, seemingly replaced in some parts of the world and increasingly even at the multilateral level by the simpler notion that trade is a zero-sum game, stripped of a development purpose.³

At the other end of the global spectrum, 54 of the 55 African Union nations have signed onto the African Continental Free Trade Agreement (AfCFTA),⁴ a new model for trade agreements that is intentionally development-oriented. Once all substantive areas are agreed and the agreement is implemented, it will create the largest free trade area in terms of member states and has the potential to connect more than 1.2 billion people in a U.S. \$4 trillion market.⁵

As these contrasting developments highlight, trade has come to signify different things in different parts of the world. In some advanced economies, many see a stronger link between trade and inequality, which has led to a growing distrust of globalization and even anti-trade and populist movements resulting in the sort of trade barriers noted above. In other parts of the world, trade is increasingly viewed as an engine for growth and market development, albeit with "decentralized"

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² WTO, 21st Report on G20 Trade Measures (WTO/2019/21), June 24, 2019; United Nations, Inter-agency Task Force on Financing for Development, Financing for Sustainable Development Report 2019 (New York: United Nations, 2019), available at <https://developmentfinance.un.org/fsdr2019>.

³ World leaders affirmed their commitment to international trade in Sustainable Development Goal (SDG) targets 17.10-17.12 as well as in Chapter 2D of Addis Ababa Action Agenda.

⁴ Mayeni Jones, *Nigeria Signs African Free Trade Area Agreement*, BBC News, July 7, 2019, available at <https://www.bbc.com/news/world-africa-48899701>.

⁵ Landry Signé, *Africa's Big New Free Trade Agreement, Explained*, The Washington Post, March 29, 2018, available at https://www.washingtonpost.com/news/monkey-cage/wp/2018/03/29/the-countdown-to-the-african-continental-free-trade-area-starts-now/?utm_term=.7ef4d48b47cc.

or plurilateral approaches taking the place, at least for now, of multilateral negotiations through the WTO.

Ultimately, these shifts in the global economic order, challenges with multilateral consensus, and a polarized narrative around trade provide a rare opportunity to rethink the way our international trade treaties are designed and implemented. The Sustainable Development Goals (SDGs) uniquely bridge concerns on both sides of the trade divide and are an important framework through which to reassess trade and development. As the Twelfth Ministerial Conference (MC12) in Nur-Sultan, Kazakhstan scheduled for June 2020 draws near, now is the time to consider this approach.

This article highlights three main factors that often exacerbate rising inequalities and frustrations with trade's role in development, all of which call for an SDG-focused approach to trade: (1) first, the lack of consistent, transparent, and participatory processes in trade rulemaking; (2) second, the need for a tailored approach that better aligns content of trade agreements with economic and social development priorities and commitments, such as the SDGs and the Paris Agreement; and, (3) finally, the uneven implementation of trade rules, which has significant implications for sustainable development.

More flexible and adaptive approaches to trade rules could address the challenges highlighted in this article, and they would also be better suited to a global economy in which not every country is at the same stage of development.⁶ Ultimately, strengthening links between trade and social and environmental issues would help trade truly serve as an engine for sustainable development, a commitment world leaders made in Agenda 2030 and one that the WTO has recently reiterated.⁷

Current Challenges

In addition to the important policy-level debates around trade agreements and the WTO, trade is ultimately something that touches individuals and communities. The unequal distribution of trade's benefits is often cited as one of the most pressing challenges with trade and an impediment to using trade as a tool for inclusive economic development. However, the distribution of benefits actually fluctuates across sectors, regions, and time,⁸ calling for a more nuanced approach to trade and development, as reflected in the SDGs. This dynamic also suggests that inequality is not a necessary consequence of globalization but rather a result of the institutions and policies surrounding it. A range of policies and laws related to industrial development, digital commerce,

⁶ UNCTAD, *Forging a Path Beyond Borders: The Global South* (UNCTAD/OSG/2018/1), November 28, 2018.

⁷ WTO, *Trade Can Make a Vital Contribution to Meeting the Sustainable Development Goals* – Azevêdo, WTO News, 3 October 2018, available at https://www.wto.org/english/news_e/news18_e/sdgs_03oct18_e.htm; WTO, *Mainstreaming Trade to Attain the Sustainable Development Goals*, 2018, available at https://www.wto.org/english/res_e/booksp_e/sdg_e.pdf.

⁸ Max Lawson, *How to Reduce Inequality?*, in *SDGs: Delivering Change*, United Nations Association – UK, 2018, available at <https://www.sustainablegoals.org.uk/how-to-reduce-inequality/>

entrepreneurship, and cross-border trade measures, among others, can all be instruments for change.⁹

Although policies, institutions, and rules that govern markets can perhaps have a greater effect on inequality than trade itself, the lack of participatory processes for trade agreements presents another hurdle. Market rules are made at multiple levels, with international and regional commitments implemented through changes to national and even sub-national law. This can mean that ultimately changing the rules winds up being felt much more at the local level than internationally when all is said and done. Despite this grassroots connection, however, trade policy is often a high-level exercise. Adding to the challenge, in most countries, information on trade policies, economic rules, and negotiations is not easy to access. As a result, many affected stakeholders, including small- and medium-sized enterprises, local authorities, workers, and citizens, are de facto excluded from negotiations and related policy decisions. Consequently, it comes as no surprise that those negatively affected feel left with the short end of the deal.

Another difficulty is that the scope of issues under negotiation has become more complex over time and increasingly interacts with and affects other national priorities and commitments. It is well documented that the focus of trade has shifted from tariffs to less tangible non-tariff measures (NTMs), which can include a range of regulatory measures central to the “policy space” governments can exercise and the rights and obligations of individuals within an economy. These include rules and standards on health and human safety, customs and trade facilitation, and governance of services, the environment, labor, and intellectual property rights. Not only are these measures often more difficult to negotiate and address in practice, but they also tend to have significant (and sometimes overlooked) economic, social, and environmental development implications. This is due, in part, to the lack of broad engagement in negotiations noted above. Further, transformative concepts that developing countries have long rallied around, such as “industrial policy” and “technology transfer,” have not been used as effectively as possible and are increasingly being stripped of their development connotations.

At the market level, most of the world’s goods travel through regional and global supply chains,¹⁰ highlighting the importance of integrated regional and international markets. At present, however, the myriad regional and international trade agreements can make it difficult to navigate the dynamic nature of global markets, particularly for smaller enterprises, and the rules even conflict at times. Not only are stakeholders calling for a direct hand in shaping the global rules affecting

⁹ See, e.g., Dani Rodrik, *The Global Governance of Trade -- As If Development Really Mattered*, United Nations Development Programme Background Paper, 2001, <http://www.tinyurl.com/lekak8z>.

¹⁰ OECD, WTO, and World Bank Group, *Global Value Chains: Challenges, Opportunities, and Implications for Policy*, Report prepared for submission to the G20 Trade Ministers Meeting, July 9, 2014; OECD, WTO, UNCTAD, *Implications of Global Value Chains for Trade, Investment, Development and Jobs*, August 2013, available at https://unctad.org/en/PublicationsLibrary/unctad_oecd_wto_2013d1_en.pdf; and, UNCTAD, *Global Value Chains and Development: Investment and Value Added Trade in the Global Economy* (UNCTAD/DIAE/2013/1) February 27, 2013.

supply chain growth, the nature of this growth could be better aligned to the SDGs. Mounting efforts to build a sustainable circular economy aimed at maximizing the use of resources and eliminating waste, would be a significant step in aligning trade law and policy with the SDGs.

Finally, even when historic new trade agreements, such as the AfCFTA or the Canada-Chile Free Trade Agreement (which includes a comprehensive gender chapter), bring the promise of changing law and policy, implementation of these agreements remains a pressing challenge.¹¹ Implementation has different dimensions, as work by the New Markets Lab highlights,¹² all of which will impact whether trade can deliver on its development potential. While implementation challenges can arise at any level, they tend to surface locally most often, where application of market rules do not match the high-level agreements governments have signed. For example, women farmers in Africa often still struggle to access markets and finance despite trade agreements that promise to expand opportunities in agriculture and related services. This can be a result of how the agreements and the rules they generate are designed, which do not always take women's needs into account, but most often it is due to inconsistent application of the rules day-to-day. Tailoring trade agreements and the legal and regulatory frameworks they establish to actual social, environmental, and economic development considerations and improving effectiveness in practice can help address these "implementation gaps" across the board.

The Need for a New Trade Regime

Without question, we are at a crossroads in trade policy that calls for new thinking. When the 17 SDGs were adopted nearly five years ago, international trade was meant to play a central role in achieving the SDGs. Although this has not yet fully materialized, current circumstances set the stage for a stronger link between trade and the SDGs.

The current trade climate provides an opportunity to reassess existing structures and trade agreements, replacing the zero-sum approach currently driving discourse in some parts of the world with an SDG-focused approach that will unlock greater benefits from trade for all. In order to make trade truly work for development, marginalized communities, enterprises of all sizes, and individuals need a voice as the rules are developed and negotiations advanced. Increased engagement in trade policy will ensure better accountability in international negotiations and within domestic legal systems as well. The SDGs provide an interesting case study,¹³ as they were

¹¹ Katrin Kuhlmann, *Reframing Trade and Development: Building Markets through Legal and Regulatory Reform*, E15Initiative, Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015, available at <http://e15initiative.org/publications/reframing-trade-and-development-building-markets-through-legal-and-regulatory-reform/>.

¹² See New Markets Lab, "Dimensions of Policy, Legal, and Regulatory Implementation," 2019, available at <https://www.newmarketslab.org/about>

¹³ UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

created through an inclusive process that brought together governments, industry, and civil society to determine the world's agenda for sustainable development.¹⁴

The SDGs and their 169 sub goals and 230 concrete targets could be used as benchmarks and indicators for trade agreements and international economic law.¹⁵ A new trade model should be designed to harness the rules of trade to advance economic, social, environmental and human rights in alignment with the SDGs and other international efforts, macroeconomic policies, business and human rights principles, and a balanced approach to rule of law. This would include developing a comprehensive food security approach for trade agreements that goes beyond food safety standards in order to deliver on SDG 2 (Zero Hunger). It could also include a meaningful focus on gender in trade agreements, building on the approach in the Canada-Chile and Chile-Uruguay Free Trade Agreements and the General Objectives of the AfCFTA in support of SDG 5 (Gender Equality). In order to advance SDG 8 (Decent Work & Economic Growth), strengthened labor provisions, taking note of advancements in the United States-Mexico-Canada Agreement (USMCA), will be important. Considering the vital role played by intellectual property (IP) in access to medicine and vaccines, TRIPS (Trade-Related Aspects of Intellectual Property Rights) flexibilities can be used to achieve SDG 3 (Health and Well Being); however, as trade debates have shown, these rights need to be balanced with the ability of governments to ensure access to medicines. Trade agreements should also better address overfishing, given the importance of SDG 12 (Responsible Consumption and Production), 13 (Climate Action), and 14 (Life Below Water), and the USMCA does show progress in this area. Greater focus on the circular economy will support SDGs 12 and 13 as well.¹⁶ The Agreement on Climate Change, Trade, and Sustainability (ACCTS) planned for signature in 2020, which would remove barriers to trade in environmental good and services,¹⁷ phase out fossil fuel subsidies, and encourage promotion and application of voluntary eco-labeling programs and mechanisms¹⁸ presents an interesting model that is particularly timely as climate and environmental risks are becoming material for a growing number of sectors. And, although this list is not exhaustive, business and human rights should be more fully aligned with trade agreements as well, in line with the OECD Responsible Business Conduct standards and UN

¹⁴ Chantal Line Carpentier, "How United Nations Reform can Support a Reimagined Democracy," *CIVICUS*, available at <https://www.civicus.org/index.php/re-imagining-democracy/overviews/3513-how-united-nations-reform-can-support-a-reimagined-democracy>.

¹⁵ Katrin Kuhlmann, *Investment with Sub-Saharan Africa: Recent Trade and New Developments Written Submission* Testimony Before the United States International Trade Commission, July 30, 2019, *Investigation No. 332-571*.

¹⁶ Guillermo Valles, *The Circular Economy in International Trade*, UNCTAD (2016), available at: https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1400&Sitemap_x0020_Taxonomy=UNCTAD%20Blogs

¹⁷ Environmental goods, according to a common definition developed in the 1990s by the Organization for Economic Co-operation and Development (OECD) and Eurostat (the EU's statistical agency), are activities which produce goods and services to measure, prevent, limit, minimize or correct environment damages to water, air, and soil as well as problems related to waste, noise and eco-systems. Examples include products related to clean energy generation, such wind turbines, and services to monitor cities' water supplies or support solar projects.

¹⁸ Steenbilk, Ronald P., and Susanne Droege, *Time to ACCTS? Five Countries Announce New Initiative on Trade and Climate Change*, International Institute for Sustainable Development, September 25, 2019, available at <https://www.iisd.org/blog/time-accts-five-countries-announce-new-initiative-trade-and-climate-change>.

Guiding Principles on Business and Human Rights. Investment in new tools to understand the impact and contribution of trade agreements and rules would be helpful to tracking progress of the SDGs,¹⁹ an effort that overall will require unprecedented amounts of data at the regional and global level.²⁰

How trade agreements are structured will also be significant. The WTO principle of special and differential treatment (SDT) could be applied strategically to design agreements that are tailored to different circumstances and levels of development, progressively ushering in commitments over time. The WTO Agreement on Trade Facilitation is a good example of such a model, which over time could become the norm rather than the exception. Notably, the AfCFTA is following a similar model. Additionally, governments could use Aid for Trade, investment strategy, regulatory review and monitoring, and investment incentives to reinforce sustainable development.²¹

On a national level, rule of law can play a vital role in furthering the 2030 Agenda for Sustainable Development. Protection of individual property rights, guaranteeing fair and credible contract enforcement, and setting and enforcing labour laws could all provide for social and economic development. Unrest can also have a devastating effect on development; recent analysis suggests that of the various dimensions of the rule of law, the basic control of violence has the strongest correlation to economic growth.²² Institutions such as judiciaries and regulatory agencies can play a critical role in longer-term stability.²³ Rule of law also cuts across development endeavors like infrastructure and primary health care. It can also play a major role in environmental protection and the protection of the rights of indigenous communities. Because each country has its own multi-dimensional social and political reality, it has been difficult to come up with indicators to access progress in terms of rule of law; however, some do exist, including a state's conformity to international law and standards.²⁴

Important efforts are moving forward on other fronts. Countries and NGOs are pressing for a sustainable development agenda at MC12, following on the successful launch of the trade and gender agenda coming out of MC11. UNCTAD is partnering with diverse stakeholders, ranging

¹⁹ Katrin Kuhlmann, *Investment with Sub-Saharan Africa: Recent Trade and New Developments*, Testimony Before the United States International Trade Commission (Written Submission), July 30, 2019, Investigation No. 332-571.

²⁰ United Nations, *The Sustainable Development Goals Report*, (New York, 2019), available at <https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf>

²¹ United Nations, *17 Partnerships for the Goals*, available at <https://www.un.org/sustainabledevelopment/globalpartnerships/>

²² UNDP, *Background Paper: Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda*, August 2013, available at <https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global%20Dialogue%20Background%20Paper%20-%20Rule%20of%20Law%20and%20Sustainable%20Development....pdf>

²³ *Ibid.*

²⁴ *Ibid.*

from Fair Trade to the International Institute for Sustainable Development, to make the SDGs operational. The first UN Trade Forum recently took place in Geneva to explore the linkages between trade, climate, and the environment. UNCTAD has also developed the UNCTAD Principles for Responsible Sovereign Lending and Borrowing to deal with rising debt vulnerabilities, while still focusing on the large investments needed to achieve the SDGs. Trade and sustainable development linkages, including climate change, will also be a focus at UNCTAD's 15th Ministerial Conference in Barbados in October 2020.

The New Markets Lab, consistent with its mission of creating a neutral space for improving the design and implementation of regulatory systems in line with social and economic development goals, has launched a new global research initiative to evaluate the different areas of law that are covered by the most expansive and inclusive trade agreements, all benchmarked against good practices and the SDGs. This initiative will culminate in a book on trade law and the SDGs later this year.

To put trade back on track, we need to put sustainable development at the heart of the multilateral trade regime. The future of trade – and its ability to spur economic and social development worldwide – will depend upon it.

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