

**EUROPEAN COMMISSION**

**RESEARCH DG**

**KEY ACTION : IMPROVING THE SOCIO-ECONOMIC KNOWLEDGE BASE**

**RESEARCH NETWORK**

**Sustra**

**Trade, societies and sustainable development**

**FINAL REPORT**

**FEBRUARY 2005**

**HPSE-CT-2001-50005**

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## **FINAL REPORT**

**Contract n°: HPSE-CT-2001-50005**

**Title: Sustra - Trade, societies and sustainable development**

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Reference period: from September 2001 to September 2004

Starting date: 1 September 2001 Duration: 3 years

**Project financed within the Key Action Improving the Socio-economic Knowledge Base**

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## **ACRONYMS**

AIDS	Acquired Immune Deficiency Syndrome
CAP	Common Agricultural Policy
CSO	Civil society organizations
CSR	Corporate Social Responsibility
DDA	Doha Development Agenda
DG	Directorate General
DPI	Department of Public Information
EPI	Environmental Policy Integration
EU	European Union
FLEGT	EU's Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
GATS	General Agreement on Trade of Services
GATT	General Agreement on Tariffs and Trade
GM	Genetically modified
GMO	Genetically modified organisms
GNP	Gross national product
GPG	Global public good
GSP	Generalized System of Preferences
ICJ	International Court of Justice
ILO	International Labour Organization
MEA	Multilateral environmental agreements
MNC	Multinational companies
NGO	Non governmental organization
NTBT	Non-tariff barriers to trade
OECD	Organisation for Economic Co-operation and Development
PPM	Production and process methods
PPP	Public-private partnership
SD	Sustainable development

S-E	System–Environment
SEA	Single European Act
SIA	Sustainable impact assessment
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
WHO	World Health Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation
WWF	World Wildlife Fund

## Abstract

Sustru is a research network of European social scientists in relation with policy-makers and stakeholders, who have worked together for three years in order to analyse the interactions, complementary and tradeoffs between trade rules and social and environmental protection objectives. The objectives were to provide analytical keys to interpret the needs of the civil society, the underlying motives of collective preferences and the gradual building up of international collective action in the area of sustainability in trade. The network organized five international workshops on the following themes: (i) global public goods and global governance; (ii) the institutional architecture of the global system of environmental governance; (iii) the methodologies for assessing the process of trade liberalisation from a sustainability perspective; (iv) vested interests and resistance to trade and sustainable development reforms; (v) civil society participation into the European policy-making process.

The whole analytical approach of the Sustru network was based on the general recognition that sustainable development is not a stabilized concept for which a single measurement benchmark can be used. It is, therefore, difficult to develop a theoretical framework that can assess and measure progress towards sustainable development objectives. It is typically an area in which traditional top-down approaches to public decisions lack legitimacy, and for which deliberative processes could help improve the quality and acceptability of policy making. Sustru therefore analysed the theoretical justifications of deliberative processes for defining sustainability priorities; it then made a critical survey on principles and guidelines for participatory procedures and it drew a number of general recommendations for the architecture of the global system of governance. Sustru also focussed on the role that the EU could play in promoting sustainability in trade.

The Sustru network emphasises that the EU plays the role of a true institutional laboratory, in which the notions of subsidiarity, political superstructures and horizontal management of cross-sectoral issues have been progressively refined. Furthermore, Europe has been increasingly aware of the necessity to re-regulate its domestic markets in order to better integrate sustainable development requirements. This is where Europe could exert stronger leadership: by negotiating accompanying measures and shared production of global public goods as a central component of free trade agreements with third countries; by being more present in discussions led by international institutions and by demonstrating its willingness to impose at home what it recommends for others; by reforming its sustainability impact assessment procedures in order to make it genuinely participatory and interactive. Sustru also highlighted that existing experiences are insufficiently analysed and that there is a need to conduct across-the-board surveys on the impact of trade liberalisation on the environment and on social issues, on the effectiveness of private-public partnerships for sustainable development and on perceived legitimacy of sustainability impact assessments.

# 1 Executive summary

The Sustra network was launched following the WTO Doha Ministerial Conference, in 2001. The overarching objective was to create a network of European social scientists and non-government organizations (NGOs), in order to discuss how trade regulation could be designed or improved to be more supportive of sustainable development objectives. Sustra's aim has been to contribute to the development of a theoretical framework for analysing the interactions, links and trade-offs between trade rules and social and environmental protection objectives. Another, and equally important, objective of Sustra's work has been to interpret the needs of civil society and to seek a better understanding of the underlying motives of collective preferences and of the gradual building up of international collective action in the domain of sustainable trade.

The networking role was established and consolidated through five international workshops, on the following research and debate themes:

The **first workshop** was dedicated to a theoretical debate over the concept of **global public good**, and its usefulness in analysing global challenges and in providing guidance to develop a consistent, credible and legitimate global plan for trade and sustainable development. The objective was to assess the scope for the development of such a comprehensive multidisciplinary analytical framework, which could demonstrate the necessity of incorporating social and environmental considerations into economic decision-making. A number of issues were highlighted:

- i. what are the criteria to identify the global public good which should be the object of an international negotiation?
- ii. what are the incentive and regulatory tools to manage global public goods?
- iii. what are the cooperation strategies between countries for an efficient collective action.

The **second workshop** addressed the **architecture of the global system of environmental governance**. The issue here was to understand how to build an efficient, equitable and legitimate institutional architecture for the world economy with a sustainable development perspective, and to explore how Europe could contribute to that aim. Three issues were envisaged:

- i. the best procedures to give structure to the international decision-making process;
- ii. the choice between setting up an international financing mechanism for collective public good and coordinating the decentralised production of global public goods;
- iii. the implementation of a legitimate and politically acceptable international mechanism for conflict settlement between parties, and between parties and general interest.

The **third workshop** focused on the methodologies for assessing the **process of trade liberalisation from a sustainability perspective**. The methodological debate has included political questions such as accountability, participation of stakeholders in the assessment process and the opportunity to develop a standardized assessment

methodology at the international level. The debate over sustainability impact assessments (SIAs) also raised the issue of the role of expertise in defining criteria and of the role of procedural justice in assessment processes. Three issues were of particular relevance:

- i. the forms of participation of civil society;
- ii. the risk that SIAs might be manipulated to serve private interests and to create unfair trade rules;
- iii. the need to design assessment procedures that allow for an ongoing debate and mutual learning between stakeholders.

The **fourth workshop** addressed the issue of **vested interests and resistance** to trade and sustainable development reforms. It is acknowledged that well-organized interest groups are efficient in obtaining the postponement of necessary reforms and in promoting their own interests in the name of the economic, social or environmental interests of their home country. They therefore introduce biases in the debate over the trade-offs between economic and non-economic objectives of a new trade programme. A careful analysis of the interests at stake at the European level helps the assessment and improvement of the internal acceptability and legitimacy of a European trade proposal based on a sustainable development perspective. The objectives of this workshop were to map out the strategies of interest groups and to measure the scope for reform in various key sectors (environment, trade, agriculture and so on) within the European Union (EU) in order to gain an insight into the following questions:

- i. Does the progressive building-up of a European public space, with greater powers given to the European Parliament, generate more rent-seeking behaviours by interest groups, or does it provide scope to improve the legitimacy of collective decision-making?
- ii. To what extent are the various European policy systems – for example, from a traditional community system represented by the Common Agricultural Policy to a more multi-level governance model with several layers of authorities and decision-making levels – more or less subject to rent-seeking?
- iii. Can the recent emergence of large multinationals fundamentally change these dynamics by divorcing the interests of powerful companies from the interests of one particular country?

The **fifth workshop** was dedicated to **civil society participation into the European policy-making process**: it addressed the issue of the European governance of the trade negotiation process. The objective was to understand how collective preferences about trade and sustainability were built up within Europe. Several questions were addressed:

- i. Why did the NGO movement prove to be so successful in raising linkage issues such as the potential negative effects of trade, for example, on food security?
- ii. Does the European integration process favour the convergence of public opinions on sustainable trade, or does it exacerbate divergences?
- iii. What should a consistent European policy for development in the South be?

The forms and roles of participation in international negotiations have cut across all workshops as a main issue, for which social sciences have scattered and unsatisfactory responses, and for which there is a very high demand from policy makers. It appears that

most actors have a “normative” view of how participation should be organized: they argue for more transparency, more openness in meetings and more accountability. However, there is a lack of analysis on the justification of participation in international decision-making and on the ways deliberative processes could promote – or not – more sustainability in economic decisions.

The whole analytical approach of the Sustran network is based on the general recognition that sustainable development is not a stabilized concept. Although economists have tried to provide a benchmark against which sustainability could be measured, in terms of capital preservation (human-made capital, natural capital, human capital) and despite international negotiations and policy prescriptions, there is no consensus on what the pillars of sustainable development should be. Different categories of stakeholders, governments, international organizations, businesses and NGOs define it within their own interpretative frameworks along different justification principles, following their own interests and preferences. It is, therefore, difficult to develop a theoretical framework that can assess and measure progress towards sustainable development objectives. It is typically an area in which traditional top-down approaches to public decisions lack legitimacy, and for which deliberative processes could help improve the quality and acceptability of policy making. In fact, claims for more equity, transparency and civil-society participation in the decision-making process are also indirect demands for new forms of social and political relations, in which stakeholders can present their understanding of what sustainable development should achieve, and under what conditions it should be implemented. The issue of participatory and deliberative processes associated with trade and sustainable development is fairly recent in the social science domain, and raises complex political, social and ethical questions. Moreover, it cuts across several disciplines: researchers in sociology, political science, law and economics need to establish a common language in order to be able to debate together and to identify the common areas of research that could benefit from “cross-fertilizing” contributions. The first two years of the Sustran network were therefore dedicated to developing theoretical and empirical criteria for defining a credible and workable trade and sustainable development policy package.

In the last year, we chose to focus more specifically on the European decision-making process. The ongoing debates on European enlargement and on the European Constitution have proved that the way European governance is organized has become a crucial issue, and are very politically sensitive when sustainability issues are at stake. Institutions and decision-making rules at the European level are changing: the European Parliament has more weight in the decision. The enlargement has reduced even further the individual influence of Member States in the decision-making process and, at the same time, has increased the heterogeneity of interests and opinions on what the European trade strategy should be. Moreover, the political economy of trade policy has substantially changed since the creation of the WTO: the traditional confrontation between the USA and the EU is now embedded in a much more complex web of new coalitions, in which developing countries play a crucial role. Corporate interests are no longer the sole stakeholders in dialogue with governments; trade negotiations are under the scrutiny of NGOs; and the globalisation process is the target of virulent social movements reflecting the distrust of citizens. In this context, the European Commission and national governments have to find new ways to build a consensus between Member States and across European citizens, on what the basis of a legitimate and consistent project articulating trade and sustainable development objectives could be. It is both an internal and external challenge, especially

when a number of countries, following the USA, are tempted to give up on multilateralism and to go back to bilateral agreements.

Our main findings are summarized below: we first tried to analyse the theoretical justifications of deliberative processes for defining sustainability priorities; we then made a critical survey on principles and guidelines for participatory procedures and we drew a number of general recommendations for the architecture of the global system of governance. We then analysed the role that the EU could play in promoting sustainability in trade. To conclude, policy recommendations and a prospective research agenda are discussed briefly.

## **1.1 How to define sustainable development: the need for deliberative processes**

Sustainable development (SD) has been progressively adopted as a new benchmark by UN organizations, governments and public authorities, NGOs and even private firms. It is interesting to note that since 1992, almost all international agreements refer – directly or indirectly – to the sustainable development objective. Sustainable development was therefore at the centre of debates at the WTO Ministerial meeting in Doha, which launched the so called “development round” of WTO trade negotiations, at the International Conference on Financing and Development (2002) in Monterrey, and at the World Summit on Sustainable Development (2002) in Johannesburg. This notion is invoked at different levels of political governance, from local scenes to the global one. Asked to make choices compatible with sustainability, bureaucracies and the managers of private firms try to translate this broad concept into manageable indicators and criteria. Such an approach takes it for granted that sustainability can be measured in a unique and unambiguous way, once data are provided. Furthermore, there is the implicit or claimed view that SD has been – and can be – turned into a new legitimate principle of assessment and justification of actions on its own. However, it is necessary to examine and challenge these two assumptions for the following reasons.

Environmental issues raise difficult questions about the way to integrate the interests of all living things into one unified representation. The standard utilitarian economic concept and the political model of the ‘common good’ are framing the world into a partition between ‘subjects’ – human beings – and ‘objects’ – all other beings. At the same time, systemic approaches give the same ontological status to all beings, human and non-human. As regards environmental issues, each of these two visions is incomplete and is therefore condemned to open up to the other one. The integration problem is not simple: the logical structure of the environment-system relationship is one of “entangled hierarchy” between two orders. An additional source of complexity and uncertainty in the system–environment relationship arises from the plurality of principles of justification that coexist in Western democratic societies to qualify the environment: they are called ‘market’, ‘industrial’, ‘civic’, ‘domestic-traditional’, ‘opinion and fame’, ‘inspiration-based’ principles. Each one is organized around a specific normative concept, and depends on specific tests of value and procedures to solve conflicts. Environmental problems are not built and interpreted the same way within each of these principles. Social conflicts raised by environmental issues often oppose different views regarding the right principle to use as a reference. Competing views about which principle should take precedence is a type of competition without clear procedures for arbitration: there is no mechanism – a marketplace, a negotiation procedure, a democratic vote or the like –

within which to compare their respective performance, because there is no universal meta-criterion against which to judge their achievements. In this respect, sustainability issues are a source of controversy, all the more so because they generally cross existing frontiers: they concern consumption as well as production; they have an economic dimension, but also a civic one resulting from the public good and intergenerational characteristics; they depend on public institutions, but also on business and NGOs; they concern strategies of multinational firms, but also personal choices and ethics regarding lifestyles. Scientific and social controversies combine to generate 'controversial universes', in which scientific theories and 'visions of the world' become social stakes around which strategic games are developing among economic and social actors. Hence, cognitive issues and stakes of collective action are intertwined, giving rise to new forms of strategic competition among social and economic actors, between present and future generations. What are the validation procedures to elicit the most representative justification principle? What tests could be used to judge self-proclaimed and contradictory claims to represent future generations? One response is to organize deliberation processes that form the foundation of the legitimacy of decisions on the interaction between a plurality of visions and normative frameworks.

## **1.2 Deliberative processes guidelines: principles and guidelines for participation**

In the 1970s and early 1980s, the increasing recourse by local and national governments, as well as by NGOs and (later) by international development agencies to various forms of participatory approaches was rooted in the expectation that community-based initiatives would help to design more proactive, more innovative and better-adapted responses to the development issue. The justification was also that, by taking into account different knowledge, values and preferences, the participatory processes would improve the legitimacy of local policy responses, and would create a greater sense of shared responsibility and a greater commitment to implementation. At the national level, emphasis was placed on the subsidiary principle and on the decentralization processes, seen as means to bring the decision centres closer to the community concerned. Consultation and participation have rapidly become the keywords of successful environmental decision-making.

However, this new form of collective decision has given rise to a number of theoretical and policy debates. On the philosophical and political side first, it questions the nature of democracy itself, by highlighting the respective advantages and limitations of representative and deliberative democracy. It also raises questions concerning the "right" level of decision and subsidiarity, and the coordination between different levels of governance. On the more practical side, the success of deliberation also very much depends on the design of participation: who is entitled to participate, with what rights or duties, which groups are legitimate, how to prevent the lack of accountability of certain participating groups, what are the decision rules, what role should play public authorities and so on. There is a knowledge gap that leaves decision-makers and coordinators of deliberative processes with too few recommendations and little guidance. The consequence is that there is suspicion, and doubt thrown on such decisions.

The same enthusiasm, but also the same reticence, exists concerning participatory decision-making at the international level. There is also a growing recognition among policy makers and the public at large that civil society plays an integral role in

*international* governance for sustainable development. While the decisions of many international institutions have a discernable effect on the life of citizens, their only form of democratic legitimation is a highly indirect one derived from (elected) national governments, rather than from the collectivity of world citizens. This is what has become known as the democratic deficit of governance beyond the state. In the absence of a convincing parliamentary solution to this problem, many scholars of global, and in particular EU, governance have turned to theories of deliberative democracy in order to devise some blueprint for institutional reform. In essence, these authors argue that deliberation among a broad range of actors affected by decisions made in international governance arrangements can enhance the rationality and legitimacy of political decisions. This realization is evidenced by the growing body of international legal instruments that identify public participation as a prerequisite for promoting the goals of sustainable development. As a result, the importance of broad-based public participation – often achieved through civil society involvement – has emerged as a consistent theme in many international agreements for sustainable development – from the 1972 Stockholm Declaration (Part I, paragraph 7) all the way through to the 2002 Johannesburg Declaration on Sustainable Development (paragraph 26). However, many of the questions already raised in the local negotiated decision-making are also left unanswered in the case of international decision-making. These unanswered questions create even more acute debates on the forms of participation, the legitimacy of participating organizations and the impossibility of identifying an international civil society.

### ***The emergence of a trans-national public sphere***

It is often assumed by scholars that only a shared collective identity (a ‘*demos*’) – able to ensure societal cohesion, mutual trust and solidarity – can render policy decisions widely acceptable among the potential “losers”. Yet, is there a way of conceiving democratic legitimation of global governance which neither presupposes international equivalents to national electoral democracies nor a certain (pre-political) homogeneity of the citizens of a polity? In the context of international relations, the model of deliberative decision-making has taken on a vision *sui generis*. Political deliberation is viewed primarily in a functional fashion as a prerequisite for a high level of efficiency, efficacy and quality in political regulation. This approach to deliberation is inspired by thinking from public policy and international relations theory that has highlighted the importance of scientific expertise and consensus seeking in the epistemic community of experts. This process is not designed to aggregate self-interests but rather to foster mutual learning, and to eventually transform preferences while converging on a policy choice that is oriented towards the common good. What is important to the notion of public deliberation is not so much that everyone participates, but more that there is a warranted presumption that public opinion is formed on the basis of adequate information and relevant reasons, and that those whose interests are involved have an equal and effective opportunity to make their own interests – and their reasons for them – known. This ‘public use of reason’ depends on civil society as “a network of associations that institutionalises problem-solving discourses on questions of general interest inside the framework of organized public spheres”.

At the international level, the public sphere – conceived as a pluralistic social realm of a variety of sometimes overlapping or contending (often sectoral) publics engaged in transnational dialogue – can provide an adequate political realm with actors and deliberative processes that help to democratise global governance practice. Fostering

extended deliberation among those actors over the nature of problems and the best way to solve them, participatory arenas produce a pool of (transnationally) shared arguments which contribute to the emergence of a global public sphere. Opening up political deliberation in international organizations to the wider public debate implies that the process of deliberation on global politics can transcend boundaries between experts and stakeholders, officials and concerned or interested citizens. These two spheres must mutually and reliably inform one another. It has to be ensured that information is made available to stakeholders, and that in turn stakeholder concerns reach the agenda of those political or administrative bodies that formulate the decisions to be made in international organizations. In other words, introducing deliberative *procedures* into international organizations needs to be complemented with *participatory* practices in order to be able to push global governance towards democratisation.

### ***Role of Corporations***

For years, corporations have pleaded for the state and public actors to stay out of their production, investment and location policies. Environmental and social concerns would be best pursued, they claimed, if the public authorities let them set their own objectives, and their own ways to achieve them. This demand has accompanied a posture of covert lobbying and discrete interactions with other actors. What can be seen currently is different: corporations no longer go to environmental or social fora as ‘observers’, but as actors; presenting projects, building alliances with other groups, making claims for transparency, accountability and equity. What are the forces and rationales at stake behind this new posture? They have been repeatedly – and still are – accused of ‘green-washing’ their activities through a change of discourse instead of a change of practice. If it seems difficult to totally discard these accusations, it is worth emphasizing that things may have recently changed in this area, with the development of discourse and the practice of ‘global social responsibility’. Thus, creation of partnerships, of funds and of environmental initiative has successfully raised the support of public authorities, particularly when they appear to fill a gap in environmental or social law. They are always tolerated. This clearly shows that public authorities consider voluntary regulation as a good instrument to induce the corporations to adopt cooperative behaviour. The question, therefore, is to understand under what conditions private norms may constitute the basis for the development of universal public norms and enter the international public law. Here again the question is less one of architectural choices than of actor strategies.

### ***Sustainability Impact Assessment (SIA)***

An alternative to the current practice of impact assessments is to decentralize the assessment process and change the institutional structures, for example to promote "distributed assessment systems". The underlying idea is that national and international institutions have the resources and the capacity to undertake modelling studies, while research on a regional or local scale might be more appropriate for collecting local-specific data. Consequently, complementary advantages at each level should be integrated through an institutionalised system of multiple linkages. This approach mirrors the complex multilevel nature of trade impacts on sustainable development, and the need to assess both large-scale dynamics and their local implications.

The enrichment of SIA through enhanced stakeholder participation does not automatically imply a learning process allowing integration of the objectives of

sustainable development in trade liberalization. Indeed, the amelioration of SIA through capacity building is currently based on an error-correction mechanism that is oriented to maintaining the stability of the main operational programmes (implementing trade liberalization) and not towards the transformation of the basic (economic, social) beliefs of the actors and institutions. The remaining issue here is to organize a *reflexive learning process*, whereby the interpretation of SIA by different actors has an effect in turn on the definition of SIA by its main institutional promoters. Such a reflexive model would reinforce the capacity of actors to construct and express preferences and perceptions. In doing so, it would both contribute to overcoming the limitations of intrinsic uncertainty on sustainability definitions, and develop capacity building to ensure that all affected parties can participate in the assessment process.

### **1.3 The Architecture of Governance for Sustainability in Trade**

A growing number of international organizations, policy makers, politicians, NGOs as well as researchers in economics and social sciences mobilize the concept of global public good (GPG) to call for institutional and policy reforms at the international level. Beyond the question of definition of global public goods and their production mode, the main area of debate concerns the links between collective preferences, international equity and international democracy. It highlights again the need for a better analysis of forms of subsidiarity that can be built into the architecture of global governance.

These questions are at the heart of the debate on trade and sustainable development, since they concern the way in which governance regimes are constructed, legitimised and linked. If it succeeds in becoming a common value, the notion of global public good should contribute to rethinking global governance, no longer conceived of as the management of the balance of power between potentially competing regimes, but as the definition of an integrated, complementary system of decision at the supranational level.

One way to preserve global public goods, and more specifically sustainable development, is to implement coordinated control and regulation systems. A number of these systems incorporate trade measures (such as trade restrictions or/and trade sanctions) or require the setting-up of global norms. There is, therefore, scope for conflict between the trade regime and GPG governance systems. What then is the most appropriate role for global institutions if the right balance between trade and sustainable development is to be achieved? Debates concern the relative power of trade institutions versus sustainable development institutions: proposals to strengthen the sustainable development regime range from providing more financial resources and political powers to the existing institutions, to a reorganization of multilateral environmental agreements (MEAs), to a complete new global environmental governance system, such as establishing a World Environment Organization (WEO) to act as a counterweight to the WTO. As it does not appear likely that governments will establish something dramatically new, it seems sensible that any new arrangement should be the result of an evolutionary process and should seek in the first instance to making better use of existing institutions. Still, it is fundamental to identify a desirable long-term structure and the accompanying procedure for an evolutionary reorganization. The specific advantages of the existing global sustainable development regimes, such as flexibility and innovation, should not be overlooked, and deserve further study in order to maximize their relevance to international trade.

## 1.4 Role of Europe

The EU is a unique experience of international governance: its *sui generis* institutional model combines intergovernmental and supra-national rule-making. However, the mere existence of an integrated European opinion, transcending the national opinion of Member States and expressing itself through an emerging European Political Space is far from being established. European public opinion remains deeply rooted within national frameworks. Nevertheless, converging trends can be identified in the attitudes of European public opinion towards trade policy and globalisation.

First, European opinion polls reveal common features across national attitudes towards the stakes of globalisation – taken as a proxy for trade policy objectives. These include: (i) a wide acceptance of the principle of openness and globalisation; (ii) a demand for political control over globalisation trends; (iii) the expectation that the EU plays a leading role in shaping globalisation; (iv) a call for more democratic control over European policies.

Second, converging trends in European public opinion must primarily be interpreted in the light of national political contexts. Public opinions perceive the European and global institutions as a continuation of national governments. The national level thus acts as a screen, filtering the relations between European institutions and public opinion. Important variations to the average European consensus acknowledging the opportunities of trade and globalisation can therefore be found in national public opinion. For instance, Belgian, Greek and French opinion reveal important reservations towards the benefits of economic openness. Split opinions toward globalisation are also found in Sweden, Austria and Spain. Within the fifteen new Member States, public opinion attitudes toward globalisation are not clearly defined. The experience inherited from their EU accession process may significantly shape their future attitude toward European trade policy. Against this backdrop, the general perception of free trade is expected to be positive in Central and Eastern European countries: the rise in their trade with the EU came with very little social protest, in spite of painful adjustment costs resulting from trade liberalization. The transition process remains unfinished and leaves room for further trade creation and investment. Nevertheless, difficulties could develop in some sectors of opinion in the new Member States. The heavy structural adjustment anticipated in the Polish agriculture will grant a determinant role to the reforms of the CAP. In some countries, a deep-rooted nationalism may also turn to social protest against foreign capital and investors, considered as a new form of foreign domination on their economy.

Third, the democratic control over trade policy relies mainly in the hands of national governments. However, the political debate on trade policy usually remains weak in many European countries. The intervention at the national level may sometimes blur the public's perception of the decision-making: national governments may be tempted to use the EU level as a "scapegoat" for their own domestic political responsibilities; the compartmentalization of national government responsibilities may impact trade-policy decisions, since discrepancies are sometimes reported between different formations of the EU Council of Ministers. Successive EU enlargements and the extension of majority voting provide more leeway for the European Commission against the individual positions of Member States. The Commission (DG Trade) has developed an autonomous capacity for assessing economic interests of the EU and of its Member States. But this increased decision-making efficiency was gained at the expense of a more fragile democratic

legitimacy of the EU trade governance. The Constitutional Treaty for Europe, if ratified, will entail a radical change by granting important new powers to the European Parliament. Further research will be needed to investigate how this might impact on public opinions.

## **1.5 Policy Recommendations and research agenda**

### *On the Architecture of Global Governance*

The point of departure for achieving mutual supportiveness ought to be a clear division of labour between the regimes based on a shared understanding and commonly agreed principles on the acceptable trade-offs between sustainability and short-term economic growth. In addition to global rules on trade and sustainable development, there has been an increase in the development of regional, inter-regional and bilateral rule making. The relationship between all these levels is not only complex, but also dynamic. The recent increase in such agreements begs the question as to what the appropriate boundaries of global and regional scales, respectively, should be. Yet, uncertainty endures as to how to choose appropriate levels of governance and how to avoid conflicts between different scales. In addition, there is no clear approach on how to decide between establishing frameworks and principles at the global scale, while leaving the means for implementation for other scales of governance, or setting up very specific rules and leaving little room for discretion in the implementation. A starting point for future debate might be to structure the analysis along the particular types of global and regional public goods being addressed and provided.

Because of the danger that the trade regime or trade interests might overrule MEAs or other regimes, it was suggested that the protection of global public goods (GPGs) be incorporated into an international charter. The coherence at domestic and international level (e.g. to resolve competition between GPGs), as well as their implementation, could be achieved through the assignment of national agencies to each GPG, a state representative comparable to an ambassador for coordination at the national level, or officers for each GPG at the international level. This type of recommendation follows those already formulated by the UNDP 's office of development studies.

The research agenda on global governance for sustainable trade could thus be condensed under three primary thematic areas: legitimacy, effectiveness and linkages. In particular, there is a need for more substantial research on the problem structure of “institutional fit” – that is, determining whether the scope of the institution is appropriate for the problem with which it is confronted. Another point of interest is compliance. What are the best practices of compliance structures both in and outside of the environmental context? how can compliance procedures be recognized, validated and promoted; as well as how compliance practices can be strengthened within the MEA context. Compliance should also be discussed in the context of law. For example, how can law be defined so that it is not susceptible to differences of interpretation that could lead to a general distrust about how the law is applied?

Corporate actors can contribute significantly to sustainable development, but can also undermine it. Voluntary instruments and initiatives from the corporate sector aimed at sustainable development have certain advantages, such as flexibility or low monitoring and enforcement cost. However, one of the main arguments against voluntary initiatives is that they may encourage a lack of collective action by governments. An important

question is whether *regulations* can be *privatized*, or to what extent governments could use NGOs or corporations for specific governmental purposes. A survey could help to identify how public versus private institutions perform in monitoring and enforcement, in order to give policy makers a perspective to maximize positive gains. Regarding the increase of corporate actors' participation in environmental governance, there is a need to assess what kind of rationality or motivation guides their action, what strategy they follow and what the consequences are for others actors in this arena. The necessary assessment of what kind of social control, transparency and responsibility the corporate actors will accept should be on the research agenda, in an effort to better understand what enables the corporate sector to support sustainable development. We should also address the question of how to govern sustainable development partnerships, particularly those that – like Type II – were advocated in Johannesburg.

It has to be highlighted that existing experiences are insufficiently analysed. There is a need to conduct across-the-board surveys on a number of topics that could help guide research and institutional recommendations in the future. The following are examples of such surveys:

- Identify and assess the motivations for private companies to support global environmental governance, such as profit-making (i.e. if companies can make money by following governance corresponding criteria), and risk protection (i.e. public pressure and boycotts, or court cases).
- Identify and assess the sources of influence, i.e. to understand the economic, political and legal space of private initiative by mapping the different types of relationships; how they operate through markets, constituencies; and evolution of shared principles on sustainability.
- Measure the risks but also the potentialities of specific bilateral agreements to enhance sustainability at the regional scale: i.e. offer market access as a compensation for more sustainable practices.

#### *On the Implications for Europe*

The EU plays the role of a true institutional laboratory, in which the notions of subsidiarity, political superstructures and horizontal management of cross-sectoral issues have been progressively refined. Furthermore, Europe has been increasingly aware of the necessity to re-regulate its domestic markets in order to better integrate sustainable development requirements. This is where Europe could exert stronger leadership: by negotiating accompanying measures and shared production of global public goods as a central component of free trade agreements with third countries; by being more present in discussions led by the international financial institutions and by demonstrating its willingness to impose at home what it recommends for others.

Increasing the legitimacy of EU governance on trade and sustainable development could be helped by taking action in the following areas:

- Strengthening the EU parliament's political scrutiny. Building on the current Commission practice, the Council and Commission should anticipate the

implementation of the future treaty by systematically requesting the political approval of the EU Parliament on trade agreements and major trade decisions.

- Transparency and consultations with public opinions. During the negotiating phases, the EU Commission should better balance the legitimate needs for technical confidentiality and the information of the opinions.
- Strengthening the national political debates on trade. The role of Member States in the 133-member Committee has evolved in the EU-25. Throughout successive enlargements, the Member States have lost their grip on the technical and tactical aspects of the negotiations run by the Commission. Their essential role now relies on their capacity to ensure the democratic control of the EU negotiating strategies. So a healthy political debate at the Member-State level remains crucial to the legitimacy of EU decision-making on trade. The initiative of the *Trade and Investment White Papers* by the UK Government may thus provide an interesting example of an effort for political remobilisation of the national level on the European trade agenda
- Renewing the European approach to global regulation. The Doha Development Agenda may now be considered a lost opportunity for widening the WTO role on sustainable trade rules. Alternative regulatory avenues thus need more consideration from the EU trade policy: bilateral and regional trade agreements (the Environment and Labour Standards chapters included in the recent US bilateral trade agreements with Jordan and Morocco may provide interesting precedents), good business practices and NGO/corporate partnerships
- Reconciling trade liberalization and the European social model. The inability of the European governance to cope with the impact of trade liberalization on the European social model may particularly damage its perception in public opinions. A possible improvement may imply empowering the EU level with an autonomous capacity for compensating the social costs of trade liberalization. Progressing toward a European regulatory regime for essential services of general interest may also be needed, prior to undertaking new liberalization commitments under the General Agreement on Trade and Services (GATS).
- Coherence between trade and development policies. Inconsistencies between trade and other internal (agriculture) or external (aid) EU policies need to be reduced. Increasing the European efforts on economic analysis and sustainable impact assessment of trade liberalization policies on developing countries is primarily needed: detailed sensitive product/countries analysis of the impact of trade liberalization could contribute to better enlightening the stakes of the Doha agricultural negotiations. The future role of the Minister of Foreign Affairs of the EU can open new avenues for more coherence: as a Vice President of the Commission, his external policies coordination role (Article I-28-4) may influence trade and aid policies.
- Further research would be necessary to develop SIA as a product itself, and more specifically to enhance its capacity to play a role in international trade discussions and in generating alternative policy options. But trying to enhance the effectiveness and legitimacy of SIA as a process is perhaps the most challenging point for the EU and all stakeholders involved.

## 1.6 Dissemination

Dissemination actions, beyond the workshops, which all gathered more than 40 participants, include: the Sustra website (<http://www.agro-montpellier.fr/Sustra/>); the writing-up of five policy brief papers (Global Public Goods, Governance of Trade and Sustainable Development, Sustainability Impact Assessment, Vested Interests and Trade Policy Reforms, and European Governance and European public opinion on trade and sustainable development[1]) which were distributed widely to policy makers at the national level and at the European level; a contribution to the Cancun WTO inter-ministerial forum in the form of background information for side events organized by Iddri and Louvain la Neuve; a website with an electronic newsletter.

As a conclusion, the network has contributed to promote a renewed dialogue between the research community and the practitioner community (with also several meetings between with the DG Trade cabinet). It has supplied new ideas on democratic processes to organize the public debate on trade issues, to help to understand better the ways of building a legitimate decision-making process and to identify criteria to evaluate current actions.

Two books will be published in 2005. The first one, *Participation for Sustainability in Trade* (Ashgate), will provide the necessary theoretical background, as well as case studies relating to sustainability and trade. The words participation and deliberation are understood in their widest meaning: participation of international organizations, states (issues of power imbalance between states), non-state actors (NGOs, business or corporate organizations, people's movements etc.) and national parliaments in the negotiations leading to collective action. The book will focus on three main phases of the international negotiation process where participation and deliberation processes appear to be critical: agenda setting, decision and evaluation.

The second book, *Sustainable trade and European decision-making processes*, will analyse whether the new governance practices within the Commission contribute to improve the legitimacy of the European decision on trade and sustainable development issues: it will highlight the heterogeneity of positions within Europe (at the intergovernmental level but also across groups) on issues related to trade and sustainable development and will analyse under which conditions it is an obstacle to the development of a stable European proposal at the international level. It will also focus on the “invisible” balance of power between different stakeholders, and on the risk of promoting economically unviable compromises in order to satisfy influential groups.

## **2 Background and objectives of the project**

### **2.1 Context**

The failures of the Seattle and Cancun World Trade Organization (WTO) ministerial conferences, in 1999 and 2003 respectively, have confirmed the mounting difficulties in reaching international agreements on trade. In the analysis of the dynamics of the trade negotiation process following the Marrakech agreements, three factors are particularly worthy of note.

First, there is a growing interdependence between trade and social and environmental concerns. Though the link between trade liberalisation and sustainable development (SD) was a sensitive issue prior to Seattle, it emerged during the Ministerial Conference in 1999 as an acute debate and became an explicit objective of the Doha agenda in 2001. Two questions have become focal points of the debate: social and environmental norms and the management of risk. These two issues raise some major obstacles to the pursuit of the WTO negotiation process. First, because norms and the precautionary principle are suspected to introduce new biases in trade competition they are challenged vigorously by developing countries for the former, and by potential exporters of genetically modified organisms (GMOs) for the latter. Second, national delegations are ill prepared to tackle trade issues and social and environmental issues simultaneously. Lastly, they bring the exceedingly complex issue of the architecture of the global system of international rules to the fore. Even though the preamble to the 1995 Marrakech Agreement establishing the World Trade Organization recognizes that “relations in the field of trade and economic endeavour” should allow 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” and though the 2001 Doha Declaration reaffirms, in paragraph 6, the commitments of Members to act “for the protection of the environment and the promotion of sustainable development”, the WTO is not an international institution for sustainable development. The relationship between the WTO and multilateral environmental agreements (MEAs) on the one hand, and institutions in charge of social matters such as the International Labour Organization (ILO) and the World Health Organization (WHO) on the other, is not organised in a clear and constructive way. Indeed, the relationship is more often seen as one with impending conflicts, rather than as an area of cooperation and mutual reinforcement.

Second, developing countries have radically changed their negotiation stance: from a fairly passive role, particularly evident in General Agreement on Tariffs and Trade (GATT) circles, they have adopted a much more proactive bargaining attitude. Although the United Nations Conference on Trade and Development (UNCTAD) forum had already demonstrated that consistent positions rooted in robust coalitions could help to gain momentum in trade negotiations, it is certainly within the fora of MEAs that developing countries have learnt to position themselves and to claim their due share of bargaining power. Their capacity to edict their preferences and priorities was reinforced by the increasing collaboration between the official delegations of developing countries and Non governmental organization (NGO) activists, although such cooperation was sometimes embedded in ethical conflicts and mutual suspicion. The “Sectoral Initiative in Favour of

Cotton”, which was presented on 10 June 2003 to the Trade Negotiations Committee by Burkina Faso President Blaise Compaoré is a good illustration: when four Sub-Saharan African countries (Benin, Burkina-Faso, Chad and Mali), backed up by powerful development NGOs such as Oxfam International<sup>1</sup> and the Institute for Agriculture and Trade Policy, require, in the name of fair development, that developed countries phase out their subsidies to their cotton sector and pay compensation to traditional cotton exporters, it creates upheavals at the WTO and developed countries cannot afford to ignore it. From a practical (and probably quite cynical point of view), the increased presence of developing countries – led by China, India, Brazil and South Africa – in the WTO negotiation process, has certainly contributed to accentuating the difficulties in reaching a trade agreement. Meanwhile, leading negotiating parties such as the European Union and the United States have had to learn that bilateral “green room” negotiations are no longer acceptable. The increased role that developing countries – who represent three-quarters of WTO members – wish to play has created some procedural “gaps” pertaining to the forms that cooperative coalitions might take and the means by which transparency, democracy and trust might be acquired.

Third, there has been a surge in demands by civil society to participate in a negotiation process that remains very much limited to member states. The demand for greater participation is clearly associated with a deep wave of protest against the movement towards further trade liberalization and globalisation. Although disorganized at its early stages, civil society has proved its capacity to coordinate efficiently and its potential to influence the decision-making process. Civil society groups have been particularly dynamic and vindictive on a wide range of issues linked to sustainable development, and have contributed to demonstrating that trade rules could not be designed in isolation of other burning global issues such as poverty, debt, North–South relations, environmental protection, labour rights, human rights and democracy. On these issues, their contributions, either in the form of protests and street demonstrations, or in the (more cooperative) form of position papers and side conferences, have served to enrich the agenda of international negotiation and to enlarge the issues publicly debated.

## 2.2 Objectives and main actions

The Sustra network was launched following the Doha meeting, in 2001. The overarching objective was to create a network of European social scientists and NGOs, who would discuss how trade regulation could be designed or improved to be more supportive of sustainable development objectives. Sustra’s aim has been to contribute to the development of a theoretical framework for analysing the interactions, links and trade-offs between trade rules and social and environmental protection objectives. Another, and equally important, objective of Sustra’s work has been to interpret the needs of civil society and to seek a better understanding of the underlying motives of collective preferences and of the gradual building up of international collective action in the domain of sustainable trade.

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<sup>1</sup> The Cotton Initiative is mostly based on the 2002 Oxfam study, *Cultivating Poverty. The Impact of US Cotton Subsidies on Africa*. <[http://www.oxfam.org/eng/pdfs/pp020925\\_cotton.pdf](http://www.oxfam.org/eng/pdfs/pp020925_cotton.pdf)>

**Two sub-programmes were initially identified:** in the first sub- programme, the objective was to propose theoretical and empirical criteria for defining a credible and workable trade and sustainable development policy package; the second sub-programme was more specifically oriented towards assessing the political acceptability and legitimacy of a European trade and sustainable development strategy. The networking work was to be established and consolidated through the organization of five international workshops, on the following research and debate themes:

The **first workshop** was dedicated to a theoretical debate over the concept of **global public good** and its usefulness in analysing global challenges and in providing guidance to develop a consistent, credible and legitimate global plan for trade and sustainable development. The objective was to assess the scope for the development of such a comprehensive multidisciplinary analytical framework, which could demonstrate the necessity to incorporate social and environmental considerations into economic decision-making. The following questions were addressed: (i) what are the criteria for identifying the global public good which should be the object of an international negotiation (ii) what are the incentive and regulatory tools to manage global public goods (iii) what are the co-operation strategies between countries for an efficient collective action.

The **second workshop** addressed the more global issue of the **architecture of the global system of environmental governance**. The issue here was to understand how to build an efficient, equitable and legitimate institutional architecture for the world economy with a sustainable development perspective, and how Europe could contribute to that aim. Three issues were envisaged: (i) the best procedures to structure the international decision-making process; (ii) the choice between setting-up an international financing mechanism for collective public good versus co-ordinating the decentralised production of global public goods; (iii) the implementation of a legitimate and politically acceptable international mechanism for conflict settlement between parties and between parties and general interest.

The **third workshop** focused on the methodologies for assessing the **process of trade liberalisation from a sustainability perspective**. The methodological debate has rapidly included more political questions such as: accountability, participation of stakeholders in the assessment process, the opportunity to develop a standardised assessment methodology at the international level. The debate over sustainability impact assessments (SIA) also raised the issue of the role of expertise in defining criteria and of the role of procedural justice in assessment process. Three questions were of particular relevance : (i) the participation of the civil society; (ii) the risk that SIA be manipulated to serve private interests and to erect unfair trade rules; (iii) the necessity to design assessment procedures which allow for an on-going debate and mutual learning between stakeholders.

The **fourth workshop** addressed the issue of **vested interests and resistance** to trade and sustainable development reforms. At the international level, it is widely acknowledged that well-organised interest groups are efficient in obtaining the postponement of necessary reforms and in promoting their own interests in the name of the economic, social or environmental interests of their home country. They therefore introduce biases in the debate over the trade-offs between economic and non economic objectives of a new trade programme. A careful analysis of the interests at stake, at the European scale, helps to assess and improve the internal acceptability and legitimacy of a European trade proposal based on a sustainable development perspective. The objectives of this workshop were to map out interest group strategies and to measure the scope for

reform in various key sectors (environment, trade, agriculture etc.) within the European Union in order to gain an insight into the following questions: (i) does the progressive building up of a European public space generate more rent-seeking behaviours by interest groups or does it provide scope to improve the legitimacy of collective decision-making? (ii) to what extent are the various European policy systems (from a traditional community system represented by the common agricultural policy for example to a more multi-level governance model with several layers of authorities and decision-making levels) more or less subject to rent-seeking ? (iii) Can the recent emergence of massive multinationals fundamentally change these dynamics by divorcing the interests of powerful companies from the interests of one any particular country?

The **fifth workshop** was dedicated to **civil society participation into the European policy-making process**: it addressed the issue of the European governance of the trade negotiation process. The objective was to understand how collective preferences about trade and sustainability were built up within Europe. Several questions were addressed : (i) why did the NGO movement prove to be so successful in raising linkage issues such as the potential negative effects of trade for example on food security ? (ii) Does the European integration process favour the convergence of public opinions on sustainable trade or does it exacerbate divergences? (iii) What should be a consistent European policy for development in the South?

## 2.3 Reorientation of scientific objectives

The forms and roles of participation in international negotiations has cut across all workshops as a main issue, for which social sciences have scattered and unsatisfactory responses and for which there is a very high demand from policy-makers. It appears that most actors have a “normative” view of how participation should be organized and militate for more transparency, more openness in meetings and more accountability. However, there is a lack of analysis on the justification of participation in international decision-making and on the ways deliberative processes could promote (or not?) more sustainability in economic decisions. We therefore decided to put more emphasis on these issues in the planned workshops and the two Sustra books, which will be published in 2005, are built around this specific question. Participatory and deliberative processes have been the leading threads of our work and have provided a useful analytical grid to summarize the Sustra network’s main findings. However the initial objectives, stated in 2.2, have not fundamentally changed.

### 2.3.1 Participation for sustainability in trade

For the first sub-programme, the whole analytical approach of the Sustra network was based on the general recognition that sustainable development is not a stabilized concept. Although economists have tried to provide a benchmark against which sustainability could be measured, in terms of capital preservation (human-made capital, natural capital, human capital)<sup>2</sup>, and despite international negotiations and policy prescriptions, there is

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<sup>2</sup> Human-made capital is artificially produced assets. Natural capital is traditional natural resources (timber, water, mineral reserves etc.) and natural assets such as biodiversity or ecological services. Human capital generally refers to the well-being, health and productivity potential of a society. Whereas human-made capital is fairly easily measured in monetary terms, it remains much more problematic to value the other two.

no consensus on what the principle pillars of sustainable development should be. Different categories of stakeholders, governments, international organizations, businesses and NGOs define it within their own interpretative framework and following their own interests and preferences. In fact, claims for more equity, transparency and civil society participation in the decision-making process are also indirect demands for new forms of social and political relations in which stakeholders can present their understanding of what sustainable development should achieve, and under what conditions it should be implemented. It is therefore difficult to develop a theoretical framework that can assess and measure progress towards sustainable development objectives. It is typically an area in which traditional top-down approaches to the public decision lack legitimacy, and for which deliberative processes could help improve the quality and acceptability of policy making.

The issue of participatory and deliberative processes associated with trade and sustainable development is fairly recent in the social science domain and raises complex political, social and ethical questions. Moreover, they cut across several disciplines: researchers in sociology, political science, law and economics need to establish a common language in order to be able to debate together and to identify the common areas of research that could benefit from “cross-fertilizing” contributions.

The words participation and deliberation are understood in their widest sense: participation of international organizations, states (issues of power imbalance between states), non-state actors (NGOs, business or corporate organizations, people's movements and so on) and national parliaments in the negotiations leading to collective action. We decided to focus on three main phases of the international negotiation process where participation appears to be critical: (i) agenda setting, (ii) decision and (iii) evaluation; and to address the three following questions:

- Why is it important to define sustainable development within a deliberative process?
- How should this deliberative process be organized at the international level?
- What are the shortcomings of such approaches?

To address these questions, we have focussed both on theoretical approaches and on illustrative case studies, which were reunited in a book “ participation for sustainability in trade” (Ashgate, publication in February 2005). Section 3 will summarize the main contributions of the workshops on these issues and the main conclusions of this book.

### **2.3.2 Sustainable trade and European decision-making**

In the second sub-programme, we chose to focus more specifically on the European decision-making process. The on-going debates on the European enlargement and on the European Constitution have proved that the way European governance is organized has become a crucial issue, and are very politically sensitive when sustainability issues are at stake. International trade issues have become increasingly controversial within the EU, especially since they are imposing greater constraints on European domestic policy choices (for example the Common Agricultural Policy) and since they have become so intertwined with social and environmental concerns.

Institutions and decision-making rules at the European level are changing: the European Parliament has more weight in the decision. The enlargement will reduce even further the individual influence of member states in the decision-process and at the same time increase the heterogeneity of interests and opinions on what the European trade strategy should be. Moreover, the political economy of trade policy has substantially changed since the creation of the WTO: the traditional confrontation between the US and the EU is now embedded in a much more complex web of new coalitions in which developing countries play a determining role; corporate interests are no more the sole stakeholders dialoguing with governments, trade negotiations are under the scrutiny of NGOs and the globalisation process is the target of virulent social movements reflecting the distrust of citizens.

In this context, the European Commission and national governments have to find new ways to build a consensus between member states and across European citizens on what could be the basis of a legitimate and consistent project articulating trade and sustainable development objectives. It is both an internal and external challenge. On the domestic scene, the European Commission has initiated a number of reforms to improve the “European governance”, with emphasis on transparency, consultation and participation of all stakeholders. On the international scene, the EU has increasingly promoted the extension of the regulatory dimension in the WTO negotiating agenda, to achieve sustainable trade objectives: environment and consumer safety (precautionary approach), labour standards, trade and the environment, trade and development, transparency and corruption.

We therefore had three objectives:

- to analyse whether the new governance practices within the Commission contribute to improve the legitimacy of the European decision on trade and sustainable development issues
- to unveil the “invisible” balance of power between civil society stakeholders and their strategies to increase their bargaining position, and to assess the risk of promoting economically unviable compromises in order to satisfy influential groups.
- to assess the outcome and shortcomings of the European trade policy in the light of sustainable development objectives and to explain under what conditions the EU decision making may impair the development of a stable and coherent European policy at the international level.

To address these questions, we have also chosen to focus both on theoretical approaches and on illustrative case studies, which were reunited in a book “sustainable trade and European decision-making” (submitted to Edward-Elgar). Section 3 will summarize the main contributions of the workshops on these issues and the main conclusions of this book.

### **3 Scientific description of the project results and methodology**

The work of our thematic network was organized around five international workshops (see section 2.2) which allowed us to accumulate a large number of case studies and theoretical contributions and gave rise to lively debates. Contributions are available on our web site, as well as the synthesis of the discussions. The main policy conclusions were summarized in policy brief papers which were widely distributed (see section 5 for more details): pdf versions of these five policy briefs are downloadable on our site.

Instead of summarizing the findings of the five workshops successively, we decided to structure this report under four headings:

- How to define sustainable development: the need for deliberative processes (section 3.1)
- Deliberative processes in theory and practice: principles and guidelines for participation (section 3.2)
- Architecture of the global system of governance of trade and sustainable development (section 3.3)
- How to promote sustainability in trade: what role for Europe? (section 3.4)

This section will give priority to background theory, analysis and case studies. Section 4 will be dedicated to policy recommendations and areas of future research.

#### **3.1 How to define sustainable development: the need for deliberative processes**

Although the term “sustainable development” was used as early as 1972 at the United Nations Conference on the Human Environment in Stockholm, it was not until 1987, in a UN report entitled *Our Common Future*, that the term was fully defined as development that meets the “needs of the present without compromising the ability of future generations to meet their own needs”. The World Bank has also defined sustainability in terms of opportunities for future generations, based on three pillars; economic, social and ecological objectives, which have to be pursued simultaneously over the long term. In 1992, at the Rio Earth Summit, prescriptions for achieving sustainable development were agreed upon in “Agenda 21”, which recognized that the “integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future”. Since 1992, it is interesting to note that almost all international agreement refer – directly or indirectly – to the sustainable development objective. Sustainable development was therefore at the centre of debates at the WTO Ministerial meeting in Doha, which launched the so called “development round” of WTO trade negotiations, at the International Conference on Financing and Development in 2002

in Monterrey, and of course at the Johannesburg World Summit for Sustainable Development (Rio +10).

Sustainable development has been progressively adopted as a new benchmark by UN organizations, governments and public authorities, NGOs and even private firms. This notion is invoked at different level of political governance, from local scenes to the global one. For instance, with the adoption of the Charta of Environment, it is to become a constitutional goal of French public policies. Asked to make choices compatible with sustainability, bureaucracies and managers try to translate this broad concept into manageable indicators and criteria, with the general assumption that if people ask for sustainability, this ‘thing’ should and could be measured approximately the same way as a physical characteristic (length, weight ...) or an economic one (income, GNP).<sup>3</sup> It could then be standardized as an object of administration. The implicit view is that, in order to achieve such a result, it would just be a question of methodological investment in building sustainability indicators (Kuik and Verbruggen 1991) and sustainability impact assessments of given projects or policies (Commission of the European Communities 2002; Kirkpatrick and Lee 2002).

Such an approach takes it for granted that sustainability can be measured in a unique and unambiguous way, once data are provided. Furthermore, there is the implicit or claimed view that SD has been – and can be – turned into a new legitimate principle of assessment and justification of actions on its own. However, it is necessary to examine and challenge these two assumptions.

### **3.1.1 The philosophical debate on sustainability**

In spite of demands of public and private managers, sustainable development is not easily measurable. Neither is it a well-shaped, consistent and legitimate principle of justification of economic and social choices.

At the very least, measures and indicators should be targeted to be intrinsically robust and not committed to one ideology. For instance, for some NGOs and scientists, the nearer an ecosystem and natural resources are to a state not influenced by human activities, the greater the guarantee for ecological sustainability. The popularised ‘Ecological Footprint’ (Wackernagel and Rees 1995) is one of the synthesis index that can be said to be framed by this controversial idea of a radical opposition between human activity and ecological sustainability, as if less of the former would automatically imply more of the latter. Many people who find the Ecological Footprint attractive at first sight may nevertheless not agree with the values and conceptions hidden in its building; that is, a philosophy in which the environment can only suffer from man, and the best that man can do is to avoid any interference with natural processes. This example shows that by fixing our attention on some specific manageable and simple indicators, we may be

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<sup>3</sup> For instance, the International Institute for Sustainable Development based in Winnipeg (Canada) states as a strategic intellectual position: ‘Societies measure what they care about. Measurement helps decision-makers and the public define social goals, link them to clear objectives and targets, and assess progress toward meeting those targets. It provides an empirical and numerical basis for evaluating performance, for calculating the impact of our activities on the environment and society, and for connecting past and present activities to attain future goals. Measuring sustainable development—just as we currently measure economic production—makes it possible for social and environmental goals to become part of mainstream political and economic discourse’, <<http://www.iisd.org/measure/>>.

embarking on validating implicit goals that have not been tested according to agreed social values and justification principles acknowledged in our democratic societies.

One needs to face the ambiguous theoretical status of SD within the field of social and normative values. Taking for granted the fact that the main conceptual challenge of SD is to find ways to go on with development, without putting the natural environment at peril, one issue is to understand what the environment really involves as a concept embracing Man–Nature relationships. Environmental events cannot escape interpretations, and interpretations depend on legitimate interpretation frameworks.

### 3.1.1.1 Entangled hierarchy

Environmental issues raise difficult questions about the way to integrate human beings and non-human beings into one unified representation. What is the appropriate qualification and status that we should give to ‘environmental beings’. The standard utilitarian economic concept and the political model of the ‘common good’ are framing the world into a partition between ‘subjects’ – human beings – and ‘objects’ – all other beings. At the same time, standard systems approaches and energetics give the same ontological status to all beings, human and non-human; both categories being viewed as vehicles of energy and material flows. As regards environmental issues, each of this approach is incomplete and is therefore condemned to open up to the other one, although the prospect of getting both categories combined in one integrated model is problematic. The integration problem is not as simple as linking different boxes or compartments that have the same physical nature, because there is a rupture between the semantics used on both sides. The logical structure of the environment-system relationship in the context of self-organizing systems is one of “entangled hierarchy” between two orders.

(i) In one order, the meaning emerges from the system: human society is logically the first, being the definitional reference of the other pole, its ‘environment’. The environment is the subset of the world that is meaningful for this reference system, either as resources and conditions of existence and development, or as sources of relevant perturbations and threats. An illustration of this order, the self-referent order, is found in the main concepts we are currently using for organizing the representation of the natural environment of human societies. They do not express components of the environment taken for themselves, but a human look at these components.<sup>4</sup>

(ii) In the opposite order, the system is just a subset of the environment, one that takes part in its global functioning and dynamics and can influence or disturb the environment. This second order, qualified as hetero-referent, explains what the environment makes of the action of the system on its own organization and functioning, and what feedback goes to the system.

Each order of meaning generates its own key benchmarks and factors of integration and reproduction, which are reflected in the different semantics used by scientists for their description and understanding. However, at the same time, both orders are linked in such a way that each one includes the other as part of its own functioning and accomplishment.

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<sup>4</sup> Take the concept of natural resources: within the environmental problem, there is no place to speak of natural resources if the targeted components are not referred to a human usage or to some value defined by men. If, alternatively, we consider the use of some resources by biological units (predator-pray relationship), there is no basis to qualify them as ‘natural’, i.e. in the context of an opposition with human attributes (culture, technology...). It is the same for ‘quality of life’, ‘habitat’, ‘landscape’ and so on.

### 3.1.1.2 The Plurality of Principles of Justification

An additional source of complexity and uncertainty in the system–environment relationship arises from the plurality of principles of justification that coexist in present Western, democratic societies: they are called ‘market’, ‘industrial’, ‘civic’, ‘domestic-traditional’, ‘opinion and fame’, ‘inspiration-based’ principles (see Figure 1). Each one is organized around a specific normative concept, and depends on specific tests of value, and procedures to solve conflicts. Environmental issues are not built the same way within each of these principles (Godard 1990), and social conflicts raised by environmental issues often oppose different views regarding the right principle to use as a reference; it is all the more true that the solutions should differ according to situations considered and that each principle is only partially successful to address the issues of concern (Lafaye and Thévenot 1993).

Competing views about which principle should take precedence is a type of competition without clear procedures for arbitration: there is no mechanism – a marketplace, a negotiation procedure, a democratic vote etc.– to compare their respective performance, because there is no universal meta-criterion against which to judge their achievements.

In this respect, environmental issues are a source of controversy, because they generally cross existing frontiers between social problems and spheres: they concern consumption as well as production; they do have an economic dimension, but also a civic one resulting from the public good and intergenerational characteristics; they depend on public institutions, but also on business and NGOs; they touch business strategies of multinational firms, but also personal choices and ethics regarding lifestyles; local issues find meaning through global interpretation (biodiversity, climate change) and so on. Thus, environmental issues are a permanent source of embarrassment and conflict regarding justification. The key difficulty is related to ways and means to reach an agreement between stakeholders supporting opposite views on the shape of issues and priority of concerns.

The search for agreement on collective actions and rules that would regulate individual conduct and solve conflicts over the use of the environment is subject to a general requirement of public justification. Debates, tests and judgements involved are framed by justification orders and principles. It is at the end of justification work based on specific tests that actions undertaken or new norms and classifications adopted will be seen as legitimate. Examples of tests can be found in court cases, economic calculations of the profitability of an investment, or physical comparisons. Even though they correspond to different situations, they are all tests intended to determine the appropriate action or relative value of various competing options.

The requirement of tests is twofold: to find a suitable response to the specific circumstances of the situation requiring a judgement, and also to link the situation to a more general representation of an ideal order, supposed to sustain a common good shared by all the members of society.

Orders of justification

The *inspiration-based* concern for environmental matters takes up ideas of a Nature having a transcendent value and being incommensurable; personal commitments, individual sensitivity and desire for authentic natural environments are at stake. Here, a quasi-religious relationship to Nature supports environmental protection. Practical expressions of this order (in protests, when proposing solutions, etc.) are marked by a tendency towards radical alternative, utopia and rejection of compromises. Basically argumentation refers existing, concrete situations to a 'transcendent elsewhere', such as true wild, virgin nature, a natural paradise or divine creation, with which communication is made through the channels of intimate desires and inspiration. This order may feed a benevolent attitude towards the general cause of the environment and is a possible source of social acknowledgement of 'existence values', although the fix on uniqueness and invaluable natural beings is an impediment for systematic comparisons. The general form of tests in this order is to be found in embodiment and personal commitment; it gives a high standing to prophetic characters and mystic speech.

The *domestic-traditional* order includes the will for conservation in a general project of transmission of heritage, the focus on traditions in environmental practices and a concern for a right ranking of people and things in a stable hierarchy related to the intergenerational link. The value of heritage is attributed to culturally marked objects able to both embody the identity of a cross-generational group and to crystallize polyvalent resources for allowing holders to face bad surprises in life. As such, cut-off from their cultural and social meaning, nature and wilderness have the lowest ranking. Domestic animals (horse, dogs) have a higher standing than any wild species, which, in some cases, are treated as harmful species doomed to destruction (foxes, snakes, mosquitoes).

The third order is organized around a concern for *opinion and fame*. It embodies the idea that the value of beings depends on their fame; an action is all the more valuable as it draws the attention of the largest number of people. Public perception and opinion is what really matters. Gaining celebrity and having existence in the media is the very source of value. Indices of notoriety (have you ever seen the Eiffel Tower? Did you climb up?) are the true tests to use for choosing priorities.

The *civic order* shapes a political society based on a concern both for a basic equality of citizens who should have an equal access to the environment and natural resources, and the superiority of general interest and will over private ones, and of public bodies in charge of the common good over private entities: law is taken as expression of general will of citizens, hence a focus on effectiveness of law enforcement; other concerns are related to the importance of collective action, a higher standing given to public management against private and attention attached to a fair democratic representation of all communities. Within this order, access to greatness implies an abstraction of individual singularities and specificities for the best profit of the common good

of society.
<p>The <i>market order</i> is framed by the desire for commodities; as a collective device, the market points out what the valuable goods are that people are invited to desire. It requires people and objects to be detached from roots, land or community in order to be totally available for trade and market valuation. Achieving an affluent society stimulated by the satisfaction of individual desires is the value of this order. Private property rights are the means to integrate environmental assets into the market game. Nature is valuable if it can be made profitable through trade one way (extractive uses for commodity markets) or another (tourism) ...</p>
<p>The sixth and last type of order, <i>the industrial order</i>, extends to the whole society and the environment the type of order developed by big <i>industry</i> during the nineteenth and twentieth centuries. It is focused on a productive use of resources and land in order to satisfy objective needs. Excellent technical performance in production and management is sought and expected to be reached, by giving a key role to engineers and scientific experts. A strict hierarchy of social status and roles, and a clear division between conception and execution are two features of this order. This is also the reign of objectivity and figures; decision-making is to be based solely on sound science and objective data; the future is apprehended through rational plans and investment. Regarding Nature, this order basically urges that natural systems and resources be put to a productive use: there is no greater scandal than resources lying in an unproductive state ...</p>

Figure1. Principles and Orders of Justification (Godard 2003)

### 3.1.1.3 Scientific and social controversies

With roots in the structure of the System–Environment (S-E) complex and in multiple orders of justification, environmental issues are characterized by critical uncertainty and long-lasting scientific controversies. The latter are not restricted to scientific communities, but spread through society, fuelling social controversies. Both sources combine to generate ‘controversial universes’, in which scientific theories and ‘visions of the world’ become social stakes around which strategic games are developing among economic and social actors (Godard 1997).

Such contexts contrast themselves with ‘*stabilised universes*’, which have been explored at length by environmental economics, relying on the following assumptions: pre-determined individual preferences are the ultimate source of assessment; there are clear causal relationship between actions and environmental damage; damages are reversible. Within ‘*controversial universes*’, the standard temporal precedence of knowledge on action (‘learn then act’) has to be partly reversed (‘act then learn’) because what is at stake is the prevention of a presumably irreversible damage. Action has to be determined on the basis of a partial and controversial knowledge. Hence, cognitive issues and stakes of collective action are intertwined, giving rise to new forms of strategic competition among social and economic actors. Competition is about the framing of issues in order to control the shape of policies. Alternative scientific theories and

environmental uncertainty tend to be instrumentalized by social and economic actors according to their interests and goals (stopping the development of a technology, controlling a market ...). To some extent, the level of uncertainty acknowledged in public debates becomes an endogenous variable of social games: stakeholders manipulate it to defend their interests, either by underplaying scientific uncertainty, or alternatively, by magnifying it.

### 3.1.2 Sustainable Development, a new justification principle?

Turning sustainability into an effective standard of justification would require that all of the following operations be organized precisely and achieved successfully, notably regarding the setting-up of appropriate tests to resolve disagreements and arbitrate contradictory claims.

- (i) gathering data to achieve a shared understanding of interactions patterns between human activities and the environment;
- (ii) using tests to evaluate threats and environmental assets that would be touched, with open questions on sustainability or unsustainability thresholds;
- (iii) making a decision on practical sustainability objectives;
- (iv) finding an agreement on rights of various groups of people and defining rules for allocating obligations and scarce rights in relation to the chosen sustainability norms;
- (v) defining transitional mechanisms;
- (vi) designing incentives and penalties to ensure compliance with the new regime of rights and obligations.

However, two divergent perspectives, generally called anthropocentric and biocentric, coexist in the literature on sustainability. Our previous analysis on the S–E complex confirmed the entanglement of a self-referent anthropocentric viewpoint and a hetero-referent biocentric one. This implies that a simple-minded anthropocentric approach will be at odds with SD, although there is hesitation on the appropriate way to progress. The biocentric view has been contemplated and developed by various scholars, but it rapidly leads to a dead end (Larrère 1997).

To be suited to the stakes of sustainability, a principle of justification has to provide a coherent representation of the future. This is a general point of tension, since the ‘City’ model frames a synchronic order on the people and social states, focusing on the conditions for reaching an agreement between the people who form society ‘here and now’. This does not fit well into historical time, which introduces asymmetry between generations as a result of procreation, and introduces a radical gap between remote generations. Both features have to be highlighted:

- Remote generations do not belong to the same community of living people and the same physical world, and cannot communicate with each other in order to agree on a common good or an inter-temporal strategy of exploitation of natural resources; the successive generations are incapable of having the ‘same power of access’ to the different

physical and social states, whereas the set of accessible states changes considerably over time (the ‘irreversibility effect’).

- The former generations procreate the later generations and give them, at the same time, their unique identity and the world in which they are going to live their life. Former generations have the power to allow later generations to come into existence or not.

Different attempts have been made to overcome this ‘problem of identity’. One of them is to adopt a utilitarian framework. It gives a strong pre-eminence to a criterion of maximizing global welfare, and poor consideration to the specific achievements of identified individual people. One alternative is to acknowledge minimum basic rights for all humans, in order to make ensuring human dignity possible for all individuals in all generations to come.

Another solution has been proposed on the institutional field: giving future generations a representation within the community formed by the present generation. The aim is to overcome the structural incapacity of ordinary democratic regimes, in order to give weight to human interests in the long run (Jonas 1984). The argument is as follows. As environmental changes are the remote ‘links’ from present generations to future generations, symmetry can be re-established by placing the representation of the latter in the present time. Certainly this solution would involve changes in the political modes of democracy; for example, with a council of future generations working alongside existing parliaments. It would have the theoretical advantage of re-installing an initial community made up exclusively of co-present members.

Yet it remains to be seen how weights can be given fairly to future and present generations respectively. Institutional innovation should not lead to the creation of two classes within the community: those only entitled to speak for themselves and those authorised to speak for the absent third parties.

## **3.2 Deliberative processes in theory and practice: principles and guidelines for participation**

The solution described above raises the issue of authentication of the capacity of a number of individuals or bodies to represent future generations, as the usual validation procedures (elections by those to be represented and so on) are not available in this case. What tests could be used to judge self-proclaimed and contradictory claims to represent future generations? One response is to organize deliberation processes founding the legitimacy of decisions on the interaction between a plurality of visions and normative frameworks.

### **3.2.1 Participation and deliberation in an historical perspective**

#### **3.2.1.1 Participatory approaches in development and environmental issues at the national level**

Responding to criticisms and assertions as to the failure of centralized top-down approaches of development projects, the 1970s and early 1980s have witnessed a new emphasis placed on bottom-up "people-centred" development. The increasing recourse by

local and national governments, as well as by NGOs and (later) international development agencies, to various forms of participatory approaches were rooted in the expectations that community-based initiatives would help to design more proactive, more innovative and better-adapted responses to the development issue. The justification was also that by taking into account different knowledge, values and preferences, the participatory processes would improve the legitimacy of local policy responses and would create a greater sense of shared responsibility and a greater commitment to implementation. Priority was therefore given to capacity building, participatory action research and people's empowerment at the local level. At the national level, it was also translated by the emphasis placed on the subsidiary principle and on the decentralization processes, seen as means to bring the decision centres closer to the community concerned.

Beginning in the early 1990s, consultation and participation had also become the keywords of successful environmental decision-making. It was then emphasized that environmental issues are complex, and characterized by multiple conflicting interests, within and between communities, because environmental issues relate to various aspects of life (leisure, production, consumption, technology) for which people may have very different and often competing preferences. Environmental policies, it was deemed, were therefore extremely difficult to design and implement. Therefore participative and deliberative processes were expected to lead to a better policy decision, built progressively and collectively through a shared diagnosis of the issue at stake and the co-construction of common long-term objectives.

In developing countries, this has taken the form of decentralized decision-making and community-based environmental management projects. In developed countries, emphasis has been placed on participatory rule-making for local environmental management but also on various fora of deliberative processes at the national level, such as the famous consensus conferences, citizen conferences on controversial subjects (biotechnologies, climate change) or commissions for public debate.

This new form of collective decision has given rise to a number of theoretical and policy debates. On the philosophical and political side first, it questions the nature of democracy itself, by highlighting the respective advantages and limitations of representative and deliberative democracy. It also raises questions concerning the "right" level of decision and subsidiarity, and the coordination between different levels of governance. On the more practical side, the success of deliberation depends also very much on the design of participation: who is entitled to participate, with what rights or duties, which groups are legitimate, how to prevent the lack of accountability or representativity of certain participating groups, what are the decision rules, what role should play public authorities and so on. There is a large gap in knowledge that leaves decision-makers and coordinators of deliberative processes with too few recommendations and little guidance. The consequence is that it fosters suspicion, and throws discredit on such decisions. It is interesting to highlight that the same enthusiasm, but also the same reticence, exists concerning participatory decision-making at the international level.

### **3.2.1.2 Participation for Global Governance**

At the international level, the issue of legitimate and democratic decision-making is even more crucial since nation states are sovereign and cannot be forced to abide by the law of a supranational decision. The issue of global governance has, of course, received

considerable attention, more so since the increasing awareness that a number of global issues (mainly environmental) can only be solved by international cooperation.

Theoretically, two visions have been traditionally opposed: for the libertarian approach, decisions have to be made by inter-state bureaucratic bargaining on the basis of voluntary participation of sovereign nations, while global federalism defends global governance based on a democratically elected global government. Whereas the first approach just assumes that global governance is a non-issue, the second approach implies that there is no solution to global governance since there is no possibility at the present time of nation states relinquish their right to sovereignty. However, claims rooted in the successes of participatory processes at the local level, and voiced by grassroots movements and NGOs in various international fora have made it clear to governments and international institutions that a third option could be developed and defended for global governance: the option of deliberative decision-making.

The first international fora that acknowledged the idea that participatory approaches were essential were those on sustainability issues: in 1992, the United Nations Conference on Environment and Development adopted Agenda 21, which clearly stated that sustainable development must involve the participation of all stakeholders. In 1996, the US President's Council on Sustainable Development recommended that collaborative processes be fostered to achieve sustainable development and the European Commission's General Consultative Forum on Environment and Sustainable Development published the same kind of conclusions in 1997. It is a fact that international organizations dealing with the environment have adopted from the outset a more open attitude to effective participation by stakeholders: for example, the Convention on Biological Diversity has created a number of open-ended working groups and conferences in which NGOs, grassroots movements, indigenous groups and private lobbies have been invited to voice their opinions and claims. The UN has also chosen to increase its consultation process by accrediting a large number of NGOs in its Economic and Social Council. On the other hand, so-called "member-driven" organizations such as the WTO, have been much more reluctant to move in this direction, although efforts have been made to favour equitable participation of member states as well as more rapid and transparent information for associations and the general public, both through press conferences, websites and so on.

There is also a growing recognition among policymakers and the public at large that civil society plays an integral role in international governance for sustainable development. This realization is evidenced by the growing body of international legal instruments that identify public participation as a prerequisite for promoting the goals of sustainable development. As a result, the importance of broad-based public participation—often achieved through civil society involvement—has emerged as a consistent theme in many international agreements for sustainable development—from the Stockholm Declaration (Part I, paragraph 7) all the way through to the Johannesburg Declaration on Sustainable Development (paragraph 26). The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) represents a new precedent for participation. The Convention, which entered into force in October 2001, has been signed by forty states within the Economic Commission on Europe, and among other things, requires all Parties to abide by specific procedures to ensure public participation for a number of activities with potential environmental impact.

However, many of the questions already raised in the case of local negotiated decision-making are also left unanswered in the case of international decision-making and create even more acute debates on the forms of participation, the legitimacy of participating organizations, the impossibility of identifying an international civil society and the like. Most analysis is in fact provided and publicized by NGOs and is a blueprint for more information, greater transparency and improved accountability of international institutions. Their guidelines include recommendations for an improved dialogue and good consultation practices between international administrations, governments and civil society organizations (CSO). In addition, the Organization for Economic Cooperation and Development (OECD) has put out a handbook on people's participation policy-making. However, little is said on the risks of badly conducted or badly designed consultation processes such as high-jacking the debates, circumventing the solutions, ensnaring implementation. This has provided arguments for the opponents of deliberative approaches, who claim that most decisions are illegitimate<sup>5</sup> or impractical.

### **3.2.2 Deliberation processes in theory**

While the decisions of many international institutions have a discernable effect on the life of citizens, their only form of democratic legitimation is a highly indirect one derived from (elected) national governments, rather than from the collectivity of world citizens. This is what has become known as the democratic deficit of governance beyond the state.

In the absence of a convincing parliamentary solution to this problem, many scholars of global, and in particular EU governance, have turned to theories of deliberative democracy in order to devise some blueprint for institutional reform. In essence, these authors argue that deliberation among a broad range of actors affected by decisions made in international governance arrangements can enhance the rationality and legitimacy of political decisions.

#### **3.2.2.1 Representative democracy at the international level?**

Democracy is a political ideal that applies principally to arrangements for making binding collective decisions. Such arrangements are democratic if they ensure that the authorisation to exercise public power arise from collective decisions by the citizens over whom that power is exercised. There are a variety of institutional forms of modern government that resolve this principle of democratic will formation in slightly different ways. Most Western countries have developed some form of electoral democracy. It formally secures the inclusion of citizens, their interests and concerns into government by means of aggregation of individual interests through political parties, corporations and parliaments. For the majority of citizens, participation in this system is reduced to voting in more or less frequent political elections. In addition, there are indirect and voluntary forms of participation in the political process through active involvement in political parties, interest groups, social movements and civil society associations. By addressing problems through public discussion, democracy not only assumes information but also explores a range of alternative solutions to practical problems.

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<sup>5</sup> Legitimacy can be understood as a general compliance of the people with decisions of a political order that goes beyond coercion or the contingent representation of interests. Normatively, democratic legitimacy results from a rational agreement among free and equal citizens.

Although the foundational legal acts of international governance are normally subject to national ratification processes, its every-day norms and standards are negotiated by non-elected experts and government officials. They come together behind closed doors, free from the usual mandated intrusion of public representatives and interest groups in their decision-making processes. International organisations do not ensure adequate information to the (ordinary) interested citizen nor is there sufficient public debate about their policy choices. Critics who view international organisations as the triumph of global technocracy see them enshrining professional expertise at the expense of popular sovereignty.

Along these lines, Robert Dahl (1999) has forcefully argued that international organisations cannot be democratic. He gives two reasons: first, there cannot be a system of popular control over policy-decisions at the international level. “The opportunities available to the ordinary citizen to participate effectively in the decisions of a world government would diminish to the vanishing point” (Dahl, 1999: 22). The extent of “delegation of authority” to international policy elites goes beyond any acceptable threshold of democracy. His presumption is that democracy means a process of decision-making by the citizens which principally takes place in the election of their representatives. Second, there is no common identity and no political culture supportive of international institutions.

But only a shared collective identity (a “demos”) - able to ensure societal cohesion, mutual trust and solidarity - can make policy decisions to be widely acceptable among the losers. In short, Dahl argues that the enormous size and heterogeneity of the global citizenry make the democratisation of global governance impossible. He therefore suggests treating international organisations as non-democratic “bureaucratic bargaining systems”.

Yet, is there a way of conceiving democratic legitimation of global governance which neither presupposes international equivalents to national electoral democracies nor a certain (pre-political) homogeneity of the citizens of a polity (or a “demos”)? How can we devise an alternative model of democratic will formation that corresponds to the emerging system of global governance?

### **3.2.2.2 Deliberation as an alternative to parliamentary representation?**

In deliberative democracy, the inclusion of voices and citizen’s participation is not limited to power sharing in legislative as well as judicial organs (involving proportional representation). Rather, democracy is a framework of social and institutional conditions that facilitate the expression of citizens’ concerns and ensure the responsiveness of political power. Democracy is regarded as intrinsically enhancing the legitimacy of government or governance because it ensures the (procedural) conditions for a high quality of the decision-making process with respect to regulatory choices. Deliberation as a process of reason-giving focuses political debates on the common good: interests, preferences and aims that comprise the common good are those that “survive” deliberation.

In the context of international relations, the model of deliberative decision-making has taken on a vision *sui generis*. Since a parliamentarisation of politics above the nation-state

is not in sight,<sup>6</sup> enhanced political deliberation has been regarded as an alternative avenue for global governance. Well-informed and consensus-seeking discussion in expert committees that are embedded in international decision-making procedures has been suggested as an effective remedy to the legitimation problems of international governance. In this perspective, political deliberation is viewed primarily in a functional fashion as a prerequisite for a high level of efficiency, efficacy and quality in political regulation. This approach to deliberation is inspired by thinking from public policy and international relations theory which has highlighted the importance of scientific expertise and consensus-seeking in the epistemic community of experts (Haas 1992; Majone 1999). Generally speaking, global governance regimes draw their legitimacy from the deliberative quality of their decision-making process. This process is not designed to aggregate self-interests but rather to foster mutual learning, and to eventually transform preferences while converging on a policy choice that is oriented towards the common good.<sup>7</sup> Deliberation among experts becomes a key device of “good governance” by a responsive administration.

The presumed legitimating capacity of expert deliberation has also been grounded in empirical arguments. It has been claimed that well-informed rules are effective because they can command assent and compliance by citizens, and thus enhance the (social) legitimacy of political authority. However, some important empirical arguments can be brought to bear against this alleged automatism. Thompson and Rayner (1998), for example, present evidence from environmental policy and risk regulation, which indicates that citizens assent to rules only if they have the impression that *their own concerns* have been treated fairly in the process of rule-making. They consequently argue for more inclusive institutional designs that accommodate the views of non-experts in deliberative decision-making.

At the international level, the emergence of a transnational social movement against technocratic global governance can be regarded as empirical evidence that the ‘permissive consensus’ for secretive forms of rule-making among experts is vanishing. The acceptability of a mode of global governance that excludes its stakeholders and affected citizens is empirically in question. In the eye of many stakeholders, elite expertise and bureaucratic deliberation alone do not make international organisations democratic.

### 3.2.2.3 Democratic legitimacy and the public sphere

The desirability of expert deliberation can be contrasted against the idea of public deliberation as a source of democratic legitimacy for governing (at the nation-state and global level). In the proceduralist theory by Habermas, for example, the public sphere plays a key role: it is conceived as a dispersed, all-encompassing, discursive network within which citizens, connected by the means of mass communication, form currents of

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<sup>6</sup> Only few believe that international institutions not only should but actually can be democratised in this sense (Falk and Strauss 2001).

<sup>7</sup> For it is far from clear how bureaucratic procedures such as ‘comitology’ (Joerges and Neyer 1997) can make sure that citizens’ concerns will be given appropriate weight in the process of argumentation that leads to an informed decision on binding rules. Even if we trust experts and scientists to advocate norms that, in their view, serve the common good of a polity and not some particular interest, it still remains their assessment and their view of the good that still prevails. What is missing from the committee model is a plausible mechanism that links expert governance with the discourse of ultimate stakeholders.

opinion in seeking how best to resolve common problems. A public understood as a collectivity of persons connected by processes of communication over particular aspects of social and political life, can, in principle, extend beyond national borders.

What is important to the notion of public deliberation is not so much that everyone participates but more that there is a warranted presumption that public opinion is formed on the basis of adequate information and relevant reasons, and that those whose interests are involved have an equal and effective opportunity to make their own interests (and their reasons for them) known. This ‘public use of reason’ depends on civil society as ‘a network of associations that institutionalises problem-solving discourses on questions of general interest inside the framework of organized public spheres’.

Habermas’s theory distinguishes between political institutions (or decision making bodies) and the broader, decentred public sphere (Habermas, 1992). The conception defended by Steffek and Nanz (2004) departs from this view insofar as it focuses on sites of public deliberation between policy makers and stakeholders. They emphasize the role of organized civil society participating within governance regimes as an intermediary agent between the political institutions and the wider public. They argue that at the international level, the public sphere – conceived as a pluralistic social realm of a variety of sometimes overlapping or contending (often sectoral) publics engaged in transnational dialogue – can provide an adequate political realm with actors and deliberative processes that help to democratise global governance practice.

If the public sphere is conceptualised as a communicative network where different (national and sectoral) publics partially overlap, the emerging features of global governance regimes can also be seen as offering the chance for the creation of new communities of political action at the global level (Nanz, 2001). From such a perspective, global governance regimes – when understood as sites of public deliberation and cooperative inquiry – may yield unprecedented forms of trust and solidarity among a variety of social actors (government officials, experts, NGOs, stakeholders etc.) with diverse (national/sectoral) perspectives on a certain issue. Fostering extended deliberation among those actors over the nature of problems and the best way to solve them, participatory arenas produce a pool of (transnationally) shared arguments which contribute to the emergence of a global public sphere.

Organised civil society has a high potential to act as a ‘transmission belt’ between deliberative processes within international organisations and an emerging transnational public sphere. Such interface operates in two directions: first, civil society organisations can give voice to citizens’ concerns and channel them into the deliberative process of international organisations. Second, they can make internal decision-making processes of international organisations more transparent to the wider public and formulate technical issues in accessible terms.

### **3.2.3 Deliberation processes in practice**

In the past, research in international governance has almost exclusively focused on the intergovernmental component, identifying the ways in which intergovernmental institutions facilitate cooperation between nation states. As is emphasised by the development of deliberation theory, opening up political deliberation in international organisations to the wider public debate implies that the process of deliberation on global

politics can transcend boundaries between experts and stakeholders, officials and concerned or interested citizens. These two spheres must mutually and reliably inform one another. It has to be ensured that information is made available to stakeholders and that in turn stakeholder concerns reach the agenda of those political or administrative bodies that formulate the decisions to be made in international organisations. In other words, introducing deliberative *procedures* into international organisations needs to be complemented with *participatory* practices in order to be able to push global governance towards democratisation.

### 3.2.3.1 The role of non state actors

The new empirical issue is to design deliberative instances capable of creating a genuine and fruitful cooperation between state actors and non state actors. Within this context, the role and organization of non state actors is crucial. Non state actors form an extremely heterogeneous group ranging from private transnationals to small NGOs, labour trade unions etc. They can be distinguished by their degree of organisation, their purpose (commercial vs. non-profit) and their field of activity which is retained by the political and legal space accessible to them. However, they have a number of characteristics which distinguish them from state actors.

One criterion is the legal capability; non-state actors do not enjoy, unlike governmental organisations, the sovereignty to enact legally binding decisions due to the lack of legitimacy. This incapability to participate must not be mistaken as a disadvantage since it also gives them more room for manoeuvre in terms of innovative proposals, action and claims. Non-state actors display different mechanisms of governance by shaping preferences, building confidence and delineating the area of cooperative behaviour by means of market forces and availability of knowledge as well as mustering public support or criticism. Another criterion to distinguish non-state from state actors is their motivation; their agendas are marked by a narrower and strictly purpose-related formulation, which allows them to be more focused in their claims. In particular, the emergence of corporate actors is rapidly changing the realm of global governance.

However, these common features cover a strong heterogeneity of the group of non-state actors in environmental and trade governance. They come from three main sources – civil society organizations, corporate actors and scientists – combining to form the so-called epistemic community. Until recently, these actors considered themselves opposed to each other. The scientists and the NGOs have been the first to build a common agenda on specific issues – species protection, nature conservation, pollution, climate and so on. This alliance has proved to be efficient and powerful in many cases. On the one hand, scientific works have supported political claim and action. Political demand has revealed and highlighted, on the other hand, new routes for scientific research. Since then, corporations have begun to appear as ‘full-rights’ actors of environmental and trade governance. This is not to say that corporations had not influenced environmental policies before. However, what was new was the claim by corporate actors to have an active share in policy building and implementation. Part of this new trend is the corporate willingness to account for their actions and their engagement. In many cases, they thus call for NGOs to watch and assess their actions, and even to become full partners in the initiation and management of environmental corporate policies. The promise of efficiency, founded on the corporate financing and *savoir-faire* in scaling-up, has been powerful enough to bring NGOs, researchers, states and intergovernmental organizations round to this point of view.

### **3.2.3.2 The capacity of civil society organisations to create a global public sphere**

The two determinants of civil society engagement in international governance for sustainable development are institutional mechanisms and the organizational attributes of each non state group. Institutional mechanisms will be discussed at more length in section 3.3. Organizational attributes are based primarily on CSO's internal resources, which encompass financial resources and human resources, including the people, training and knowledge needed to engage with international governance. As emphasised by Green (2005), civil society organizations must have knowledge and understanding of the issues being debated, as well as of the policy implications of proposals and decisions. They must be able to travel to meetings, to speak English, which is often the default language of unofficial lobbying sessions. Many of these resources require substantial funding and financial capacity.

Green (2005) also states that “transnational connectivity can contribute to civil society organizations’ ability to participate and influence policy-making for sustainable development. Transnational connectivity describes the means through which civil society actors receive and transmit information that promotes engagement. Information is essential for participation and influence in international policy-making. CSOs who wish to engage in international discussions must follow international processes and discussions. They must stay abreast of when meetings are held, and where; what issues are being discussed, and what the implications are of decisions being taken. This requires understanding relevant natural and environmental processes, emerging research and consensus, and other policy-relevant information” (Green 2005). Connectivity links are a way to benefit from economies of scale by sharing information and analysis output, by pooling means, and by coordinating strategies. “Effective CSOs cannot simply be informed about policy discussions, they must also contribute to them. Through connections to other civil society actors, epistemic communities and policy-makers, CSOs circulate their work and opinions. Transnational connectivity can be especially important in contributing to CSO engagement when other endogenous resources are lacking” (Green 2005).

Another crucial dimension is what Green calls the geopolitical standing, that is the fact that “certain actors have more clout than others due to their wealth, endowments of natural resources, their military power, political alliances with other important actors or some combination thereof. To the extent that civil society actors derive influence from geopolitical standing, it is due largely to their national context. For example, some developed nations, such as Canada, Norway and the United Kingdom, have begun inviting civil society representatives to serve on delegations on a regular basis. Those CSOs, who are selected enjoy considerably more influence in a negotiating setting compared to other civil society actors. The fact that they are now key players is due to their national context—governments’ recognition that civil society representation is of value to the government and its positions—and to their strategic alliance with the home government. Recent work on the effectiveness of transnational advocacy networks suggests that it is the local membership base—those actors grounded in a specific national and local context—that plays a key role in determining the network’s effectiveness. Thus, though international NGOs often serve as the interlocutor on the international level, their effectiveness is due to the local membership base (Rodrigues 2004) “ (Green 2005).

However, some civil society organizations maintain that despite formalized processes for participation, they cannot meaningfully engage in the policy-making process. Their

opinions are not taken into account, or are considered too late into the process, once most of the serious decisions have been taken. Even when there are opportunities to participate through interventions, some assert that their input is symbolic, since real decision making often occurs in backroom discussions. This disjunct alleged by some civil society actors is particularly problematic given the fact that public participation is one of the fundamental tenets of sustainable development.

Of course, such claim is difficult to assess. Few scholars have tried to evaluate the level of influence exercised by civil society in intergovernmental processes. Zurn (1998) and Betsill and Corell (2001) have proposed methodologies such as process tracing and counterfactual analysis. These are useful frameworks, however, they do not take into account influence exercised through “informal pathways” outside of official policy-making processes, nor of civil society actors who fall outside of the NGO category. These non-institutional avenues of participation—such as attracting media coverage, agenda-setting, lobbying and mobilizing constituencies to pressure governments—must also be considered when analysing civil society influence. Yet, there are relatively few comparative assessments of the impact of transnational civil society on international policy (but see, for example, Florini 2000, Fox and Brown 1998, Keck and Sikkink 1998).

Green (2005) also emphasises that another criticism of current CSO involvement in international policymaking is “the significant imbalance between civil society participation from the developed and developing worlds. Though there has been a dramatic increase in civil society actors active in international governance for sustainable development, much of this increase is due to the growing presence of large international NGOs, generally based in the developed world. Indeed, statistics from the UN Department of Public Information (DPI) bear this out: only 251 of the 1,550 NGOs associated with the DPI come from the developing world (Edwards 2001). This imbalance raises a host of questions about whom civil society represents, and to whom they are accountable. Indeed, as the role of civil society in international governance has grown, so too has the importance of demonstrating legitimacy and accountability. If future civil society engagement in international policy-making is to be credible, it must be perceived as legitimate. Thus, CSOs, and particularly transnational networks of CSOs, must be able to point to internal mechanisms and procedures that affirm their legitimacy and accountability. Greater parity of participation between CSOs of the developed and developing worlds will also help address the legitimacy problem” (Green 2005).

### **3.2.3.3 Corporate actors and public-private partnerships**

The 2002 Johannesburg Summit, designed to build a sustainable development agenda for the twenty-first century, has endorsed a long-lasting trend in environment and trade governance, that is, the emerging of corporate actors as plain stakeholders and contributors in negotiation, norm setting and implementation of governance instruments. Corporate strategies to enter the public environment and trade arenas reveal a shift of paradigm.

For years, corporations have pleaded for the state and public actors to stay out of their production, investment and location policies. Environmental and social concerns would be best pursued, they claimed, if the public authorities let them set their own objectives, and their own ways to achieve them. This demand has accompanied a posture of covert lobbying and discrete interactions with other actors – state, NGOs, research, municipalities and so on. What can be seen currently is different: corporations no longer

go to environmental or social fora as ‘observers’, but as actors; presenting projects, building alliances with other groups, making claims for transparency, accountability and equity. What are the forces and rationales at stake behind this new posture?

In the last ten years, more and more corporations have taken a stance on their commitment in favour of the environment and sustainable development. But the greening of the corporate actors has been marred by their refusal to accept processes of genuine accountability. They have been repeatedly – and still are – accused of ‘greenwashing’ their activities through a change of discourse instead of a change of practice (Bruno and Karliner 2002). If it seems difficult to totally discard these accusations, it is worth emphasizing that things may have recently changed in this area, with the development of discourse and the practice of Global Social Responsibility (Biagiotti, 2005).

Corporate actors today seem ready to accept more transparency. This is mainly the doing of large multinational firms able to set up philanthropic foundations, and projects like the Bill and Melinda Gates Foundation providing money for the Global Fund for Children’s vaccines, or French company Suez financing the UNESCO Water Research Project and so on. This shift is still in its infancy. But the capacity of transnationals to contribute to the financing and scaling-up of large social and environmental projects such as access to water, sanitation, protection of coastal areas, endangered species and other priorities on the environmental agenda is so great that the question should not be considered as marginal too quickly.

A corpus of definitions and behaviours is now known as Corporate Social Responsibility (CSR). Spread by corporate organizations such as the World Business Council for Sustainable Development,<sup>8</sup> CSR is expected to contribute to sustainable development at local, national and now global level. It is worth remembering here that one of the purposes of the Davos World Economic Forum is ‘the reintroduction of the notion of social responsibility in the corporate world’ (Klaus Schwab in Balanya *et al.* 2000, p.19).

Corporate participation to the global agenda has been recognized at the highest level. The UN Secretary-General, Kofi Annan, asked corporations in July 2000 to join the UN initiative Global Compact – an informal group of multinationals, NGOs and trade unions. The idea presented in 1999 at the Davos World Economic Forum was to encourage corporations to accept and respect nine UN principles<sup>9</sup> in their business strategies, in exchange for a UN label. The objective was ‘to anchor the global market in a shared-values network’ (Annan, 1999, p. 4). Kofi Annan’s proposal documents the fact that the UN is constantly lacking resources and authority to implement the international legal corpus. Since its inception, the UN has suffered from erratic financing by member states,

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<sup>8</sup> The World Business Council for Sustainable Development convenes some 170 companies around the world with the commitment to work and promote what they understand as the three pillars of sustainable development namely economic growth, environmental balance and social progress. See <<http://www.wbcsd.ch/>>.

<sup>9</sup> The principles are as follows: (1) Businesses should support and respect the protection of internationally proclaimed human rights; and (2) make sure that they are not complicit in human rights abuses. (3) Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; (4) the elimination of all forms of forced and compulsory labour; (5) the effective abolition of child labour; and (6) the elimination of discrimination in respect of employment and occupation. (7) Businesses should support a precautionary approach to environmental challenges; (8) undertake initiatives to promote greater environmental responsibility; and (9) encourage the development and diffusion of environmentally friendly technologies.

and is therefore calling for the voluntary assistance of corporations in the implementation of the social, economic and environmental rights that appears to be recognized by the international community of states as a functional option.

The Global Compact is based on four instruments: learning fora, a multi-stakeholder dialogue, projects for developing the Global Compact principles and communication tools.<sup>10</sup> When a firm has endorsed the nine principles of the Global Compact, it must report every year on its action in these domains and post its result on the Global Compact website. The initiative, like several other UN tools promoting human rights, relies on image and fame (Ruggie 2000). NGOs and trade unions that have been invited into dialogue with corporations in this forum have already expressed doubts about the efficiency of the project. They are afraid of being used to legitimate global corporate policies. Others are using the Global Compact Principles as a legal reference to judge corporate actions. Corporate Watch, for example, has launched a campaign against the World Business Council for not respecting principles 8 and 9 of the Global Compact – namely ‘adopting a precautionary approach towards environmental challenges’ and ‘promoting a better social responsibility.’

The Global Compact initiative is certainly too recent to be assessed fairly. It is particularly difficult to forecast what it can achieve in the area of global corporate responsibility. Social learning and transparency have already proved to be more complicated than expected. But, at the same time, the Global Compact constitutes a forum of promotion of social and environmental values that are scarcely promoted in a world liberal economy (Utting 2003). Meanwhile, the more interesting, challenging attempts to organize interactions between corporations, NGOs, international organizations and states are much less institutionalized.

The hundreds of public-private partnerships (PPP) signed on the occasion of the Johannesburg Summit are testament to the openness of state actors to accept corporate contribution,<sup>11</sup> as well as to the pressure from transnational firms to enter the scene.<sup>12</sup> They are presented by the UN as a positive outcome of Johannesburg and a contribution to the implementation of Agenda 21 and the Johannesburg Plan of Implementation (UN General Assembly December 2003, Resolution 58/129). Among the many impressive examples that could be cited is the UNESCO–SUEZ Partnership on Water.<sup>13</sup> Signed for five years, bringing a \$12 billion-a-year budget to the less market-oriented UN agency, this contract shows more than words what is at stake: on the public actor’s side, the incentive comes from decreasing public financing and the need for new means of action. On the corporate side, it is fuelled by the need for recognition and increased legitimacy. But this trend did not start at the Johannesburg Summit. In the last decade, there have been several interesting partnerships for public common goods, particularly in the health

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<sup>10</sup> The main window to Global Compact is a website where tools, principles, references and some results reports are available. It can be found at <<http://www.unglobalcompact.org/>>.

<sup>11</sup> A list of major PPPs can be found at: <http://www.transnationale.org/transnationale/information/ppp.htm>>. More than 250 projects of partnership have been submitted to the World Summit on Sustainable Development. Their list can be found at: <[http://www.un.org/esa/sustdev/partnerships/list\\_partnerships.htm](http://www.un.org/esa/sustdev/partnerships/list_partnerships.htm)>.

<sup>12</sup> In advance of the Johannesburg Summit, the World Business Council and the International Chamber of Commerce joined to form the Business Action for Sustainable Development (BASD). The claim of this lobby has been clear: ‘business is part of the solution’ (BASD 2001)

<sup>13</sup> The terms of the contract can be found at <[http://www.unesco.org/water/news/agreement\\_141002.shtml](http://www.unesco.org/water/news/agreement_141002.shtml)>.

sector. Several immunization campaigns and AIDS prevention programmes could only have been initiated because of the constitution of funds supported by multinationals. Examples include the Global Alliance for TB Drug Development financing immunization against tuberculosis, or the International AIDS Vaccine Initiative and the Malaria Vaccine Initiative supporting research into new vaccines. These PPPs are clearly considered as a serious way of promoting the global public good constituted by health (Arhin-Tenkorang and Conceicao 2003).

Today's innovation is fuelled by the exponentially growing number of partnerships merging NGOs and corporations, sometimes with the participation of states, municipalities or universities. This trend divides the NGOs into two groups: those who accept and follow the corporate proposal as a realistic answer to the difficult problem of financing, and those who refuse it because of the risk of compromising. Both will have to adapt their strategies. The former will have to learn to work with corporations, to set limits to keep their autonomy, to lobby them (not exactly the same as denouncing them), to lean on their orientations. This is a lot of work, and difficulties can already be anticipated. The latter group will also have to learn to consider corporations as actors. Denunciation and opposition can only be their strategies if they have the materials to fuel them. Therefore, there is a lot of investigation work to do on strategies in progress – by nature difficult to assess.

#### **3.2.3.4 The privatisation of norms**

The proliferation of non-state actors was mentioned as leading to a shift in the norms process; that is to say, a movement towards privatisation and thus to proliferation of norms. The dearth of regulation in many domains, combined with a laissez-faire approach of governments (explained by the lack of legitimacy felt by governments to regulate transnational corporate actors), leads to problems of control within the norms' structure. Two kinds of problems may arise from the privatisation of norms: a problem of legitimacy of these norms created and implemented by private actors and a problem of articulation with the national and international norms created and implemented by public actors. However, these processes are often encouraged by governments because they "fill a gap" in environmental or social law.

An example is the forestry sector. The problem of massive depletion of forests has socio-economic and environmental impacts. Forest certification was developed as a market incentive mechanism to palliate inaction of governments and the issue of non compliance with global forest law. The Forest Stewardship Council (FSC) is a standard-setting body that provides a consistent framework to make global comparisons on forest management and certification. It operates under a number of principles and criteria, including community and workers rights, environmental impacts, monitoring and assessment, and participation. With members in 67 countries and 18 accredited regional/national standards, the accreditation system ensures that the certifiers are following the same minimum standards. Between the establishment of the FSC in 1993 and the first labelling in 1996, much progress has been made, including certification of over 40 million hectares of forests in 57 countries and certification of between 4% and 6% of commercially viable forests worldwide. Businesses take the process seriously, particularly as it allows certified companies to retain their market and their investors, while uncertified products entering the UK market face rigorous penalties. Civil society engaged in this process because it was concerned about conservation, sustainable use and the rights of the various communities living from the forest. The success of the FSC is

built on a number of factors, including support from civil society and business; a sense of ownership among participants; auditing of the system which builds trust; and the efficient use of market mechanisms. In conclusion, it is claimed that the FSC remains the only independent, international timber labelling system, which enjoys the support of a broad range of stakeholders concerned about the conservation and sustainable use of the world's forests. Partnerships between various interest groups, including those between industries and NGOs, and their concerted effort are the driving force behind the success of the FSC.

Another related issue deals with the control of imports of illegal timber and the drivers behind the EU's Forest Law Enforcement, Governance and Trade (FLEGT) process. Trade in timber and its derivatives are a US\$200 billion a year business; with Indonesia, Malaysia, Cameroon, Brazil and Gabon among the leading exporters. A substantial percentage of the trade is illegal. The main problems relate to: lack of enforcement capacity; corruption and problems of coordination; ease of mobility of timber across national frontiers; and lack of appropriate legal frameworks in importing countries. The EU FLEGT Action Plan would address some of these problems. The Action Plan aims to establish the legality of the licensing system in cooperation with partner countries and to have EU legislation in place to block unlicensed products from partner producing countries (draft legislation is expected was expected in 2004). Wider prohibition and domestic legislation (for example on money laundering), capacity building, greater transparency in government procurement policies and due diligence of financial institutions can all aid this process. There are a number of trade associations in the EU which are involved in voluntary initiatives, such as the UK Timber Trade Federation. NGOs have an activist role in the fight to stop the illegal trade in timber. Prominent among these groups have been Friends of the Earth and Greenpeace, whose campaign methods have yielded positive results. Within the EU, however, the response has been mixed among different DGs and Member States.

Thus, creation of partnerships, of funds and of environmental initiative has successfully raised the support of public authorities, particularly when they appear to fill a gap in environmental or social law. They are always tolerated. This clearly shows that public authorities consider voluntary regulation as the best instrument to induce the corporations to adopt cooperative behaviour. The question, therefore, is to understand under what conditions private norms may constitute the basis for the development of universal public norms and enter the international public law. Here again the question is less one of architectural choices than of actor strategies. It is unclear whether the corporate actors are really committed to the building of constraining universal norms. Their participation in the constitution of private norms seems on the contrary to indicate their preference to an *ad hoc* regulation of their activities. Bruno and Karliner (2002, p. 9) go as far as suggesting that the corporate stance for partnership 'revolves around avoiding new regulations and promoting voluntary measures and self-regulation'.

Another set of questions deals with the articulation between private and public norms. Partnership agreements are often activity-oriented, and more and more often limited territorially – a region, municipalities and so on. No one knows exactly which laws may apply on this kind of contract. Should they comply with national laws? Should they observe international norms – for example, the WTO rules? Which court or forum may be referred to when there is a conflict? Thus, the proliferation of norms blurs the authority of traditional powers and adds to the confusion of local actors – which is commonly held as contrary to 'good governance'.

In conclusion on the role of corporate actors: there is an underlying assumption under the *laissez-faire* attitude surrounding partnerships and private initiatives. It is as if states are assuming that, by working with other actors, corporations are going to adopt different behaviours. But what has been learnt at the global level about the process enabling social learning to occur is that a certain amount of constraint is necessary in order for all the actors to acquire a common language and common view of the objectives (Utting 2003). There is a strong need for long-term discussion and guidance forums, for places to share and learn from first initiatives taken, and it is not sure that the Global Compact will be able to assume this role.

### **3.2.3.5 The role of civil society in Sustainability Impact Assessments**

The objectives of impact assessments are to identify and forestall the potential negative effects, or alternatively, to set up adequate measures for mitigating such effects. However, using SIAs in order to integrate sustainability concerns into trade policy poses new challenges in terms of research, causal-chain analysis, timing and legitimacy. A subsequent issue of major concern is how to integrate civil society better into these processes and procedures.

#### **Costs and benefits of civil society participation**

Stakeholder participation entails significant costs and benefits. This is particularly true for trade agreements, given the complexity of impacts that trade measures could potentially have on a country's economy, environment and social development (Dalal-Clayton and Bass 2002, pp. 193–195), as areas affected by international trade nowadays range from water services, agriculture and food security and environmental standards to intellectual property rights. Costs and benefits of stakeholder participation raise the question of what levels of participation are appropriate at different stages of SIAs. In terms of benefits, the additional knowledge and expertise that can be obtained through greater involvement of stakeholders is most important.

However, stakeholder participation is not only fundamental to building a sufficiently broad knowledge base, but also to ensuring that SIAs are perceived as legitimate and independent. Transparent assessment processes and the involvement of interested parties contribute to building reciprocal trust between experts and stakeholders and improve the commitment to the process as well as the final strategy, thus facilitating its implementation. Again, this is especially important in the area of trade, where technical language and detailed knowledge tend to make involvement difficult for non-experts, and decision-making processes and negotiations are often accused of lacking transparency. In this respect, encouraging debate among experts and stakeholders is expected to lead to a better understanding of the different points of view. In addition, it is hoped that participation processes in SIAs will raise awareness among civil society groups, and contribute to their understanding of the nexus between trade and sustainable development.

Obviously, participation processes also impose costs on both those seeking input from participants, and participating stakeholders themselves. These costs include the effort of identifying and inviting stakeholders, time needed for consultations, and direct costs such as travelling to meetings, renting meeting facilities, printing and disseminating information. All these costs may limit participation or cause a bias in the range of stakeholders who are able to participate.

## **Decentralization of participation**

Currently, the implementation of SIAs is highly centralized. An alternative to the current practice of impact assessments would be to decentralize the assessment process and change the institutional structures. This, for example, was proposed as part of the Global Environmental Assessment Project at Harvard University, which developed the idea of "distributed assessment systems" (Cash 2000, p. 1). The underlying idea is that national and international institutions have the resources and the capacity to undertake modelling studies, while research on a regional or local scale might be more appropriate for collecting local-specific data. Consequently, complementary advantages at each level should be integrated through an institutionalized system of multiple linkages. Scientific efforts on different levels and with different specializations and capacities would be coordinated, and links to decision-makers institutionalized across levels. This approach mirrors the complex multilevel nature of trade impacts on sustainable development, and the need to assess both large-scale dynamics and their local implications. Moreover, a network of semi-autonomous research nodes would allow the integration of differing assessment abilities and activities (Cash and Clark 2001, pp. 11–12).

With respect to public participation, it seems that decentralization of the SIA process could contribute to improving public participation in general. The division of the research tasks between multiple research institutes or agencies on different levels would increase the number of possible entry points for civil society contributions. Participation by local groups could be significantly fostered if local institutes were carrying out research on problems directly affecting the region. Meetings or discussions held at the local level would be more easily accessible for the public, and dealing with region-specific problems would lead to a heightened awareness of those affected. However, the costs of participation and the scarcity of resources available in civil society should not be overlooked. Thus, it should be kept in mind that with regards to participation efforts, a balance has to be found between the amount of time and resources invested in participation in SIAs and the actual impact such assessment have on the trade negotiations.

## **To allow for reflexive learning**

Naturally, the principle of sustainable development, which serves as an optimization principle in these models, does not enable them to be stabilized unequivocally. In fact, the criterion of "sustainable development", used in impact assessment, allows for a great many interpretations. As shown in section 3.1, Godard (2003) identifies at least three interpretations of sustainability: (1) a biocentric interpretation that maintains that all living beings have an intrinsic value and must therefore be protected, whilst taking into consideration complex interdependences between all living beings in the biosphere; (2) an anthropocentric interpretation that emphasizes the importance of preserving the earth's ecosystems in order to maintain human development potential; and (3) an economic interpretation of sustainable development that balances the long-term costs of the destruction of ecosystems in relation to the short-term benefits. As a result, the social legitimacy of the models will depend on the practical acceptance of the principle of sustainable development from the viewpoint of these different interpretations. The legitimacy of the SIA models will therefore depend not only on scientific data, but also on the collective preferences of the populations affected by the impact assessments and on the discounting factor that they might want to apply to future costs and benefits.

The enrichment of SIA through enhanced stakeholder participation does not automatically imply a learning process which allows integrating the objectives of sustainable development in trade liberalisation. Indeed, both the amelioration of SIA through capacity building and the adjustment process between science and policy within a polycentric network are based on an error-correction mechanism which is oriented to maintaining the stability of the main operational programs (implementing trade liberalisation) and not towards the transformation of the basic (economic, social) beliefs of the actors and institutions.

The remaining issue is here one of the organisation of a *reflexive learning process*<sup>14</sup>: in which way the interpretation of SIA by different actors has an effect in turn on the definition of SIA by its main institutional promoters? How can this interpretation process lead to the emergence and transformation of core beliefs around the use of the assessment models?

First of all, reflexive learning should take place in the policy communities involved in SIA. One of the key expectations behind SIA is that SIA generates new possibilities for evolving to win-win situations in the negotiation. However new social possibilities in the negotiation can also arise by better revealing the collective preferences that guide the choices of the different social actors. Second, reflexive learning should also take place in the scientific communities themselves. For example, one issue of this learning process is the emergence of a consensus on negotiated standards, which measure the impacts ecological and social systems can endure. These standards should allow for example to measure the resilience of social and ecological systems, define thresholds of irreversible damage and / or produce ecological footprint data. Current research is already underway in this direction, but further construction of research networks sharing values and causal beliefs is necessary in order for such a common knowledge to emerge.

Such a reflexive model would reinforce the capacity of actors to construct and express preferences and perceptions. In doing so, it would institute both frame construction to overcome the limitations of intrinsic uncertainty discussed above, and capacity building to ensure that all affected parties can participate in the assessment process. Third, it would establish institutional arrangements which are capable of incorporating different frames.

### **3.2.4 Conclusion**

The last ten years has yielded greater insight into the limitations of the State in achieving sustainable development. By contrast, there has been a discernible increase in appreciation of the role of non-State actors, which was accorded particular affirmation at the WSSD. However, the role of these actors is multifaceted and complex: it ranges from relaying information and contributing to the inter-governmental discussions, to a more deliberative role through agenda setting, participation in SIA processes and even construction of international "private" norms.

Other questions need to be grappled with. One is to what extent does civil society influence the formal components of the system of global architecture relating to trade and

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<sup>14</sup> Based on the reflexive learning concept used as a core hypothesis of research at the Centre for Philosophy of Law (Louvain – la-Neuve) – see Sustra policy brief on SIA for more details and references

sustainable development. The second question is – once decisions have been taken – to what extent does civil society undermine or reinforce the outputs of the formal institutions.

### **3.3 Architecture of the Global System of Governance of Trade and Sustainable Development**

Trade-offs and complementarities between trade and sustainability also need to be analysed within the context of relationships and interactions between formal institutions. The central question is: what is the most appropriate role for global institutions -- individually and collectively -- to ensure the right balance between trade and sustainable development is achieved? An option increasingly discussed in recent years is to think global governance as a way to preserve global public goods. Other more immediate and more practical debates concern the relative power of trade institutions versus sustainable development institutions: ie should we establish a World Environment Organization (WEO) to act as a counterweight to the WTO? should the WTO be reformed to ensure that it becomes an appropriate/efficient/effective actor within the overall architecture of trade and sustainable development? At last, an increasing number of social science scholars are arguing in favour of a improved dialogue fostering mutual learning and the development of common objectives.

#### **3.3.1 Global public goods: a useful notion to guide governance?**

The concept of Global Public Good (GPGs) is increasingly mobilized by actors of the international scene when discussing global governance issues. A growing number of international organizations, policy-makers, politicians, NGOs as well as researchers in economics and social sciences use this notion to call for institutional and policy reforms at the international level. But what is the exact definition of a GPG? Can a GPG taxonomy be designed? And to what extent can it bring new light to the governance debate?

The formulation of the public good theory was initially developed by Paul Samuelson in 1954 and provided a theoretical justification for state intervention within the framework of neo-classical economics. Public goods are goods or services which are acknowledged as necessary for the society but are not produced or sold by the private sector because of their characteristics: the consumption by one user does not impede the consumption by others (no competition in use) and it is extremely costly or technically impossible to exclude consumers, even if there are rival demands.

The globalisation process has highlighted the existence of “global public goods”, that is goods which benefit several countries without exclusion and which a country cannot produce or preserve without the co-operation of others. However, the GPG notion is not a simple enlargement of the public good definition to include trans-border spill-overs and to provide a theoretical basis for international co-operation. Existing lists of GPGs are extremely heterogeneous and range from climate change mitigation to peace or food security. As from the early 70’s, the concept of “global public good” was increasingly mobilised in the social science domain to analyse economic crisis. Kindleberger in 1986 argues that the crisis of the 1930’s is rooted in the under-supply of crucial global public goods such as free trade and reliable banking systems. This analysis has regained attention in the past few years when the increasingly critical issues of poverty, financial instability,

environmental degradation have been progressively acknowledged as global issues and have been included in the agenda of international negotiations.

The recent literature on global public goods is clearly multidisciplinary in scope and seeks to develop an integrated framework of debate. The UNDP book published in 1999 and entitled “ Global public goods: international co-operation in the 21<sup>st</sup> century” focuses on the strategies needed to ensure a better and more efficient co-operation for a greater and more reliable supply of global public goods. In the introductory chapter of this book, three gaps are identified: the “jurisdictional gap” due to the discrepancy between a decision-making system which relies on national jurisdiction and the globalisation of issues which must be tackled by international co-ordination; the incentive gap highlights the need for new co-operation strategies between countries in order to reach more stable coalitions and to improve the implementation of collective decisions; and the participation gap which emphasises that international negotiations remain fundamentally an intergovernmental process although there is a growing demand from merging global actors and from the civil society to be associated to the policy-making process in order to improve the legitimacy and the acceptability of the decisions. It is this last issue which is the most interesting from the point of view of global governance

It is often argued, on the basis of ethical considerations, that everyone's basic needs should be satisfied and should therefore be considered and treated as GPGs. The theoretical debate on GPGs has therefore evolved towards (i) the notions of exclusion and inclusion and (ii) the links between private and public goods. The notion of exclusion is primordial to the definition of public goods. Non-excludability describes the technical impossibility of preventing individuals from consuming. However, there are various types of exclusion, which may occur by nature, via the market (lack of purchasing power), or via regulation (authoritative enforcement of user rights). Therefore, exclusion - or its opposite, inclusion - can be organised *politically*. For example, the national state may choose to make freely available to all a number of essential services (health, education, etc.). However, there is no legitimate institutional procedure for making such choices at the international level: how could national preferences be aggregated into a single international preference function that would identify priorities in terms of inclusive GPGs which should be supplied by the international community? How could they be financed?

Moreover, although the notion of GPGs has emerged in social sciences, it has not been integrated into international law. It is not a legal concept, although one can identify several categories of international law which could govern GPGs: the notion of common heritage of mankind (the moon treaty, the deep sea-bed convention), norms of *jus cogens* and obligations *erga omnes* (norms which are designed to safeguard community values, e.g. prohibition of slavery or genocide, right of self-determination), and integral obligations (nuclear disarmament treaties). However, none of these categories covers exactly what seems to be meant by a GPG. GPGs fit quite well in the UN system of "cooperation" rather than "coexistence". It was suggested that a concept of *common concern for humankind* might play a role in the legal definition of global public goods.

It is also interesting to put the emergence of the notion of GPGs into a political economic perspective. Coussy (2002) emphasises that the GPG concept is also an "ideology" produced by some international institutions with the support of groups of intellectuals to re-legitimate their action. The notion was then taken up by NGOs for similar purposes. Although the notion of GPGs does not seem to be clear enough a concept in academic terms to serve as a useful analytical instrument, it is a useful concept

to highlight important issues which still have to be addressed on the international agenda. It serves to pinpoint the items which need to be put on the negotiating table.

**In conclusion**, the debate on the identification of global public goods and their production mode has renewed questions concerning:

(1) the links between collective preferences, international equity and international democracy. It highlights again the need for a better analysis of forms of subsidiarity that can be built into the architecture of global governance.

(2) the role of non-state actors in negotiation and international co-operation;

(3) the increasing significance of public/private partnership solutions which require that trade regime rules be adapted.

These three themes are at the heart of the debate on trade and sustainable development, since they concern the way in which governance regimes are constructed, legitimised and linked. If it succeeds in becoming a common value, the notion of global public good should contribute to rethinking global governance, no longer conceived of as the management of the balance of power between potentially competing regimes, but as the definition of an integrated, complementary system of decision at the supranational level.

### **3.3.2 Can regulation policies and global norms for sustainability be articulated with the trade regime?**

One way to preserve global public goods, and more specifically sustainable development, is to implement coordinated control and regulation systems. A number of them incorporate trade measures (such as trade restrictions or/and trade sanctions) or require the setting-up of global norms. There is therefore scope for conflict between the trade regime and GPG governance systems.

Strengthening sustainable development involves a change in the existing trade regime as well as the MEA system. There is a strong perception of unfair imbalance, founded on several aspects. For example, in relation to the trade regime, the cost of opting-out is relatively low (mainly due to the characteristics of non excludability and non rivalry of MEAs' benefits, encouraging free-riding), and a cost-benefit analysis is therefore more likely to lead to an opting-out of a MEA in favour of trade policy activities. The benefit of opting-in a MEA produces no direct revenue and is uncertain in the short term, taking into account a considerable financial burden originating from an increasing number of obligations. This must also be considered in the context of short term business gains and political constraints against long-term environmental and social gains for generations which do not vote yet.

An effective regime will result from a good fit; that is, the compatibility of the institution to the problem structure. The WTO, which governs by the principle of comparative advantage (i.e. "any deal is better than no deal") is effective for two reasons: (i) its strategy of avoiding distributional issues (ii) its ability to solve conflicts, leading to the common belief that it is able to deal with any conflicting issue at the international level.

However, the abilities of the WTO are immediately called into question whenever it delves into issue areas that are not ruled by comparative advantage, e.g. property rights and investment. Just as the WTO is institutionally sparse, MEA regimes are institutionally rich. There is significant diversity among environmental regimes and their procedures, but the common denominators are precaution, transparency and participation. An important factor affecting interactions between MEAs and the WTO is the plethora of challenges that arise from the implementation of unilateral measures.

### **3.3.2.1 Conflicts between the trade regime and other international agreements relating to sustainable development**

Two sorts of conflicts can arise: (i) conflicts of impacts and (ii) conflicts of rules.

About the first type of conflict (to what extent the trade regime can have negative impacts on the objectives pursued by other regimes), it is usually emphasised that the UNEP and the OECD joint working party on trade and the environment has conducted extensive research and expertise work to evaluate how trade and environment could be mutually supportive, in particular to assess the implications of decisions in one policy area for other policy areas and to identify alternative policy options for addressing concerns. Both the UNEP and the OECD have developed methodologies to help countries carry out sustainability impact assessments of trade policies. The OECD has also drawn up "procedural guidelines" highlighting the need for more transparency in government policy making (involving a broader range of stakeholders concerned by trade and environment issues) and better intra-governmental coordination (between trade and environment ministries at least).

As for the conflict on rules, the issue of compatibility between WTO and MEAs (multilateral environmental agreements) is more a myth than a reality. There is virtually no existing case of official conflict involving MEAs at the WTO dispute settlement unit.

Two major factors decrease the risk for inconsistency and rule conflicts between trade and MEAs: (i) when the MEA contains trade related measures that are targeted to specific environmental objectives (CITES, Basel Convention, Montreal protocol); (ii) when there is a clear international scientific consensus about environmental risk, as with the Montreal Protocol on the ozone layer. To sum up, it is argued that MEAs built in accordance with economic rationality and which can be justified on such grounds are more efficiently enforced than MEAs that try to bypass WTO rules.

However, for other governance regimes, the conflict is of a different nature and is not based solely on suspicion of hidden protectionism - as is frequently the case for food standards which are often used as protectionism devices. For these reasons, major conflicts between trade and sanitary norms do occur.

Efforts by the Universal Declaration of Human Rights (UDHR) to create an international regime of cooperation for human rights are an interesting case in terms of compatibility or conflict with the trade regime. Since the UDHR aims at improving global human well-being, it can be said that it shares the same objectives as the WTO. However, human rights have been declared inalienable, legally binding, and independent of economic or political systems. They have a very elaborate content (in practical terms), complex implementation mechanisms, and they put the emphasis on the poorest and the most vulnerable. They require that states apply 3 principles: that they respect, protect,

fulfil; and they also impose direct obligation for states, such as non-discrimination. Potential conflicts between human rights and trade are linked to the risks that private interest prevail over public interest, and that border measures (like NTBT, TRIPS, etc.) go too far into national regulation. The issue here is clearly the right level of subsidiary and the right level of "justifiable" interference into national affairs by the international community.

CITES on the other hand is a good example of a successful MEA which does not experience formal conflicts with the WTO even though its enforcement mechanism is almost entirely trade-based. CITES is the first international convention to focus on an enforcement process (i.e. trade regulation) to achieve a specific environmental goal (i.e. the protection of endangered species), rather than on a result. In particular, the treaty enables a country to unilaterally decide to control exports (for instance by requiring permits to trade), and allows a country to enforce higher trade restrictions than the treaty requires, if justified. This could theoretically entail specific conflicts with trade interests, but this actually does not occur. There are many reasons for the treaty's success. It is backed by a very powerful body capable of implementing trade sanctions, and its adoption is virtually universal. More importantly, it has moved from being a conservationist/protectionist treaty to becoming a "treaty for sustainable development". It is flexible (possibility to add or remove species and modify the quotas), accurate (rules can be renegotiated in a way to find new balances between environmental goals and trade goals) and targeted (trade controls only concern a restricted lists of species). The lists do not contain species with high economic value, which in a way is a treaty limitation, although some institutional steps have been taken to build bridges with the Convention on Biological Diversity and to extend the lists to more economically interesting species. In addition, theoretical conflicts with the WTO are probably avoided due to article XX of the GATT on the general exceptions to the GATT. The success of CITES lies in its governance aspects, which can correct its own excess in one way or another.

As a conclusion, it is repeatedly said that WTO rules are not to be interpreted in "clinical isolation", and that difficulties often arise due to the fact that the international structure is made up of diverse environmental treaties— which have an equally diverse number of issues and interests involved—creates a complex and disorganised body of law. From this perspective the proliferation of courts is primarily seen as "system building" rather than fragmenting in its effect on international law. Proliferation is not entirely without risks, however, and therefore the process must be monitored in order to ensure consistency.

### **3.3.2.2 Economic instruments for sustainability**

When analysing the tools available to ensure the production and preservation of global public goods relating to sustainability, we classically distinguish between regulatory 'command and control' measures on the one hand and economic instruments on the other hand. Although it is often difficult to draw a strict line between these two types of public interventions, economic instruments are usually defined as devices which reintroduce market-based mechanisms: either by setting up the conditions for a market (attribution of tradable quotas or user rights) or by correcting existing market failures (taxes, information on the quality of goods). Economic instruments are likely to interfere with the WTO regulatory framework by introducing new sources of competition distortion. The questions addressed are therefore: (1) Which of these instruments is best adapted to which situation at the international level? (2) How should countries harmonize the economic

instruments which they are implementing for supplying global public goods in order to avoid competition distortions?

The two main categories of market-based mechanisms for environmental protection are taxes (to bring into line marginal private costs and marginal social costs) and transferable quotas. Taxes (price-based instruments) and quotas (quantity-based instruments) have the same efficiency except in certain conditions: taxes are more efficient when uncertainty about damages is high, when damages grow slowly with emissions, or when the abatement cost curve is steep. The reverse is true for quotas.

In fact, market incentives are useful when the global public good is produced by decentralised agents as a joint product of private activities. It is the case of climate change which is the side effect of economic activities, most of them embedded in market regulation.

Eco-labelling is an example of a voluntary mechanism which can contribute to the provision of global public goods such as the reduction of pollution emission, the preservation of natural resources or the reduction of health risks. It has emerged from the idea that information can play an important role in determining consumer behaviour. But eco-labelling is more than just an information vector: it is also an economic instrument, which implies administrative costs and governing institutions. As such, it seems to be less flexible than other instruments, such as taxes and tradable permits. However, is eco-labelling a genuine tool for sustainable development or is it just 'picking winners'? Eco-labelling gives 'sustainable producers' the possibility to be paid for the additional service they provide. As such eco-labelling is a sustainable development tool. But the risk it carries of 'picking winners' manifests itself in several ways: labelling only with respect to certain criteria even though other criteria could also be valuable; making access to the label difficult for some (e.g. poorer producers); using standards which are not 'up-to-date' with new technologies and which therefore exclude innovative producers, in turn delaying the development and adoption of greener modern technologies. Another question is whether eco-labelling can be considered to be a barrier to international trade. Eco-labels channel trade flows. It was noted that some labelling rules are non-conform with existing WTO rules, e.g. labels for PPMs (production and process methods). A new fragmentation of international law will be necessary to make labels work in an efficient way. This includes more transparency in the labelling bodies as well as in the labelling procedures; as well as between private and public labeling organisms. Another interesting issue concerns consumer behaviour: could labeling suffice to bring about changes in producer behaviour. Indeed, price elasticity of demand for a number of products is high. This means that more expensive products might not be bought even though they have an eco-label (and especially not if only MEAS or PPMs are labeled). This issue highlights the clout of the consumers' willingness to pay.

Instruments should not only be judged with regards to their expected theoretical efficiency, but also with regard to their "implementability". International negotiations, are not driven by efficiency but by politics. But there is no agreement on the criteria for measuring "implementability": they depend of course on the political market of each participating country (what can be negotiated with interest groups at the national level), on the consequences in terms of costs and benefits between countries, and on the size of the coalition (the demobilization effect of defecting countries can be very strong).

A second important point deals with the policies and measures adopted by each country to meet its international commitments: what level of international harmonization is required? And what are the costs (in terms of international competition distortion) associated with unharmonized regimes? A simple calculation of cost distortions introduced by different options was presented by Godard (2002) in the case of the climate change convention: he shows that (i) the rules for the initial allocation of emission permits to industrial firms (free allocation on the basis of grandfathering versus auctioning) are critical variables for the industrial competitiveness of energy-intensive businesses; (ii) major distortions in international competition can be generated by the implementation of unharmonized domestic regimes, especially when they are based on heterogeneous subsidies, regulations or conditional allocation of permits (i.e. permits which are not the full property of firms); (iii) a harmonized system of tradable permits, with no restriction on use, generates less economic distortions regarding allocative efficiency than other systems.

However, since subsidiarity prevails in the choice of policy and measures implemented at home, distortions are bound to happen. One way to balance out trade distortions induced by unharmonized regimes is to introduce trade barriers but this solution is not acceptable under WTO rules.

As a conclusion, economic instruments can be developed to promote sustainability: although research has already investigated this area, more work is needed, especially to look at the harmonization of domestic regimes with international regimes.

### **3.3.3 Mutual learning**

As shown by Godard's analysis in section 3.1, the sustainable development criterion is open to a great many interpretations and its stabilization is, in turn, dependent on a series of legitimacy "tests" that take a variety of forms according to the different orders of legitimization. Stabilization will therefore depend on a learning process enabling the different actors that make up this context to modify their beliefs so as to take into account the viewpoints of the largest possible community.

This is why a strategy for improving global governance is to enable learning processes in the institutional environment. We can analyse this proposal in the light of the work by Ernst and Peter Haas on the conditions for organizational learning in international organizations. In their work, they reveal the important role that can be played by communities with a specific knowledge, known as epistemic communities, which are geared towards the development of organizational concepts and common inter-subjective meanings with respect to a certain problem (Haas and Haas, 2002). In historical terms, these communities fulfilled an important role in the field of environmental governance. Well studied examples are, for example, the role of the scientists involved in the Villach Group in the field of climate change (Haas and McCabe, 2001) and the ecological community monitoring pollution in the Mediterranean (Haas P.M., 1990). However, as their research clearly shows, the role of these communities with regard to the development of common intersubjective meanings can also be observed in other fields. One can think for example of the United Nations' *Global Compact* initiative, "which is also an effort to develop and apply within an institutional setting consensual knowledge about best corporate practices by trying to encourage participation from corporate actors, civil society and experts" (Haas and Haas, 2002, p. 597).

With a view to clarifying the contribution of epistemic communities to international governance, Ernst Haas stresses the importance of two distinct learning processes. The first of these identifies learning as a form of “error correction”, whether through a process of “trial and error”, similar to natural selection, or a “feedback” process from the environment. The central idea is to enable an organization to maintain its principal functions within established limits, in order to guarantee survival under variable environmental conditions. In the context of learning theories, this first form comes up against the need to bring about a transformation process that makes it possible for an organization to meet the challenges posed by new demands without having to reassess the organizations’ program in its entirety and the justification that underlies its own legitimacy (Haas E., 1990, p. 34). However, organizations do not merely have a capacity for biological adaptation, but are also capable of reassessing their own fundamental principles.

These self-programming abilities are the bases of a second learning process allowing an organization to redefine its own organizational mission when confronted again and again with the unexpected or ineffective results of its own actions (Haas E., pp. 35-37). The important point about this second process is that it incorporates evaluation and monitoring processes that are not geared towards maintaining the stability of the organization, but rather towards changing the basic beliefs of institutions and encouraging the emergence of new forms of life that are necessary to promote an ethics of sustainable development.

According to Ernst and Peter Haas (2002), unlike the incremental adjustment process that is typical of the interactionist visions of organizational learning, the learning process that is possible thanks to epistemic communities leads to changes in the work program of organizations by confronting them with a shared vision of cause and effect relationships between complex phenomena. Indeed, as they state in their research on organizational learning, “it is only a structured interpretation process, leading to the emergence of core beliefs around some operational models, that allows for the knowledge production to be related to new policy program proposals and to be integrated in the organizations mission statement and activities” (Haas and Haas, p. 266). It is the change in the work program of organizations as a result of a learning process that they designate by the term “organizational learning”.

In a recent article, Peter Haas develops the different aspects of this concept of organizational learning in more detail. Indeed, as such, organizational learning includes both a substantial aspect – on the level of the learning of common knowledge and common norms – and a procedural aspect – on the level of the process of transmission of the results of the learning process to the relevant organizations (Haas, 2004, 573). Current research on social learning in epistemic communities shows that one of the most important dimensions, on the procedural level, is the insulation of the learning process from the political process. Indeed, as has been shown through several empirical studies, the independent character of the epistemic community enhances the influence of the ideas and so their transmission to the policy process. On the substantial level, the research shows the importance of a mechanism to include the widest possible community of interests in the production of the new ideas and to mobilize the widest possible knowledge base. Indeed, according to the concept developed by P. Haas, the aim of the social learning is to produce “usable” knowledge”, which can be integrated in the working program of the political institutions in the end. Such knowledge should be accurate and of use to politicians and policy-makers (*Ibid*, p. 574) and can be characterized through the

criteria of credibility, legitimacy and saliency (Siebenhüner, 2003, 2002). In this light, organizational learning depends on precise, accessible knowledge that contributes to the achievement of collective aims.

The learning process in the climate change community has served as a model for the organization of similar assessment processes in other fields. For example, in the field of biodiversity governance, UNEP organized in 1994 the Global Biodiversity Assessment, which aimed to gather the relevant knowledge on biodiversity and to structure this information for the policy makers. However, this assessment was not as successful as the climate change assessment and the outcome was far less influential. In 2000, a second round of assessments in the biodiversity field has been launched, through the Millennium Ecosystem Assessment. This second round presents major innovations, in that it aims at including contextual knowledge through local assessments and starts from a broader conception of knowledge, allowing to include traditional communities' perspective on biodiversity.

### **3.3.4 Conclusion**

The global governance of sustainable development needs strengthening to ensure sustainable outcomes on the ground, particularly those outcomes that are trade-related. Although there are some well known successes, the perception is that the status quo is insufficient. At the root is the debate over what is necessary - more centralisation of the sustainable development regime or a better organisation based on the existing structure. As it does not appear likely that governments will establish something dramatically new, it seems sensible that any new arrangement should be the result of an evolutionary process and should seek in the first instance to making better use of existing institutions. Still, it is fundamental to identify a desirable long-term structure and the accompanying procedure for an evolutionary reorganisation. The specific advantages of the existing global sustainable development regimes, such as flexibility and innovation, should not be overlooked and deserve further study so as to maximise their relevance to international trade. Within this perspective, it is fundamental to look at the role that the European Union could play to promote its own vision of global sustainable development.

## **3.4 How to promote sustainability in trade: what role for Europe?**

If the European union wants to take the leadership in the gradual building-up of a sustainable trade project, it will have to consider the following crucial issues:

(i) What are the trade-off that the EU is prepared to accept in the future trade negotiations between economic objectives and non economic objectives (social and environmental norms) ?

(ii) The subsidiary question is what are the procedures for good governance at the European level which would help improve the legitimacy of a European project for trade and sustainable development in face of the European public opinions and which would contribute to reinforce the European social and political cohesion?

### 3.4.1 European opinions on trade and sustainability

The European Union is a unique experience of international governance: its *sui generis* institutional model combines inter-governmental and supra-national rule making. However, the mere existence of an integrated European opinion, transcending member-states' national opinion and expressing itself through an emerging European Political Space is far from being established. European public opinion remain deeply rooted within national frameworks. Nevertheless, converging trends can be identified in the attitudes of European public opinion towards trade policy and globalisation.

First, European opinion polls reveal common features across national opinion's attitudes towards the stakes of globalisation - taken as a proxy for trade policy objectives-. These include: (1) a wide acceptance of the principle of openness and globalisation; (2) a demand for political control over globalisation trends; (3) the expectation that the EU plays a leading role in shaping globalisation; (4) a call for more democratic control over European policies.

Second, within the framework of the 133 Committee<sup>15</sup>, an increasing convergence may be detected in member-states' positions on EU trade policy. While the scope of trade issues legally eligible to qualified majority voting has steadily widened (with the Amsterdam and Nice Treaties), unanimity remains the main decision-making practice of the EU Council on trade.

Third, in spite of their diverse attitudes toward trade and globalisation, a significant degree of convergence can be found in the political demands conveyed by European NGOs promoting regulatory and sustainable development objectives through trade policy (as, for instance: access to medicine, environment, poverty reduction).

Yet converging trends in European public opinion must primarily be interpreted in the light of national political contexts. Public opinion perceive the European and global institutions as a continuation of national Governments. The national level thus acts as a screen, filtering the relations between European institutions and public opinion. Important variations to the average European consensus acknowledging the opportunities of trade and globalisation can therefore be found in national public opinion. For instance, Belgium, Greece and France opinion reveal important reservations towards the benefits of economic openness. Split opinion toward globalisation are also found in Sweden, Austria and Spain.

Within the "new member-states", public opinion attitudes toward globalisation are not clearly defined. The experience inherited from their EU accession process may significantly shape their future attitude toward European trade policy. Against this backdrop, the general perception of free-trade is expected to be positive in Central and Eastern European countries: the rise in their trade with the EU came with very little social protest, in spite of painful adjustment costs resulting from trade liberalization. The transition process remains unfinished and leaves room for further trade creation and

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<sup>15</sup>The 133 Committee is the real power behind and decision-making center for the European Union's commercial policy. It takes its name from Article 133 of the Treaty of Amsterdam. That article provides for the establishment of a special committee appointed by the Council to assist the European Commission. The 133 Committee constitutes the link between the European Commission and the Council.

investment. Nevertheless, difficulties could develop in some sectors of the new-members' opinion. The heavy structural adjustment anticipated in the Polish agriculture will grant a determinant role to the reforms of the Common Agricultural Policy (CAP). In some countries, a deep-rooted nationalism may also turn to social protest against foreign capital and investors, considered as a new form of foreign domination on their economy.

### **3.4.2 Democratic gaps in the European trade policy decision-making**

Under the current framework, the EU governance architecture may not fully meet opinion's demands for democratic control over trade policy. Several distortions affect the transmission channels linking EU public opinion with EU institutions.

First, the democratic control over trade policy relies mainly on national governments. However, the political debate on trade policy usually remains weak in many European countries. The intervention of the national level may sometimes blur the public opinion's perceptions of the decision-making: national governments may be tempted to use the EU level as a "scapegoat" to their own domestic political responsibilities; the compartmentalization of national government responsibilities may impact some trade policy decisions, since discrepancies are sometimes reported between different formations of the EU Council of Ministers.

Second, at the European level, parts of the public opinion may confusingly perceive the location of competences and respective institutional responsibilities in the trade decision-making. A progressive transfer of power from the member states to the Commission has substantially improved the efficiency of the EU decision-making on trade policy. The Commission (DG trade) has developed an autonomous capacity for assessing economic interests of the EU and of its member-states. Successive EU enlargements and the extension of majority voting provide more leeway to the Commission against member-states' individual positions. A WWF report (Drury, 2003) criticizes the secrecy surrounding the shaping of the European Union's trade policy and raises concerns about the dangers in allowing a 'small group of influential trade specialists to dominate policy making' within Committee 133. The 133 Committee is in fact identified as the main decision making forum, because the recommendations of this committee, which are designed to 'assist' the Commission, are automatically agreed by the Council. Theoretically, all Directorate Generals (DGs) must be involved and participate in the decision making process. However, it is DG Trade and DG Agriculture who are responsible for trade negotiations; other DGs cannot fully participate, having insufficient time and resources. It is felt that the committee is dominated by the Commission, and there is no institutional consultation with other DGs. The WWF, together with other civil society groups, points out that key decisions on EU negotiating priorities are often taken by trade officials behind closed doors, without parliamentary or ministerial input. This has the potential to leave the decision making process vulnerable to manipulation.

The increased decision-making efficiency was gained at the expense of a more fragile democratic legitimacy of the EU trade governance. Due to the member-states' opposition to increasing the EU parliament's powers on trade, the strengthening of the Commission has come without counterbalances. Although the Commission has developed a practice of consulting the EU parliament on trade -both to improve its internal political legitimacy and to strengthen its negotiating efficiency- its lack of legal accountability to the European elected body deepened a democratic deficit. The Constitutional Treaty for

Europe, if ratified, will entail a radical change by granting important new powers to the European Parliament. These include: (1) a full co-decision competence on autonomous trade policy legislations (such as the Generalized System of Preferences –GSP- or antidumping); (2) equivalent rights to the Council for information on the negotiations; (3) a legislative approval of international trade agreements. However, the approval of the Commission’s negotiating directives (*i.e.* “the mandate”) will remain with the Council.

Third, the influence of NGOs on the EU trade policy is acknowledged but remains hard to evaluate. The Commission practice recognizes them “a voice but not a vote”, *i.e.* not a substitute to any democratically designated bodies. According to some Commission’s officials, the panel of NGOs represented in the dialogue with the Commission may otherwise acknowledge some built-in biases: (i) the more resourced NGOs may be more influential since they can carry stronger technical expertise on trade and sustainable development; (ii) NGOs promoting a reformist vision of trade policy are naturally more involved in consultations than radical opponents to trade liberalization; (iii) Brussels based NGOs may be more frequently consulted, for practical reasons.

### **3.4.3 The challenge of sustainable development for EU trade policy**

The EU trade policy explicitly tries to meet perceived political demands of the public opinion on sustainable development. The EU Council’s negotiating directives for Seattle and Doha WTO conferences underlined the need to “ensure that an appropriate balance between the further liberalization of trade and the strengthening of multilateral rules contributes toward sustainable development environmental protection, social progress, the reduction in poverty and consumer health.” The Council also asked to “ensure that trade liberalization promotes sustainable development and addresses the concerns of civil society”. The twin objectives of promoting liberalization and strengthening regulation became the backbone of the European approach to “harnessing globalisation”. However, these stated objectives suffer some built-in ambiguities and shortcomings that may negatively affect their legitimacy in the eye of public opinion.

A first legitimacy challenge relates to the implementation objectives of “strengthening multilateral rules” for sustainable development. The European priority to negotiating the “Singapore issues” (aiming at new WTO rules for investment, competition, trade facilitation and transparency in government procurement) was for instance rejected by many NGOs, who viewed it as a liberalizing rather than a regulating objective<sup>4</sup>. Some critics argued that regulatory objectives should aim at subordinating the WTO trade rules to the UN rules, especially in the field of human economic and social rights. At any rate, the European agenda for strengthening WTO rules has suffered major setbacks since Doha. Most WTO members opposed the EU proposals to link trade and labor standards (Doha 2001), grant observer status to the Multilateral Environment Agreements (Cancun 2003), or negotiate the Singapore issues (Geneva 2004).

A second legitimacy challenge stems from the social impact of the European trade policy. The EU council asked the Commission to better articulate the ILO core labor standards and the WTO rules, but the issue was essentially dropped from the WTO agenda in Doha, due to the developing countries’ opposition. Moreover the economic rationale for linking trade liberalization and social standards remains debated. On the other hand, the EU level is not empowered to cope with the social consequences of its trade policy. The European governance thus faces a politically damaging asymmetry between its trade

and social competences: while Europe has the power to liberalize, it cannot handle the challenges to the European social model stemming from its trade policy. A first example applies to jobs displaced by trade liberalization. The EU level of governance has no specific and subsidiary social instrument, comparable to the US “Trade Adjustment Act” to compensate the social costs of trade liberalization and production restructuring. These costs are now exclusively borne by the generic social regimes of the member-states. A second example involves the status of Services of General Interest in the General Agreement on Trade of Services (GATS) negotiations. While the EU constitutional Treaty acknowledges the importance of these services for social and territorial cohesion, the EU has no full-scale legislative framework regulating essential services.

A third legitimacy challenge relates to the impact of the EU trade policy on developing countries. Inconsistencies are detected between trade and other European policies. It is argued that the historical aid and trade preferences under the Lomé conventions may have had negative effects for the development of beneficiaries, since they were decoupled from the implementation of viable domestic reform agendas. The adverse impact of some aspects of the EU trade and agricultural policies on developing countries is commonly denounced. Therefore, the EU trade policy should avoid overselling the benefits of trade liberalization for developing countries since these benefits can only be reaped under specific economic conditions and a consistent policy mix.

All these challenges require trade reform. However trade is a sector where rents arising from regulation can be potentially high. Trade reform is a battle field between various pressure groups.

### **3.4.4 Vested interest and political economy of trade reforms**

#### **3.4.4.1 Corporate lobby groups in Brussels**

The Single European Act (SEA), signed by the twelve member states in February 1986, marked a turning point in the political preferences of European firms. Two hundred firms opened offices in Brussels, representing around 1,000 lobbyists. Between 1984 and 1994, the allocation of company resources to promoting their political preferences increased, both at the technocratic level in the direction of the European Commission, and at the political level in the direction of the European Parliament. Since 1990, business lobbyists have become more proactive and professional as they are increasingly influenced by the efficiency demonstrated by US firms. Business lobbying is more effective now as they are directed and focused on decision makers at the Commission and Parliament level. Business offices in Brussels have become credible interlocutors, as they are seen more as sources of valuable information and as implementers of EU directives (Coen, 2004). Not all companies have equal access to the Commission and, in those circumstances, marginalized companies might need to seek new alliances with the Parliament. Various European Federations, like the European Round Table, emerged in the mid 90's and are leading on a process of restructuring to incorporate either direct or collective action. Companies may either work alone or in a group depending on the issue at stake. In conclusion, the speaker asserted that though national differences will continue, some issues will remain European or globalised in character. For business lobbyists, strategic alliances and new institutional allegiances would remain a primary focus.

### 3.4.4.2 Strategies of interest groups

Vested interest groups, such as industry lobby groups, deploy various strategies in policy making processes. An example is the biotechnology sector where industry groups influence the regulatory process by relying on diverse strategies. Sector-specific groups tend to gain wide access because they offer specific information. Within the EU biotechnology sector, the combined political influence of biotech firms is channelled through federations, associations and confederations with interests in agriculture, trade and consumer issues. Umbrella organisations, such as EuropaBio, Eurocommerce, European Federation of Biotechnology and COPA-COGECA, participate in the EU policy-making process in accordance with their own mandates and strategies. Another example is agricultural trade liberalisation, for which the wide array of issues which were included in the Uruguay agreement (in particular, sanitary and phytosanitary measures, food international standards, geographical indications etc) have complicated the initial bargaining game. Farmers groups had to compete with newcomers in an 'overcrowded' political arena which embraces food companies, environmental NGOs and consumer groups. The institutionalised entry points for farm trade unions are numerous and they do participate on consultative committees. They are given a major advisory role, both at European and national levels, and are sometimes directly invited to be part of official delegations at the WTO. Under the WTO's pressure to reduce domestic support, European farm groups have formed new alliances with environmental groups to defend the multifunctional role of agriculture and therefore justify the continuation of subsidies and protection in the name of local public goods. However, the diversity of interests within the European farming community has weakened their capacity to defend a coherent programme at the WTO.

Thus, corporate lobby groups are not only large in membership, but they also collaborate with each other to strengthen their collective efforts. These umbrella groups are active in agenda setting and regulatory development. They operate at multiple levels to influence the policy-making processes: through inter-governmental organisations and through national associations, presenting their views to the respective EU Member State governments. The involvement of corporate lobby groups can be either formal or informal. Formal involvement includes submission of regular position papers, contributions at public hearings as experts, and participation in consultation meetings that open communication channels between decision-makers and industry. Major corporate groups are often informally involved in the work of the decision-making body, for example, through participation in advisory groups, regular contact with high-level bureaucrats and politicians, drafting proposals and assisting in setting agendas for policy making.

Corporate lobby groups can, therefore, implement various strategies to influence the decision-making process, such as: (i) *re-emphasizing the importance of free trade*: condemning any measure which does not conform to industry's preferred standards as 'illegitimate' barriers to free trade. For example, US industry has attacked EU's *de facto* moratorium on GM crops as an illegal restriction on trade. (ii) *voluntary guidelines*: appealing for a harmonised effort to synchronize risk assessment procedures internationally, the biotech industry has supported initiatives such as the 1992 OECD's guidelines on Safety Considerations for Biotechnology which are aimed at reducing barriers to trade by making regulatory requirements more transparent, predictable and universal, thus helping to reduce transaction costs for business. (iii) *technicality*: ensuring that regulations are as technical as possible in order to exclude from the decision those

who are not able to reach the same technical level. (iv) *sound science*: promoting scientific principles that compare the novel aspects of technologies with what is already assumed to be safe. (v) *develop related regulation*: influencing related intellectual property regulation by claiming that intellectual property protection is crucial to their business strategies. (vi) *promote protectionist regulation*: lobbying for more restrictive regulation in order to create a market-entry barrier to smaller competitors that are less able to afford the cost of regulatory compliance.

### **3.4.5 Conclusion**

The European Commission and national governments have to find new ways to build a consensus between member states and across European citizens on what could be the basis of a legitimate and consistent project articulating trade and sustainable development objectives. It is both an internal and external challenge. On the domestic scene, the European Commission has initiated a number of reforms to improve the “European governance”, with emphasis on transparency, consultation and participation of all stakeholders. On the international scene, the EU has increasingly promoted the extension of the regulatory dimension in the WTO negotiating agenda, to achieve sustainable trade objectives: environment and consumer safety (precautionary approach), labour standards, trade and the environment, trade and development, transparency and corruption. However, European has now to cope with the diversity of political demands by civil society in an enlarged Europe. It has to re-assess how to respond to pressure by interest groups and public opinion, to unveil the “invisible” balance of power between civil society stakeholders, and measure better the risk of promoting economically unviable compromises in order to satisfy influential groups.

## **4 Conclusion and policy implications**

In this section, we will re-emphasise the policy recommendations in three areas: global governance; participatory and deliberative processes; and the role of Europe. Then, we will suggest a number of research area which deserve further investigation and which would be best tackled by multidisciplinary teams in social science.

### **4.1 Policy recommendations**

Since Sustru is a thematic network, and not a research programme, we do not wish to develop at length in this report the policy recommendations which were mentioned during our discussions, because they were not analysed in sufficient depth and they are not necessarily reflecting a consensus within the network. However, we wish to underscore that each of the 5 policy briefs which were distributed contain a number of policy directions which could be envisaged to improve sustainability in trade.

#### **4.1.1 Guidelines and recommendations for the architecture of global governance**

Experiences with the World Summit on Sustainable Development (WSSD), the Doha Development Agenda (DDA), multilateral environmental agreements (MEAs) and several international organisations all point to the importance of striving for an effective and efficient architecture of global governance of trade and sustainable development. The general consensus at present is, however, that the current architecture is neither well functioning nor coherent. Consequently, a broad range of proposals seek to reform the existing sustainable development governance regime and the international trading regime, respectively, and improve their interaction.

##### **4.1.1.1 Appropriate division of labour**

The global governance of sustainable development needs strengthening to ensure sustainable outcomes on the ground, particularly those outcomes that are trade-related. Although there are some well known successes, the perception that the status quo is insufficient is founded on several considerations, such as the high (economic and political) cost of opting in international regimes for sustainable development, the fragmentation of the sustainable development regime as compared to the international trading system, and a lack of mechanisms to ensure effective implementation.

Compared to the global sustainable development regimes, the international trading system is highly centralised in the form of the World Trade Organization, although it risks becoming overloaded by its ever-expanding agenda. It is commonly asserted that the WTO's mandate is not directly focused on sustainable development. However, references to environment and sustainable development appear in several WTO Agreements, and both themes have been a standing topic of discussion in various WTO bodies. In addition, trade policy can, under the right conditions, be an important component of sustainable development. The DDA brings sustainable development issues squarely into the trade negotiations for the first time. But this raises the key questions as to what extent the WTO should make policy relating to sustainable development, whether this should be done in

conjunction with other regimes, and what process should underlie this. All these questions must be considered against the background of an unequal power distribution among WTO members, different priorities of Members in regard to environmental conservation and economic development, and lack of internal and external transparency.

Proposals to strengthen the sustainable development regime range from providing more financial resources and political powers to the existing institutions, to a reorganisation of MEAs, to a complete new global environmental governance system, embodying possibly a World Environmental Organisation or an International Environmental Court. As has already been emphasised, one of the key questions is: should we reform drastically the existing institutions for sustainable development – mainly to improve centralization and therefore – hopefully- leverage; or should we promote a better organisation based on the existing structure. As it appears that reforms are politically costly, especially when an intergovernmental agreement must be found, it seems sensible to recommend that an evolutionary process takes place, through a better use of existing institutions. Still, it is fundamental to identify a desirable long-term structure and the accompanying procedure for an evolutionary reorganisation. The specific advantages of the existing global sustainable development regimes, such as flexibility and innovation, should not be overlooked and deserve further study so as to maximise their relevance to international trade.

Another item on the global agenda is investment liberalisation and its impact on the ability of governments to regulate on sustainable development. Although foreign direct investment can be a major channel for promoting ecologically sustainable development, in many instances, such investment does not further, or even hinders, sustainability. Current proposals to ensure mutual supportiveness between foreign direct investment and sustainable development range from expanding the mechanisms present in the WTO, to creating a new, discrete regime, such as a framework convention on investment. However, further research is needed on how freedom for necessary regulation of investments by host and home states can be maintained in light of investment liberalisation. Relevant experiences from regional and bilateral contexts can prove instructive.

#### **4.1.1.2 Reforming WTO procedures**

At stake is the legitimacy of the WTO, which entails confronting key issues, such as equity, transparency and participation. Several ideas have been put forth, many of which seek to enable developing countries to engage more proactively in the agenda setting process of the WTO. Experiences with the current "implementation" issues, in the context of the DDA, are instructive in this regard. Another issue is the asymmetric impact of the WTO dispute settlement rules, whereby even if developing countries win against developed countries on the merits, the remedies awarded may not ensure actual elimination of offending acts. Some countries are now proposing that developing countries be permitted to take collective retaliation against developed countries, or that remedies focus on compensation rather than retaliation. Other options to be studied further are the viability and appropriateness of less juridical approaches to dispute settlement, which may be more effective in enabling countries to comply with their obligations, or a new conciliatory body that makes recommendation about a conflict before the formal dispute settlement proceedings are launched. It was suggested that conflicts between dispute settlement regimes could be avoided by the WTO seeking an advisory opinion of the International Court of Justice (ICJ). The Appellate Body could request such an opinion, as can non-parties to the conflict, which is not directly enforceable but might

provide essential guidance from an impartial standpoint. Also discussed extensively is the status of amicus curiae briefs and their compatibility with dispute settlement in the WTO. It is noted that since there is no consensus on amicus briefs within the WTO dispute settlement process, it is important for NGOs to continue to submit them. The eventual implementation of the amicus process will then inevitably develop on a case by case basis, finding foundation through the interests expressed by those NGOs.

#### **4.1.1.3 Appropriate scale and global public goods**

In addition to global rules on trade and sustainable development, there has been an increase in the development of regional, inter-regional and bilateral rule making. The relationship between all these levels is not only complex, but also dynamic and the recent growth in regional, inter-regional and bilateral agreements begs the question as to what the appropriate boundaries of global and regional scales, respectively, should be. Yet, uncertainty endures as to how to choose appropriate levels of governance and how to avoid conflicts between different scales. In addition, there is no clear approach on how to decide between establishing frameworks and principles at the global scale, while leaving the means for implementation to other scales of governance, or setting up very specific rules and leave little room for discretion in the implementation. A starting point for future debate might be to structure the analysis along the particular types of global and regional public goods being addressed and provided. However, a more sophisticated analytical framework is needed to determine the most appropriate basis for subsidiary and decentralisation.

Because of the danger that the trade regime or trade interests might overrule MEA or other regimes, it was suggested that the protection of GPGs be incorporated into an international charter. The coherence at domestic and international level (e.g. to resolve competition between GPGs), as well as their implementation, could be achieved through the assignment of national agencies to each GPGs, a State representative comparable to an ambassador for the coordination on a national level, or officers for each GPG on an international level. This type of recommendations follow those already formulated by the UNDP 's office of development studies (Kaul et al, 2002). Finally, some GPGs could be protected on the basis of existing human rights, e.g. the right to certain social and civil standards, access to safe and adequate food (Art. 11 ICESCR), access to effective jurisdiction as well as international responsibility, and the International Monetary Fund and World Bank should take this into account in their reconstructing programmes. Indeed, mechanisms should be developed to hold States accountable for their actions regarding GPGs (e.g. trade sanctions).

#### **4.1.2 Guidelines and recommendations for participation of non state actors**

The WSSD reconfirmed and reinforced the significant role that non-State actors play in the architecture of global governance on trade and sustainable development. Participation of civil society is well established in international sustainable development institutions and is solidly grounded in law and practice. By contrast, the WTO provides only limited participation possibilities for non-State actors. In particular, developing countries have been reluctant to agree to admit non-State actors into WTO deliberations, especially since major "internal transparency" issues have not been resolved. In addition to formal participation in intergovernmental processes, non-State actors can carry out a number of trade-related activities, which should not be underplayed.

#### **4.1.2.1 Control lobbies and vested interests**

In order to balance the influence of various interest groups in the trade policy making, there seems to be a need to move:

*From secrecy to transparency:* Transparent decision-making processes, at the EU and WTO level, would require further information-sharing, publication of committee reports, and effective and timely consultation processes. A move towards more accountable trade policies would certainly involve increased parliamentary scrutiny at all levels of trade policy.

*From confrontation to partnership:* Interaction between NGOs and corporate groups is complex and multi-dimensional. Environmental NGOs either recognise the role of the industry lobby and are willing to work together to achieve common objectives, or distrust the activities of corporations, and MNCs in particular. Corporate support could be invaluable for environmental monitoring and for implementing community development projects, as well as ensuring corporate compliance with the local, national and international regulation. More successful collaboration among European environmental NGOs could be possible if they were able to jettison subtle competition within the environmental sector for membership, financial support, or status in the policy processes.

*From reactive to proactive style of lobbying:* Trade policies are an amalgam of country-specific and cross-border issues and are inseparable from other policy areas. As the agenda-setting has become more political and uncertain, there is a need for public interest NGOs to become more proactive both at the technocratic level (eg in the direction of the European Commission or the WTO secretariat), and at the political level (eg: in the direction of the European Parliament or states). There is a further need to have open and extended networks, rather than exclusive policy communities.

*From good practice to regulation:* Within the EU and the WTO, lobbying by interest groups is prompted by either economic or ideological or non-commercial motives. Whatever the type of lobbying, there is a greater need for regulation as not all groups are well-organised, or well-represented. Lobbying processes within the EU could be structured in a way to reduce the possibility of abuse by various vested interest groups. New legislation, modelled on the 1995 US Lobbying Disclosure Act,<sup>13</sup> might be useful to regulate disclosure of information, register lobby groups, account for financial donations made to political parties, and monitor and report lobbying activities. Moreover, some industry groups are adapting their practice to become more environmentally motivated. A few MNCs are moving towards more sustainable practices in order to: avoid negative publicity; avoid threats of fines and lawsuits; win new markets for clean technologies; apply government regulations; and show genuine commitment to protecting the environment. This needs to be encouraged.

#### **4.1.2.2 Better assess voluntary initiatives**

Corporate actors can contribute significantly to sustainable development, but can also undermine it. Voluntary instruments and initiatives from the corporate sector aiming at sustainable development have certain advantages, e.g. flexibility or low monitoring and enforcement cost. However, one of the main arguments against voluntary initiatives is that they may encourage a lack of collective action by governments.

In the corporate world there is a real potential for financing public goods (the recent tsunami tragedy in South East Asia has demonstrated that private businesses could also contribute to the solidarity movement). However, this should not lead the UN – and national governments- to overvalue the relationships with business and to pay less attention to other non-state actors, namely the NGOs. Moreover, the relationships between NGOs and corporations should be encouraged and monitored at the same time. Public scrutiny and accountability are essential. NGOs will have to learn to work with corporations, to set limits to keep their autonomy, to lobby them (not exactly the same as denouncing them), to lean on their orientations. This is a lot of work, and difficulties can already be anticipated. The latter group will also have to learn to consider corporations as actors.

On public-private partnerships, there is the need for an international guide of action principles and follow-up with the view to: (i) identify *specific* gaps of implementation addressed, in order to define the type of network or partnership that needs to be developed; (ii) define precisely what can be labelled as a Type II Initiative; (iii) maintain the equilibrium within the partnerships by setting rules which will ensure equitable bargaining power on either sides.

#### **4.1.3 Guidelines and recommendations for Europe: Increasing the legitimacy of EU governance on trade and sustainable development**

What role can Europe play in redefining global governance? The European Union was successful in establishing a coherent policy programme, overcoming the difficulties associated with divergent national preferences. From this perspective, the European Union plays the role of a true institutional laboratory in which the notions of subsidiarity, political superstructures and horizontal management of cross-cutting issues have been progressively refined. Furthermore, Europe has been increasingly aware of the necessity to re-regulate its domestic markets in order to better integrate sustainable development requirements. This is where Europe could exert stronger leadership: for example by negotiating accompanying measures and shared production of global public goods as a central component of free trade agreements with third countries; by being more present in discussions led by the international financial institutions and by demonstrating its willingness to impose at home what it recommends for others.

##### **4.1.3.1 Improving the trade-sustainable development interface**

Increasing the legitimacy of EU governance on trade and sustainable development could be helped by taking action in the following area:

*Strengthening the EU parliament's political scrutiny.* The constitutional treaty will nearly place the EU parliament on a par with the Council's. Yet the Doha Development Agenda and others major agreements (Mercosur) stand a chance to be concluded before any possible entry into force of the treaty. Building on the current Commission practice, the Council and Commission should anticipate the implementation of the future treaty by systematically requesting the political approval of the EU Parliament on trade agreements and major trade decisions.

*Transparency and consultations with public opinions.* The drafting of the Commission negotiating directives is considered a decisive moment for wide consultations of civil

society constituents. Thereafter, during the negotiating phases, the EU Commission should better balance the legitimate needs for technical confidentiality and the information of the opinions. The Commission must vigilantly achieve a sufficient diversity of the NGOs participating to its consultation process : developing NGOs capacities in the new member-states may raise a specific challenge in that regard. The NGOs themselves need to better guaranty their own transparency and representativeness.

*Strengthening the national political debates on trade.* The member-states' role in the 133 Committee has evolved in the EU-25. Throughout successive enlargement, the member-states have lost grip on the technical and tactical aspects of the negotiations run by the Commission. Their essential role now relies on their capacity to ensure the democratic control of the EU negotiating strategies. So a healthy political debate at the member-states' level remains crucial to the legitimacy of EU decisions making on trade. However, the rise of the European powers on trade policy tends to take the issue off national policymakers' agendas. The initiative of the "Trade and Investment White papers" of the UK Government may thus provide an interesting example of an effort for political remobilisation of the national level on the European trade agenda

*Renewing the European approach to global regulation.* The Doha Development Agenda may now be considered a lost opportunity for widening the WTO role on sustainable trade rules. Alternative regulatory avenues thus need more consideration from the EU trade policy : bilateral and regional trade agreements (the Environment and Labor Standards chapters included in the recent US bilateral trade agreements -Jordan, Morocco- may provide interesting precedents), good business practices, and NGO/Corporate partnerships

*Reconciling trade liberalization and the European social model.* The inability of the European governance to cope with the impact of trade liberalization on the European social model may particularly damage its perception in public opinions. A Possible improvement may imply empowering the EU level with an autonomous capacity for compensating the social costs of trade liberalization. Progressing toward a European regulatory regime for essential Services of General Interests may also be needed, prior to undertaking new liberalization commitments under the GATS.

*Coherence between trade and development policies.* Inconsistencies between trade and other internal (agriculture) or external (Aid) EU policies need to be reduced. Increasing the European efforts on economic analysis and sustainable impact assessment of trade liberalization policies on developing countries is primarily needed: detailed sensitive product/countries analysis of the impact of trade liberalization could contribute to better enlighten the stakes of the Doha agricultural negotiations. The future role of the – constitutional - Minister of Foreign Affairs of the EU can open new avenues for more coherence: as a Vice-president of the Commission his external policies coordination role (Article I-28-4) may influence Trade and Aid policies.

#### **4.1.3.2 Improving Sustainability Impact Assessments**

From the outset, SIA has been conceived in Europe as a multi-stakeholder process and several inclusive stakeholder consultation processes have been implemented, such as the dialogues between the contractors for the assessments and stakeholders with interests in individual sectors, or the meetings with civil society organized by the European

Commission to discuss project reports. Further, the European Commission has already begun to address criticisms that have been addressed by stakeholders and civil society.

For instance, it has committed itself to improving the timing of SIA by commencing the process earlier in trade discussions, allowing for a better impact of the SIA on the trade negotiations. It has promoted greater coordination between researchers and negotiators and has trained negotiators about the potential value and use of assessment reports. And it has expanded opportunities for stakeholder input in the SIA process by hosting workshops within the EU and requiring stakeholder consultations in third countries when they are the focus of examination.

As such, the experiment on SIA underway in the DG Trade has a broad ambition and can be considered as a potential extension of the Environmental Policy Integration (EPI) requirement mentioned in the EU founding treaties<sup>16</sup>. This requirement states that environmental considerations should be integrated into the design, adoption and implementation of policies in all policy sectors. At the current state of the methodology this broad objective has been implemented through an institutional process that allows to network independent experts, key negotiators and relevant stakeholders. As such, in a similar manner to the implementation of the EPI, it is a good example of the concept of network governance promoted by the European commission. However, a long-term development of such networking can only be successful if it is able to develop in the same time incentives for organizational learning in the broader institutional environment of the networks

Nevertheless, no methodology is complete and several important gaps remain in the institutional design of the implementation of the SIA tool. In particular, as we mentioned in section 3.2.3.4, the approach suffers from a lack of tools that specifically address the social learning process between the different stakeholders, allowing to integrate information coming from different type of actors and to combine a heterogeneous set of social values. It seems therefore that the institutional design of the social learning process on the trade and sustainable development *nexus* initiated by the SIA's remains an important stake to be addressed. Tradeoffs associated with expanding stakeholder participation suggest that merely increasing the number of participants consulted in the assessment process is insufficient. Alternative frameworks which rely more on rearticulating the role and nature of stakeholder participation offer a more fruitful line of inquiry. As has already been advocated in section 3.2.3.5, the European Commission should seek to develop an institution framework allowing for distributive assessment, based on networks of researchers and decision makers spanning multiple levels, and integrating research, assessment and decision making processes across those levels through a dynamic, two-way communicative and adaptive process.

This network approach towards stakeholder participation requires further reform on the level of the governance structures. A special attention should be given in this respect both to mechanisms for the generation of local data and to mechanisms to reveal the social preferences (or social demands) of the actors concerned by trade liberalisation. Interesting examples in this direction are governmental incentives for the generation of environmental and social data by private actors themselves or the further development of

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<sup>16</sup> Initially in the 1987 Single European Act ; more recently in Article 6 of the 1997 Amsterdam Treaty.

screening tools revealing collective preferences of the social actors in their evaluation of the impacts of liberalisation, prior to the “in depth” assessment phase.

Participation in SIA also requires capacity building. The ability of many countries to undertake SIA remains limited because of weak research capacities. It undermines the strength of the assessment process in the EU, as researchers are forced to rely on data which are less robust than they might otherwise desire. The limited research capacity in many developing countries also restricts their ability to undertake assessment studies independent of the EU’s efforts. This reinforces suspicions regarding the EU’s motives, and undermines the perceived validity and credibility of SIA in the developing world.

Capacity building should not be confined merely to efforts to support and promote EU assessments. By establishing an independent research capacity for impact assessment in the developing world, the European Union would accomplish three important objectives. First, it would encourage developing countries to take *ownership* of sustainable development policy. Where the domestic research capacity is sufficient to provide policy input and advice to decision makers, environmental, economic and social policies are more likely to be tailored to specific local conditions and needs. Consequently, commitment to policy should be stronger and policy failure should be less common. Second, supporting the development of local research capacity would enhance the *legitimacy* of SIA by establishing the conditions necessary for consideration of a broader number of frames and worldviews. Third expanded participation would create the opportunity for the emergence and development of alternatives not necessarily considered by European researchers. Through policy dialogues between scientists in the developing world and Europe, new positions not considered unilaterally by either could emerge.

## 4.2 Research agenda

### 4.2.1 On global governance for sustainable trade

The research agenda for this topic could be condensed under three primary thematic areas: **legitimacy, effectiveness and linkages**. With regard to the first, it was recognised that there are many more sources of legitimacy in practice than we are generally willing to acknowledge. For example, legitimacy can originate in formal, legal or procedural bases. It therefore becomes a challenge to encompass all interests when negotiating collective norms. However, it is difficult to find mechanisms through which legitimacy can be produced at the global level, particularly in the southern context, given that the states are diverse and have different perspectives and approaches to the international realm. Moreover, legitimacy and democracy are connected but not synonymous, and it is thus quite important in research to see where these elements interact. There are also various crosscutting issues under this theme, including the notion of subsidiarity, specifically fragmentation (as close as possible to the citizen) versus universal norms and institutions.

The ultimate output of legitimacy is effectiveness, the second thematic area, which is strongly associated to linkages. One of the fundamental issues under this theme is the need for more substantial research on the problem structure of “institutions-fit” - that is, determining whether the scope of the institution is appropriate for the problem with which it is confronted. Other points of interest under this thematic umbrella are efficiency and compliances. What are the best practices of compliance structures both in and outside of the environmental context; how to recognise, validate and promote compliance

procedures; as well as how compliance practices can be strengthened within the MEA context. Compliance should also be discussed in the context of law, namely regarding how law can be defined so that it is not susceptible to differences of interpretation that could lead to a general distrust about how the law is applied. Subsidiarity is another area of research. There is the issue of societal feedback; that is to say, how it might be possible to forge different negotiating processes that would create space in which community interest would be reflected.

We have shown in section 3.3.1 that global public goods are a useful notion which can contribute to renew the way we think about globalisation and sustainability. Insofar as GPGs can be defined as 'whatever is of global social concern', they contribute to the quest for common well-being, which is at the root of international politics and the foundation of the legitimacy of all political actions. The procedures through which common well-being is built is key to defining the architecture of the institutional system of global governance. Can we identify which theoretical base within social science could help provide an analytical framework for understanding the build-up process of international preference functions?

Another interesting question, stemming from observed facts is: should GPGs precede or follow international law? What is the scope for soft law in the promotion of GPGs? The scope of action of specialized agencies is circumscribed by the terms of their constitutive instrument, which forces them to adopt a "tunnel vision" approach to their area of competence. To what extent could GPGs contribute to their reform?

#### **4.2.2 On public participation and deliberation procedures**

There is an urgent need to gain a clearer understanding of what an efficient and equitable multi-stakeholder process involves and what the contextual differences are, drawing from literature and comparative government studies. An international survey could be designed to assess the cost and benefits of public participation, and whether there is an optimal level for specific cases and institutions.

Another important question is whether **regulations** can be **privatised** or to what extent governments could use NGOs for specific governmental purposes; again, a survey could help to identify how public versus private institutions perform in monitoring and enforcement, in order to give policy makers a perspective to maximise positive gains;

Further research would be necessary to develop SIA as a product itself, and more specifically to enhance its capacity to play a role in international trade discussions and in generating alternative policy options. There is a need for research in the developing an institutional framework to allow for the reflexivity recommended in section 4.1.3.2.

#### **4.2.3 On private initiatives and sources of influence**

Regarding the increase of corporate actors' participation in environmental governance, there is a need to assess what kind of rationality or motivation guides their action, what strategy they follow and what the consequences are for others actors in this arena. NGOs, public authorities and local governments may have to adapt their actions and learn to work together with corporate actors. Areas of research stemming from this subject area include examining the strength of motivation within firms to promote sustainable.

The necessary assessment of what kind of social control, transparency and responsibility the corporate actors will accept, and who will be in charge of this assessment should be on the research agenda, in an effort to better understand what enables the corporate sector to support sustainable development. We should also address the question as to how to govern sustainable development partnerships, particularly those that – like Type II – were advocated in Johannesburg. The challenge that the sustainable development community faces is to ensure that implementation of WSSD targets is not left to actors and mechanisms which are lacking in accountability. Under GATS, many services that are being regulated are significant parts of the international trade agenda (i.e. water, health, energy, agriculture and biodiversity). This provides an interesting area for further research into the relationships among these new forms of organisation, trade and existing international law.

The notion of Type II partnerships has become increasingly relevant for environmental discussion, and as was pointed out all throughout this report, it is necessary to devise a new model of international governance that is no longer built on a top-down approach, but rather incorporates NGOs, citizen's movements, multinational corporations and other non-state actors into the decision-making process by a concrete delegation of responsibility at the appropriate level. Within this argument, Type II partnerships from WSSD are lacking sufficient criteria and a clear strategy, and the links between Type II partnerships and Type I outcomes were inadequately defined. The "ideal" partnership would have a tri-sectoral characterisation through the collaboration between governments, civil society and the private sector, and would be inclusive towards both the North and the South. It would integrate international, regional and local actors, and would most likely be organised in an informal or loosely structured framework. Most importantly, the ideal partnership would have to be flexible and responsive to opportunities for learning. How can we devise such structures?

## 5 Dissemination and/or exploitation of results

The other aims of the network were:

-To promote a renewed dialogue between the research community and the practitioner community . The EU has to prepare a strategy for the follow-up of Rio plus 10. The operation of this network during this process could help to perceive better public opinion evolution on trade issues and the rationale behind it.

- To provide guidance to European policy-makers: Sustra was set-up to supply new ideas on democratic processes to organise the public debate on trade issues, to help to understand better the ways of building a legitimate decision making process and to identify criteria to evaluate current actions. Environment and social issues, as well as health and food security, are key issues of the renewed discussion in WTO. This network was expected to mobilize European expertise around informal meetings parallel to the formal process. The idea was to raise the level of European expertise on these issues to be able to introduce new ideas in the global debate where US academics still have a very prominent role.

Sustra's dissemination strategy evolved around four types of actions: (i) a regular update of the website and the publication of a newsletter (with online subscription); (ii) the publication of policy brief papers following each workshops; (iii) Sustra's direct or indirect participation to international meetings and to discussions with DG trade; (iv) the publication of two books for a broader public.

### 5.1 The Sustra web site

The Sustra website (<http://www.agro-montpellier.fr/Sustra>) was maintained and updated regularly. The web site describes the Sustra network, informs about relevant conferences and papers written by Sustra members. For each workshop, a list of preparatory and reference documents was made available online. After each workshop, contributed papers, round table synthesis and policy briefs were also posted online. The website also includes a "news section" on all events relating to trade and sustainable development/

In November 2002, we referenced the web site in the major Internet search tools. At present, Goggle, AltaVista, Yahoo, hot Bot and Lycos propose the Sustra web site in the first 10 answers when using Sustra as a keyword. The Sustra web site was visited by more than 7000 users since.

### 5.2 Sustra newsletter

In order to inform a larger circle than the Sustra members, we created a newsletter. This newsletter, e-mailed in PDF format after free subscription on the Web site, is made of three parts: "Sustra News", "Partners' news" and "Beyond the network". Its frequency was around 4 per year More than 130 members from 10 European countries have subscribed.

### **5.3 Policy brief papers**

The policy brief papers of all workshops (4 pages) are available online. All of them are in English. The Global Public Good policy brief is also available in French.

For each policy brief, Sustra also made 400 printed copies which were sent to Sustra members and relevant institutions or persons. As decided commonly, each Sustra member was in charge to distribute policy brief papers in his own network. Policy brief papers were also distributed at the Conference of the International Association of Agricultural Economics (Durban, South Africa; 16-22 August 2003), the Globus conference on “Globalization and National Environmental Policy: Taking Stock of Changes in Government Interventions in Response to Globalization” organized by the University of Tilburg, Netherlands (22, 23 and 24 September 03) and the Cancun WTO conference (September 2003).

### **5.4 CDRom**

Following the workshop on SIA, The DG Trade asked the Center of Philosophy of Law (CPDR) and the Institute of Sustainable Development and International Relations (Iddri) to help them identify key speakers for a side event on sustainability impact assessments organized during the WTO ministerial conference in Cancun (10-14 September 03). Sustra took this opportunity to enlarge its visibility by distributing its policy brief papers and a free CDRom. Specially created for this event, this CDRom is based on the Sustra web site and offers the offline access to all the available workshop papers and synthesis, the policy brief papers and the main reference documents. 150 copies of this CDRom were distributed during this “Sustainable Trade Day session on Sustainability Impact Assessments of trade agreements”.

### **5.5 Meeting with DG Trade**

The Sustra network has engaged into a series of informal meetings led by the Cabinet of the Commissioner for trade but involving also representatives of several DGs (research, environment, trade, development). Three meetings took place between 2001 and 2003. The objectives of the meetings were to discuss the contents and the findings of the Sustra workshops.

### **5.6 Books**

Two books are in preparation.

The first book, edited by S. Thoyer et B. Martimort-Asso “ Participation for sustainability in trade” focuses both on theoretical approaches and on illustrative case studies. Its content is described in section 2.3.1. The table of content is provided in annexes. It has been accepted for publication by Ashgate in the “Global Environmental Governance” series. Publication is expected in the first semester of 2005.

The second book, edited by S. Thoyer and JM. Paugam, “Sustainable trade and European decision-making” is described in section 2.3.2. The table of content is provided in the annex. It has been submitted to Springer-Verlag.

## 6 Acknowledgments and references

This report has been written by Sophie Thoyer, with the help of Benoit Martimort-Asso and thanks to the contributions of Sustra members as well as participants to the Sustra workshops.

We would like to acknowledge more specifically (by alphabetical orders): Isabelle Biagiotti (Courrier de la Planète); Tom Dedeurwaerdere (Université Catholique de Louvain); Olivier Godard (Ecole Polytechnique); Jose Maria Garcia Alvarez Coque (Institut Polytechnic of Valencia); Jessica Green (United Nations University); Markus Knigge (Ecologic); Patricia Nanz (University of Bremen); Alice Palmer (Field); Jean-Marie Paugam (Ifri); Jona Razzaque (Field); Jens Stekkek (University of Bremen); Richard Tarasofsky (RIIA; formally at Ecologic); Konrad Von Moltke (IVM Amsterdam); Noah Zerbe (Université Catholique de Louvain); Numerous parts of this report are directly based on their writings (contributions to workshops, policy briefs and books).

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## **8 List of Annexes**

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### **8.2 List of contributed papers and presentations**

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