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Trade, biodiversity and the right to development: an equation to be constructed

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Transcript of the statement by Ms. Carolyn Deere Birkbeck, Forum on Trade, Environment & SDGs

Thank you very much and thank you for the invitation to be here today.

I'm particularly pleased to be here because the title of this session aligns very well with our work at TESS, we are focused on fostering a global trading system that effectively addresses urgent environmental crises like biodiversity loss, in certain ways that reflect the importance of sustainable development in all of its dimensions; economic, social and environmental, because this is no easy task. This is the objective we have set ourselves.

In thinking about my comments today I always like to go back to, what the General Assembly has said recently, in September the UN pact for the future, action 10 recognized the urgent need for a fundamental shift in our approach in order to achieve a world in which humanity lives in harmony with nature. Now at COP16 this week, we are hearing loud and clear the urgency of addressing biodiversity loss and a range of evidence importantly on its far-reaching impacts on food security, on climate resilience, on human health, on livelihoods and on key economic sectors. We know that biodiversity loss undermines our ability to advance progress on sustainable development. Biodiversity and nature are fundamental to realizing the right to development because we need functioning ecosystems in order to avoid a whole range of risks.

Now from a trade perspective, biodiversity underpins a broad range of global supply chains, trade related infrastructure and investment, and economic sectors upon which many developing countries rely. When we lose biodiversity, we risk the sustainability of sectors that are vital for millions of jobs, livelihoods and communities around the world, in the fisheries sector, in the agriculture sector, in the tourism sector. So, when we fail to manage our biodiversity well, we risk a whole range of sustainable development impacts.

At the same time, trade can exacerbate biodiversity loss most, obviously when there is inadequate environmental regulation, such as in cases of illegal wildlife trafficking, dumping of hazardous or toxic wastes, but it can also exacerbate biodiversity loss when trade incentives compound or exacerbate pressures on unsustainable patterns of natural resource extraction or production practices. So, my colleague from UNEP mentioned issues like trade in plastic waste or trading unnecessary and problematic plastic products, such as many single use plastics, these have direct impacts on marine ecosystems and biodiversity, which is particularly challenging for many small island developing States and stuff who rely on pristine environment for tourism and for fisheries and so on.

Trade flows and production related incentives that degrade the environment are ultimately bad for nature, but they are also bad for resiliency of supply chains and ultimately for sustainable

development. We also know that trade can be harnessed in ways that provide incentives for biodiversity conservation, for sustainable youth and restoration, and we can trade in ways that support sustainable development and biodiversity goals. So, the big challenge here is how can we advance the ambition of nature restoration and avoiding biodiversity loss while supporting sustainable development and what is the role of trade, trade policies and I think most importantly trade cooperation in this endeavor. A key question for this panel was about what principles international trade must meet if it is to play a genuine role in combating biodiversity loss and supporting the right to development. So, here I think it is important to step back to consider the state of play.

As an international community we are faced with the challenge of dealing with a complex web of fragmented national efforts and sector specific approaches to trade and biodiversity. Without stronger international cooperation on trade and trade policies, there are risks that many of these measures will be ineffective. A whole bunch of fragmented and untransparent approaches will not help us tackle biodiversity loss effectively, they will also be unfair.

There are countries and communities that it deeply and impacted by a patchwork of trade related measures, upon which they are not properly consulted or supported in their efforts to shift toward greater sustainability. It can be particularly challenging for medium, small and micro enterprises and for small holders who are not consulted in how these kinds of measures are developed. So, when we think about how we preach trade in nature, we must consider that at the other end of these supply chains are a whole set of communities who rely on these supply chains for their livelihoods and employment.

Core principle is that we have to approach the Nexus of trade, biodiversity and sustainable development through the lens of international cooperation. This may sound an obvious thing to say, but in fact if you look at many of the international commitments that we have, this issue of international cooperation is embedded in the whole multilateral system and in many UN documents. I looked this morning at Article 3 of the declaration of the right to development; States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development. The realization of this right requires full respect of the principles of international law concerning friendly relations and cooperation.

Also, States have a duty to cooperate with each other in ensuring development and eliminating obstacles, talks about the importance of sovereign equality, interdependence, mutual interest and cooperation, as well as to encourage the observance and realization of human rights. I think all of that is worth restating because I think in much of what the minister said earlier, these are concepts that are embedded in the remarks that she made. We need to focus a lot more attention on these principles when we think about how we approach issues of environmental trade and sustainable development.

At TESS, one of the things that we did in the past year is bring together a set of leading or eminent legal scholars from around the world who are focused on international law, as it relates to trade, to the environment, human rights, general public international law, to ask them for their guidance on what are some of the core principles that should be shaping our approach to trade related environmental measures. Here they highlighted 6 which I will measure briefly and each of them have been mentioned this morning, which is great also that our lawyers really had grappled well with the diversity of perspectives that need to be brought together; The first was sovereignty, The second was this critical issue of prevention. We do want to prevent environmental harm, but we want to cooperate as they emphasize throughout the body of

international law. There is this emphasis on international cooperation and as alongside that about transparency and about consultation with affected parties. There is also in the trade world the principle of prohibition of arbitrary and unjustified discrimination, and they identified the cross-cutting issues related to the right to development equity and CBDR.

So, one of the things that we need to do is to work out how we can operationalize these principles. They are all from very different areas of international law, we all sort of hide in our silos of international law and in our agencies and in the policy sector that we are in, but we need to find ways to connect the dots among these legal principles in the ways to have an honest dialogue about what are the range of elements we need to bring together so that we can achieve the environmental ambition that we all need, to save it in a way that is fair and just. I think alongside that we also need to connect the dots well, and this will imply that we need to connect the dots between quite separate areas of policy making. So, it is not trade alone, or the CBDR alone, or finance and investment alone, or technologies alone. If we want to enable developing countries to be players in this shift to agree that green economy, we will need to be thinking about how to ensure that they have access to sustainable investment and finance on fair terms, affordable access to relevant technologies and so on as well.

I think I had some other points that I could make but as the day is long, I will close here. Just the one last point I wanted to make is the second one of the questions for the panel was on whether current international rules are up to the challenge, and I think here just an insight that may be useful in this setting is that we have to consider that the trading system has many layers of rules. We have the multilateral rules, regional and bilateral trade agreements countries might have, but also the range of national measures countries may take. Sometimes, it is about whether the trade rules themselves are up to the challenge or if it is about the implementation and whether countries have adequate support to implement them. Sometimes, the rules could almost be right, but if there was more consultation and cooperation, they could be much better. It is also the fact that a lot of rules relevant to trade and global supply chains are not part of trade agreements anymore, they are made by a range of different ministries, especially when it comes to issues of disclosure, they may be from a Ministry of Finance, it may be in ministries of energy who are making climate related rules for example. We also have a vast array of sustainability standards across supply chains that are led by companies, but they have an enormous impact on exporting countries, even if they are not in trade rules, they shape the rules of the game so to speak.

We have to think hard about what needs to happen across that range of different aspects of the trading system. It is about the rules, but also the processes and the interconnected issues. So, going forward I think key priorities are really to have an open and honest dialogue about the power dynamics at hand which our colleague from Namibia mentioned at the beginning and what needs to be done to ensure that developing countries are not marginalized as we shift to the incredibly important task of protecting biodiversity, but also ensuring that we do so in a way that we are not further marginalizing developing countries in the process and that we shift not only to a greener global economy but to one that is fairer and supports the right to development.