# The 10th session of the Expert Mechanism on the Right to Development

**Item 5 of the Provisional Agenda**
**Implementation of the mandate and programme of work –**
**Focused thematic discussion and interactive dialogue**
Palais des Nations, Room XXI, Geneva

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

Tuesday 29 October 2024, 16h30 to 18h00

**Transcript of the statement by Ms. Erika Watanabe Patriota,**
**Deputy Permanent Representative of Brazil to WTO**

Thank you Chair,

First, I thought that was a mistake, an invitation to the mission to the WTO because we thought it was coming from the UN side of the city, that maybe the invitation should have been addressed to the other mission. But then, after double checking, we are very happy to be included in this kind of conversation, because it's very much needed. Oftentimes, we talk about environment at WTO and then the partners, the members say "oh no this should be built in another forum, let's do it in COP16, let's do it 2020 something" not here. And then, there at COP16, we ask the same partners "let's try to have an agreement around this article" and then they come back to us "no this is WTO, it's not to be discussed here". So, finally we have the two worlds together and I am very glad to take part in it.

The equation for us is not only biodiversity; it is trade, environment and right to development, and in the sense that it should not it be constructed but it should be corrected because this equation has been in place for around 50 years. The first time the GATT, the predecessor of the WTO was called to contribute to the environment was in 1971, when the GATT was asked to contribute to the preparations for the Stockholm conference on the human environment. So, from and from the 70s onwards, we see the evolution of this interplay between trade and environment in clear steps. in the 80s for example, in addition to the to the right to development, you also had all the conventions, well we have had one in 1973, the sides conventions, on international trade and endangered species, which was the first one to establish what is called "specific trade obligations". It was the first time ever that a multilateral environmental agreement established a trade obligation concerning trade, or a kind of regulation on trade of certain species, and this regulation came in many ways, by certification, by adoption of restrictive measures to trade.

So, it was the first time in 1973, but the bulk of these measures came in the 80s with the other convention. Later on, you had the ozone layer depletion convention and protocol, you had the the Basel convention in the early 90s, regulating the movement of hazardous wastes and then they have the CBD, and also the UNFCCC. All of these, except for UNFCCC for very specific reasons, have these so-called STOs, these specific trade obligations. So, the relationship between the two worlds, trade and the environment, is much longer than we can think of.

In the 90s, because this interplay was getting stronger and stronger, we had the consolidation of what was called some decades back sustainable development. Sustainable development as a concept as such as we understand it today came in in the late 80s, I I think with the Brundtland

document. It was the first one to coin the expression and for us, sustainable development is the more the interpretation on the right to development, because it is not only development, but also sustainable and it has three pillars, it has the social, economic and environmental pillars.So, for a country megadiversed as Brazil, this is very important because we cannot talk about biodiversity without talking about indigenous peoples, without talking about the means to be provided for these communities and traditional communities as well, who live in the biodiversity to survive, to make a living out of the natural resources they live in.

Going to the other side of the "Route de Lausanne", WTO, we have many people who forget, or may have never known, that the interplay between trade and environment is at the basis of the organization. The Marrakesh agreement which established WTO has a decision on trade and environment that creates a committee on trade and environment and also establishes the terms of reference of this committee and how the relationship should be between the two worlds. And It is very clear, I have some parts here; it is very clear when it says that "we need rules to enhance positive interaction between trade and environment measures for the promotion of sustainable development," and so on because you have two pages on this line of thought.

Fast forwarding to nowadays, what we had in the 80s and the 90s as a mutually supportive relationship between these two worlds, we can say it's totally supported nowadays because we agreed during the last round of the GATT, the Uruguay round, we agreed on a number of treaties that on one side put in writing the rules necessary to safeguard developing countries, their rights to development, because at that time, there was not a whole set of rules on agriculture for example, internationally agreed rules on agriculture. the "Politique Agricole Commune" of the European Commission at the time, which was in fact reproduced in the agreement of agriculture. So, in spite of the fact that it was not in terms of rules not as progressive as many developing countries desired it, at least we had something in paper. Then, we had a dispute settlement mechanism through which we could enforce and monitor the compliance and enforce the compliance of these rules.

But then, on the other side in the 90s, we also saw the emergence of this private standards kind of proliferation, what is called today voluntary sustainability standards. At that time, these standards were established to cater to niche markets, especially from Africa, Latin America to Europe and the United States. And then if you do quick research, you will see that each dollar you pay for this for one label, one certification or one banana but marketed as something more sustainable, from each dollar you pay, three cents goes to the producer. So, is this an additional income? Is this reducing poverty?

In addition to inefficiency to say the least of these kinds of standards, there was also what we see today as fragmentation of the rules, because people and members say that these rules are voluntary, the rules pertain to the private sector, that the governments have no say on them. But what we see today, 20 years later, is that the governments themselves and the members are laying down these kinds of rules, in a way that deviates from the mutually-agreed rules that we have in trade. There is a clear aspect of extraterritoriality in these rules and as the minister was saying, we have the right to sovereignty right and the right to development and what this kind of rules create, because they are one sided, it is in a one-size-fits-all approach. We have questions about the extraterritorial application or nature of this kind of rule, because they need to respect the rules these members agreed on in the environmental form, not the WTO rules in the trade side. So, we are in a situation where these fragmentations of rules leave developing countries with no other instrument, except complying with rules, one- sided, unilateral, in spite and in violation sometime of multilateral trading rules that sometimes have been consulted only,

and consultation doesn't solve the problem of non-compliance with the multilaterally agreed rules.

One of the aspects mentioned by the discussion is bioeconomy. We as Brazil, we try to regulate bioeconomy to take most of the advantages we can from this area, but there are many challenges to it. You have the HS, the harmonized system for example, they don't cater by the economy because you have the product and the tariff line but you don't have the specificity of that product, whether it is sustainable or not it, whether it came from a sustainably grown production or an area that was free from deforestation. So, there are many challenges in this new world that will require time and flexibility from countries to be solved, but definitely the interaction between trade and environment has been in place for many years and nowadays not with so best grade as we thought at the beginning.

But on a positive note, last May, we were able to agree on the disclosure requirements treaty in terms of patterns. So, at WIPO, we have treaty that mandates to the signatories that every patented application whose development was based on access to genetic resources or traditional knowledge should disclosure, whether the access to traditional knowledge and resources was needed or not. So, common minimum countries and members, parties to the new treaty should require from the patented of applicant this kind of transparency. Some may say that it is not a big step, but it is an agreement that was in the making for the last twenty-five

years and it is the basis for the benefit sharing measures of every country that can or want will put in place. We are very glad to have Namibia to participate in the preparatory conference and meetings to this conference and because Namibia has played a very important role in this last twenty-five years of negotiations in this agreement.

Last but not least, happening just now as mentioned by Ms. Isabelle Durant, at COP16 we have the goal 18, which is to reduce harmful subsidies ,starting 2025 by 2030, but then when we came with some observations to the first draft, we were told by some partners, usually the same partner, that Brazil and others and other countries have the suggestion of making clear that the indicators should tackle subsidies, harmful subsidies, and not only positive incentives as it is right now in the document. So, because the goal itself says that members committed to reducing their harmful subsidies, but the indicators, the metrics of it, is only about the positive incentives, so where are the harmful subsidies? How can we implement the complement with our commitments in terms of eliminating these subsidies? And of course they should be in many areas, many sectors disaggregatedly speaking, so in agriculture, in fisheries, in fossil fuel for example, and not only in an aggregated manner as it is right now.

Thank you.