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The WTO and sustainable development: a reply to Robertson

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In the Foreword to my recent book – The *WTO and Sustainable Development* – Pascal Lamy, the Director General of the World Trade Organization (WTO), comments that: 'Given the evolution of the rules-based trading system, as well as the growing attention paid to policies designed to achieve sustainable development, there has been an increasing overlap between what have now become "trade" policies and policies relating to sustainable development.' He continues: 'In this respect, a crucial question that emerges throughout this book is whether a clearer mission for the WTO in support of sustainable development implies major institutional reforms' (Sampson, 2005: vii, xi).

Based on 18 years experience as Director of several divisions in both the GATT and the WTO, my answer to this question is very clear: 'I do not advocate a greater role for sustainable development in the WTO' (Sampson, 2005: 7). I also state at the outset that 'a trade policy organization such as the WTO should not be responsible for the many non-conventional trade issues that are gravitating towards it' (Sampson, 2005: 6). The remaining 307 pages of the book elaborate why I firmly believe this to be the case. With respect to the many specific issues addressed in the book, I conclude that the 'WTO should not be the arbitrator on matters well outside the realm of conventional trade policy considerations' (Sampson, 2005: 125). I offer many policy proposals relating to both substance and process, but I do not recommend changes to any WTO concepts, principles, and rules.

In an inaccurate review of my book, David Robertson misrepresents my arguments and attributes conclusions to me that are the opposite of those in my book.

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He states, for example, that I 'compromise' the WTO system by supporting the extension of WTO responsibilities 'to accommodate the demands from UN agencies and advocacy groups (NGOs), which seek to exploit the leverage of trade negotiations to pursue environmental, development and social goals' (Robertson, 2007: 149). In reality, nothing could be further from the truth. The purpose of the book is to make quite the opposite case by arguing against an extension of WTO responsibilities. This fundamental misrepresentation needs to be corrected, as do the particularly damaging criticisms of the WTO based on a lack of understanding of the WTO coupled with false information.

It seems futile to argue – as does Robertson – that no link should be made between the WTO and sustainable development. Like it or not, the reality of the day is that sustainable development is a formal objective of the WTO and frequently stated as such.[1] Less formally, the Director-General Pascal Lamy, in an address to the UNEP Global Ministerial Environment Forum in Nairobi on 5 February 2007 remarked that 'Sustainable development should be the cornerstone of our approach to globalization and to the global governance architecture that we create. If I have come to this forum, it is to deliver a message: **the WTO stands ready to do its part'** (original emphasis).

If sustainable development is indeed the cornerstone of the WTO approach to globalization and global governance, then a constructive approach is surely to inquire into how WTO members view sustainable development and how they operationally deal with their commitment to it. This is the objective of my book.

In commenting on the review, I will restrict myself to four points.

First, in addressing the interpretation of sustainable development, I most certainly do not revert to the 'tired and controversial definition' as charged by Robertson (2007: 149). In fact, I reject the conventional definition as inappropriate for my purposes. My approach is to create an inventory of policies of common concern to both the WTO and those who prioritize sustainable development. In other words, I identify those WTO activities that affect what are generally considered to be the pillars of sustainable development – economic development, conservation of the environment, and social considerations. In doing so, I single out common issues addressed in the Declaration of the World Summit on Sustainable Development and the Doha Development Agenda. Over 20 such topics appear in both declarations. I review how they are dealt with in the WTO, and the policy conclusions that follow.

I do not – as accused by Robertson (2007: 149) – 'sift through' my many years of GATT and WTO experience 'in search for an enhanced role for sustainable development'. Quite the opposite, I argue strongly against an enhanced role for sustainable development in the WTO. As far as the 'sifting' is concerned, not

1 It is stated as a WTO objective in the Agreement Establishing the WTO, the terms of reference of the Committee on Trade and Environment, Appellate Body proceedings, as well as the Doha Development Agenda and other ministerial declarations.

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much is needed: access to essential medicines, fishing subsidies that deplete world fish stocks, cross-border movement of genetically modified organisms, liberalized trade in environmental goods and services, WTO relations with multilateral environment agreements (MEAs), and numerous other issues are all squarely on both the WTO agenda and those preoccupied with sustainable development.

Second, Robertson (2007: 150) denigrates the integrity of the WTO legal system by asserting that WTO dispute settlement panels and the Appellate body rulings were 'reversed on appeal' after 'NGOs lobbying and criticisms of the WTO'. He cites the GATT Tuna–Dolphin cases and the WTO Shrimp–Turtle case by way of example. The reality is the opposite of what Robertson asserts.

In fact, as the two Tuna–Dolphin panel reports were never adopted by the GATT, it is simply impossible that the panel decisions were reversed on appeal. Not only that, as no appeal process existed at the time of GATT, the possibility to reverse decisions on appeal did not even exist. In the WTO Shrimp–Turtle case, contrary to what Robertson asserts, both the panel and the Appellate Body ruled against the US. Robertson (2007: 150) falsely states: 'The difference between the panel decisions and the judgements on appeal was that the former were decided in accordance with GATT-WTO trade rules, whereas the appeal lawyers chose to take a broader view to accommodate environmental interests.' In fact, the Appellate Body did exactly the contrary. It decided that the panel ruling had 'no basis in the text of the GATT 1994, has never been adopted by any previous panel or Appellate Body Report, and would impermissibly diminish the rights of that WTO Members'.[2] On this basis, the Appellate Body not only maintained, but strengthened the ruling against the US by placing it on a firm – and consensus based – WTO legal footing.

Also, before entertaining Robertson's assertion that the WTO legal processes are collapsing under the pressure of environmental lobbying, it is worth recalling that there have now been close to 400 disputes brought to the WTO. As explained in my book, of these, only three involve an examination of environmental measures. During the half century of GATT, there were only six environment related disputes, of which only three reports were adopted. All of these cases were eventually resolved to the satisfaction of both trade officials and environmentalists.

Robertson (2007: 149) dismisses the Committee on Trade and Environment (CTE) and the Trade and Development Committee (CTD) as 'not central to WTO activities'. While this demonstrates a failure to understand WTO processes, to say that 'labour market controls' were 'placed on the WTO program' is just plain wrong.

Third, in terms of policy conclusions, Robertson focuses only on institutional matters in my last chapter. Here, as elsewhere, the most striking feature of the

2 WTO, (1998), United States, Import Prohibition of Certain Shrimp and Shrimp Products [Shrimp-Turtle], Panel Report, WT/DS58/R, circulated 15 May 1998, and Appellate Body Report, WT/DS58/AB/R, circulated 12 October, p. 6.

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review is that the policy conclusions ascribed to myself do not come from my book – or any of my other writings for that matter. In reality, I argue quite the opposite of what is presented by Robertson. I will give three examples:

First, the 'main proposal' attributed to me is 'that the WTO and trade policies can contribute to environmental regulation without loss of economic efficiency' (Sampson, 2005: 150–151). In fact, I consistently argue precisely the opposite. In my view, trade policies are rarely, if ever, the first best solution to environmental problems. The only link I make between trade policy and environmental management is to explore how the removal of trade distortions can positively affect the environment. This aspect of trade liberalization is well known to all familiar with the WTO, and has been discussed in the CTE for more than a decade. I argue that the elimination of harmful fishing subsidies – now under negotiation in the Doha Development Agenda – would be one sure way for the WTO to meet its formal objective of 'the optimal use of the world's resources in accordance with the objective of sustainable development'. Nevertheless, I caution that 'as with other areas of sustainable development, the WTO should not be drawn into the role of a fisheries management or conservation body' (Sampson, 2005: 73).

Second, according to Robertson, my 'principal proposal is to establish another Committee of UN agencies "to explore their cooperation"!' (Robertson, 2007: 151; Robertson's exclamation mark). At no stage do I propose such a Committee and I have no idea what such a committee could contribute to the WTO, or even what it would discuss. The reader should also note that as elsewhere in this review, texts in italics, and therefore attributed to myself, do not come from my book. Nowhere, for example, do I use italicized terms such as 'participatory democracy' or for the WTO to be 'democratized' (Sampson, 2005: 150–151).

Finally, Robertson (2007: 151) draws attention to a proposal that the WTO work program should be 'expanded or that its management should be "democratized" by allowing NGO participation or some kind of representative people's council to advise the WTO Council'. Once again, this is the antithesis of what I argue. Anyone even vaguely familiar with the sentiment of WTO members would know that they would never accept a representative council with NGO participation to advise the WTO General Council.

My final comment relates to Robertson's remark that the proposals he attributes to me – but not found in my book – would 'eviscerate the WTO and drag it down to UN levels. Perhaps such sacrifices are necessary to get a book published by the United Nations University!' (Robertson, 2007: 151, his exclamation mark). This statement is most unfortunate and characterizes the ill-informed nature of this review.

Pascal Lamy states clearly what I hoped the book would achieve. 'It is a crucial first step in identifying and exploring the issues that fall under the umbrellas of sustainable development and the expanded agenda of trade policy' (Sampson, 2005: x). According to Dr Supachai – the WTO Director General prior to Pascal Lamy taking office – the book identifies 'an inventory of policy issues that fall

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within the overlap between trade and sustainable development, and … presents policy options that are both ambitious and realistic' (Sampson, 2005, back cover endorsement). Both have clearly gasped the objectives of the book.

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