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## Climate Change and Business Opportunities (Interview with Stefano Bertasi)

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**Stefano Bertasi, *Executive Director***  
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**Paris, France**

## ***“Road to Paris” – Conference of Parties (COP)21***

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In preparation for what is predicted to be the largest gathering of heads of nation-states, nongovernmental organizations, intergovernmental agencies, business entities, faith-based organizations, academics, and nonprofits from November 30 to December 12, 2015, to discuss and hopefully draft a comprehensive climate change policy for the world, global leaders have released action plans, amalgamations of businesses have pledged their support, the Pope has disseminated an extensive climate change encyclical, and intergovernmental organizations have been scheduling conferences in preparation the Paris Summit. One of the significant actors in this dialogue helping to formulate policy is the International Chamber of Commerce (ICC). Against this backdrop, the following interview of Stefano Bertasi, Executive Director of ICC’s Policy and Business Practices Department, was conducted at ICC headquarters in Paris, France by the *JVBL* on July 9, 2015. As many of the *JVBL*’s readers and contributors emanate from business, government, and/or academic sectors and may not be knowledgeable of certain key institutions, terms, agreements, events, and acronyms, a brief definitional section is provided in order to facilitate the transcription of that interview.

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## **INTERNATIONAL CHAMBER OF COMMERCE (ICC), PARIS, FRANCE**

The ICC is a world business organization, whose mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated global economy. With interests spanning every sector of private enterprise, the ICC's global network comprises over 6 million companies, chambers of commerce, and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

The ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the G20 (Group of 20 major world economies), and other intergovernmental forums. Approximately 3,000 experts drawn from ICC member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

## **WORLD TRADE ORGANIZATION (WTO) GENEVA, SWITZERLAND**

Created in 1995 as a result of the Uruguay Round negotiations, the WTO promotes international trade and investment between nation-states by serving as a forum for governments to negotiate trade agreements. Its predecessor GATT – the General Agreement on Tariffs and Trade – was established after World War II to stimulate international economic cooperation. The Doha Development Round, launched in 2001 with its primary focus on stimulating trade with and between developing countries, remains incomplete.

## **LEAST DEVELOPED COUNTRIES (LDCS)**

According to the United Nations, LDCs exhibit the lowest indicators of socioeconomic development compared with all countries in the world. The UN has identified 48 such countries, with 34 already members of the WTO and 8 currently in the negotiating process.

## **SMALL AND MEDIUM ENTERPRISES (SMES)**

SMEs are considered by the UN and the WTO as those businesses employing the majority of workers and driving global innovation. The US has no distinct metrics for identifying SMEs, but the European

Union regards a small-sized enterprise as a company with fewer than 50 employees and a medium-sized enterprise with less than 250 employees.

## **TRADE FACILITATION AGREEMENT (TFA)**

In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement at the Bali Ministerial Conference as part of a wider "Bali Package." The TFA contains provisions for expediting the movement, release, and clearance of goods, including those in transit. It additionally establishes measures for effective cooperation between customs and other authorities on trade facilitation and customs compliance issues and provides for technical assistance and capacity-building.

The Trade Facilitation Agreement will enter into force once two-thirds of its members have completed their domestic ratification process.

## **TRADE IN SERVICES AGREEMENT (TiSA)**

Trade in Services Agreement (TiSA) – based on the WTO's General Agreement on Trade in Services (GATS) – is the first multilateral trade agreement to cover trade in services (GATT is premised on merchandise trading) and was one of the major achievements of the Uruguay Round of trade negotiations (1986 to 1993). It is currently being negotiated by 25 members of the WTO including the EU. These participating countries constitute more than 70% of the world's trade in services. The talks aim to open up new international markets in service-related activities and improve rules and policy-making in areas which include licensing, e-commerce, maritime transport, and financial services.

## **DOHA (QATAR) DEVELOPMENT ROUND, 2001-**

Also referred to as the Doha Development Agenda (DDA), these WTO trade negotiations have continued since 2001 and have largely centered on minimizing trade barriers to facilitate increased global trade. Since 2008, they have stalled due to disagreements between developed countries (led primarily by the US and the EU) and developing countries (including Brazil, India, and South Africa) with respect to agricultural subsidies, industrial tariffs, and trade remedies.

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## Interview, July 9, 2014

**Q.** The ICC has myriad services to offer international businesses – training; assistance with formulating rules, policies, and regulations; help in prosecuting intellectual property crime; and finally, offering the services of the largest dispute resolution body in the world. And recently, there appears to be a concerted effort to encourage the passage of the WTO Trade Facilitation Agreement and to conclude the resolutions made at the Doha Rounds. The focus of the WTO is on lowering trade costs, ensuring the necessary infrastructure – both internal to the company as well as to the country – empowering the role of women, engaging both the private and public sectors, and streamlining the necessary financing to include SMEs and the service industries through WTO’s Trade in Services Agreement (TiSA), especially with regard to LDCs.

Is this an accurate portrayal of what the ICC desires as well?

**We would look at this from the vantage point of how is this going to be done, and how does this fit with a global-based trading system. Does it help or does it hinder? Are there elements in this that are “multi-lateralizable”? So that’s what we would look at because we have been around and took part in 9 rounds of GATT-WTO trade liberalization discussions including Doha, so we actually have a strong interest in the system supported by the WTO, which I guess is a broader role than arguing for business interests from a narrower vantage point.**

**Q** I attended the WTO's 5<sup>th</sup> "Global Review for Aid for Trade" conference which was held in Geneva, Switzerland, June 29-July 3, 2015. The major focal points were to:

- welcome additional nation-states to the WTO;
- encourage member countries to enter Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs) in furtherance of the Doha Round negotiations;
- identify the most salient obstacles to unimpeded international trade and investment concerns; and
- properly allocate the investment of billions of dollars to assist developing countries (mostly African and Asian/Pacific countries) to enter international markets and help alleviate extreme poverty through expertise, capacity-building, reducing trade costs, and fostering better infrastructure.

Do you believe that all of these objectives are possible to attain?

We very much put a priority on both the ratification and implementation of the trade facilitation agreement; we were at the origins of the discussions in the very early days of the WTO at the time of its first ministerial conference in 1996. We argued in favour of putting trade facilitation on the WTO agenda and convinced it of the need for something practical – beyond the need for dismantling tariff and non-tariff barriers – for oiling the wheels of trade and lowering trade costs by simplifying the administration of trade transactions. So we are extremely supportive; we made a big push pre-Bali for this to be concluded and to see this happen and we got over the hurdles, getting to the point where WTO members are now asked to ratify. We will do everything we can in terms of conveying that message to governments so that as many of the 161 member countries of the WTO ratify this agreement before the next ministerial conference of the WTO in December in Nairobi. So that is very much a priority.

Insofar as the broad, overarching goals that you mentioned in the context of the "Aid for Trade" conference that you attended, we very much believe that cross-border trade and investment have a huge contribution to these objectives. These objectives and others are now being consolidated in the UN Sustainable Development Goals to be agreed to by the UN in September (the successor to UN Millennium Development Goals) and we see trade and investment as ways to make those objectives materialize.

**\*UPDATE: On September 26, 2015, the United Nations launched a Technology Facilitation Mechanism (TFM) to promote science, technology, and innovation to help achieve its Sustainable Development Goals by 2030. This is the first significant UN initiative launched to support SDG implementation. Those goals are to:**

<b>Goal 1</b>	<b>End poverty in all its forms everywhere</b>
<b>Goal 2</b>	<b>End hunger, achieve food security and improved nutrition and promote sustainable agriculture</b>
<b>Goal 3</b>	<b>Ensure healthy lives and promote well-being for all at all ages</b>
<b>Goal 4</b>	<b>Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all</b>
<b>Goal 5</b>	<b>Achieve gender equality and empower all women and girls</b>
<b>Goal 6</b>	<b>Ensure availability and sustainable management of water and sanitation for all</b>
<b>Goal 7</b>	<b>Ensure access to affordable, reliable, sustainable and modern energy for all</b>

Goal 8	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
Goal 9	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
Goal 10	Reduce inequality within and among countries
Goal 11	Make cities and human settlements inclusive, safe, resilient and sustainable
Goal 12	Ensure sustainable consumption and production patterns
Goal 13	Take urgent action to combat climate change and its impacts
Goal 14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development
Goal 15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
Goal 16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
Goal 17	Strengthen the means of implementation and revitalize the global partnership for sustainable development.

**Q.** At the WTO’s 5<sup>th</sup> “Global Review for Aid for Trade” conference, WTO Director-General Roberto Azevêdo noted the WTO’s success in adding several LDCs to the roster over the course of the past year. World Bank President, Jim Yong Kim, emphasized the need to achieve integration sustainably, that is, with an eye towards dealing with the threats posed by climate change. I noted that Chad was losing the majority of its farmland to an ever-expanding Sahara Desert due to over-farming and livestock grazing; that Vanuatu’s tourism industry was devastated in May, 2015, by a Category 5 cyclone; that many of the Solomon Islands were disappearing into the Pacific due to rising sea levels; and that more than 9,000 people were killed in Nepal in April 2015 as a result of a devastating earthquake and its aftershocks.

To help ensure that trade assistance would be effective long-term, Director-General Azevêdo emphasized that the eradication of poverty and the inclusion of women were of paramount importance in this process. President Kim explained that climate change concerns had to dominate practices and policies and called for additional local sustainable initiatives, “smarter” agricultural practices, carbon pricing (i.e., a carbon tax), the end to fossil fuel subsidies, and worldwide attention to (adaptation *and* mitigation) climate change.

Where does the ICC stand?

**We are a trade-focused organization so we have a lot of sympathy for what Mr. Azevêdo is trying to do at his level and do what we can on our level which is to tackle this from a very practical point of view. So by facilitating and increasing trade in low-carbon technologies in products and services (which is one of the things that the WTO is trying to agree upon between now and Nairobi) – if they can manage this, we very much believe that trade can make an important contribution to adaption and mitigation.**

**Q.** Within the past week, the US Senate passed renewed trade negotiating authority for President Obama. As you may know, this is a controversial power granted to the President and would allow the Trans-Pacific Partnership (TPP) to go forward and



expedite trade with 12 Pacific Rim countries by helping to lower trade barriers. What is the ICC's position on this?

**We think that the Trade Promotion Authority (TPA) power granted to the President by Congress (used to be called fast-track) is essential and that the executive branch of the US government should have the capacity to sign onto the trade agreement it has negotiated – otherwise, there would be a great deal of reluctance on the part of trade partners negotiating with the US to move forward, especially if the agreement is going to be picked apart.**

**Q.** So in essence, you are saying that the US would potentially lose credibility without this action?

**Having that authority should help the various negotiations that are currently ongoing in which the US is a party; this is so for the TPP – and the TTIP.<sup>1</sup> And it is also very important in terms of another priority that we have for the multilateral trading system which is the completion of the Doha Round. Trade facilitation is just one piece of it. It is an important piece of it .... that is done in terms of negotiating the agreement. It needs ratification now and it needs to be implemented. By the way, it can be implemented already through very practical measures and it is in the self-interest of WTO members to do that.**

**Q.** At the Business and Climate Summit this past May, over 6.5 million companies representing more than 130 countries pledged to lead the global transition to a low-carbon, climate-resilient economy. The ICC was instrumental in gaining this collective commitment and acknowledged that leading businesses were already taking action to build the prosperous, low-carbon economy of the future. What exactly have they done?

**Well, companies are the creators and the implementers of the technology, and the scaling-up of low-carbon technology by business will be instrumental to the reality of a low-carbon economy. A lot of that technology I understand, and I am not an expert in this field, is already existing technology so it is really a question of business having a clear and well-established regulatory framework. A big piece of it needs to be set at the global COP 21 negotiations in December in Paris. Hopefully, a strong agreement will come out of that because companies need the certainty of a global regulatory framework in order to be able to continue to develop those technologies.**

**This is not new ground for the ICC. In 1991, before the first UN Rio environmental conference, the ICC came out with its business charter for sustainable development which we actually have revised and augmented and updated and are in the process of re-launching it as a tool to facilitate business's contribution to sustainable development, including moving towards a low-carbon economy.**

**Q.** So basically walk the talk?

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<sup>1</sup> Transatlantic Trade and Investment Partnership is a free trade and investment agreement being negotiated between the U.S. and the European Union.

**Yes, walk the talk.**

**Q.** In facilitating this summit pledge made in May and as an institution promoting responsible business growth, what is the ICC's position concerning factory farms or agribusiness as it appears to run contrary to the pledge? Could carbon pricing in this area translate into a more sustainable, plant-based agriculture such as vertical farms and grass-fed cattle – growth in areas where grazing is not possible?

**The ICC does not have any particular policy on agricultural business. We have companies that are involved in that sector. We have a very broad membership, but we don't do any specific sectoral work. All sectors of the economy need to figure out what a low-carbon economy means to them and what practical measures they have to take at their level of operations...to walk the talk as you say, and to play their part.**

**Q.** Is it possible that that situation might change ahead? The statistics are overwhelming. In the US alone, over 80 percent of corn and soy crops are grown to feed cattle and pigs. Cargill, one of the US's largest privately-owned businesses in the world,<sup>2</sup> not only portends to be "feeding the world," but additionally offers financial, industrial, and transportation services and goods. It is a major player in the business landscape – especially with respect to developing, implementing, and maintaining sustainable trading activities.

Worldwide, there has been massive deforestation, urbanization, and population growth – all impacting the growth of factory farming. This is becoming a real health hazard for both human and animal health. When factory farming emits a greater amount of GHG into the atmosphere than the transportation system, these activities must be addressed. With increased populations, we will be experiencing more of a demand for meat and dairy products. There will be less farmable land and clean water at a time when the demand for both are already quickly rising. So again, with agri-business expanding rapidly and globally, do you think the ICC might be looking to play a greater role?

**At this time, not specifically. When we develop the business charter for sustainable development or the green economy roadmap we look at the environmental and social elements relevant to business broadly-speaking and try and develop approaches that are applicable to all sectors of the economy. We have a broad variety of members and would hope that the tools we provide could be helpful to that sector as well. It seems that agri-business has a huge impact on climate change so we would hope that what we have produced would be useful.**

**Q.** Concerning carbon pricing, or a carbon tax, what is the ICC's policy position with respect to its member businesses facing new, and in some cases, quite significant,

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<sup>2</sup> Boosting over 155,000 employees in 68 countries.



costs? If a carbon tax is imposed, then those who pollute would pay. This would highly impact landfills, oil and gas refineries, coal-fired energy plants, and transport. Has the ICC adopted a particular policy position as it works with both the public and private sectors?

**We have a couple of statements that were made public in early June by our executive board in Turin at the time of the World Chambers Congress: one is on a general approach to climate change and the other is more specifically on the economic instruments to make progress on climate change. One of goals in policy-making is to try and be the bridge between business on the one hand and government on the other. We try to achieve this by creating or developing consensus positions among our constituents and put those to governments as they attempt to make their positions benefit from the consensus that emerges from business. We do not pretend that there is a business consensus on all issues, but if we can bring world business together at least on agreed principles and if we can share those principles with governments, then we hope we can make a positive contribution to governments achieving a consensus themselves. So yes, we have addressed the issue of carbon pricing and you can see that we have issued these statements.**

**Q.** Does the ICC directly work with governmental regulatory agencies?

**The ICC works with governments and intergovernmental organizations.**

**Q.** With declining world resources, many of us in the legal and business communities foresee more government control as a necessary process of distribution of those resources necessary to human survival. Already, we are seeing this with potable water. California Governor Jerry Brown started incrementally, limiting water usage in the most drought-stricken areas in his state. It has already advanced to water rationing in São Paulo,



Brazil, resulting in chaos and stifling tourism. In areas where businesses control resources that are so vital to continued existence, do you would think that there will be more government control?

**We are very much in favor of private-public partnerships to manage global challenges and I think that water shortages are one of those and that climate change is one also. I think that there is a recognition on the part of government, individual governments,**

intergovernmental organizations, in the discussions at the UN leading up to the Addis Summit for Financing for Development<sup>3</sup> and on the SDGs that governments can't do things alone; intergovernmental organizations can't do things alone and that they need a buy-in from a multi-stakeholder approach which is increasing the way that new models of government work. For example, as governments and the Internet are both based on the model of the multi-stakeholder approach, we believe that there is a need for private-public partnerships. Then you know it is possible for the inclusion of societal interests in those discussions. And companies are acutely aware of that; the shortage of water is going to be a tremendous challenge for many of them. If you look at a company like Nestlé, their chairman has been at the forefront of those discussions. And so they have as much at stake as anybody in finding solutions to these problems and I think they have manifested very clearly their desire to work with public world authorities to that end.

**Q.** Does the ICC agree that governments should eliminate fossil fuel subsidies as has been recommended by World Bank President, Dr. Jim Yong Kim? If so, would you anticipate a backlash from your petroleum-based business members?

**The Business 20 recommended to the 2012 Mexico G20 Summit in Los Cabos to end fossil fuel subsidies and other inefficient forms of support.**

**Q.** Don't the subsidies largely go to the industry, though?

I think that there is a recognition that economic instruments that are being used currently are probably not optimal.

**Q.** The ICC was founded shortly after WWI and appears to pride itself in having coined the term "corporate citizenship." What does that mean to you?

We use "business in society," "corporate citizenship," and "corporate responsibility" to largely mean the same thing, that is ...I think it is basically recognition that business is an intrinsic part of society and has a big role to play in ensuring broader societal balance. Companies in the private sector are intrinsic to the fabric of society at the national level and at the local level. There is a role for companies to play in societies that flows from that.

**Q.** Has the ICC ever refused an organization either dispute resolution or membership opportunities because of a less than favorable track record on human rights?

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<sup>3</sup> *Financing for Development* – Third International Conference, July 13-16, 2015, Addis Ababa, Ethiopia. From this conference, the following commitments were outlined: "Our goal is to end poverty and hunger, and to achieve sustainable development in its three dimensions through promoting inclusive economic growth, protecting the environment, and promoting social inclusion. We commit to respecting all human rights, including the right to development. We will ensure gender equality and women's and girls' empowerment. We will promote peaceful and inclusive societies and advance fully towards an equitable global economic system in which no country or person is left behind, enabling decent work and productive livelihoods for all, while preserving the planet for our children and future generations."

I could not speak about that knowledgeably; I really don't know. Dispute settlement is outside of my responsibilities completely.

**Q.** Some examples of such businesses would be Foxconn in China – one of the largest manufacturers of electronic equipment for companies like Apple. Not long ago – and perhaps some of the conditions have since been ameliorated – employees lived in a company city and worked 7 days a week for very low wages, constantly subject to intolerable conditions. And then there was IBM in WWII – alleged, with ample substantiating evidence, to have provided the tabulation machines for the Third Reich's concentration camp populations. IBM purportedly recouped its profits after the conclusion of the war together with Coca-Cola through the creation of its Fanta Orange project and GM with its Opel automobile. With this background, in 2004, the ICC lobbied fiercely to prevent the official United Nations' adoption of the *Norms on Business and Human Rights* which had been developed by a sub-commission of the UN's Commission on Human Rights. The Norms oblige businesses to refrain from activities that directly or indirectly violate human rights "within their sphere of activity and influence" and establish standards for determining whether they have met that obligation as well as create rudimentary mechanisms for enforcement. Is it true that the ICC opposes the Norms because they violate the ICC's insistence that all standards for corporate responsibility must be "voluntary?"

**The Norms on Human Rights were a misguided construct. Through those Norms, the same responsibilities – that are the responsibilities of governments for the protection of human rights – would have been imposed on companies. To conceive of an international instrument that would not clearly differentiate between the roles of sovereign states to protect human rights – from the roles of a private actor like a company – was misguided. After the Norms discussion, the ICC worked very closely with the person who was appointed by the then Secretary-General of the UN Kofi-Annan,<sup>4</sup> John Ruggie,<sup>5</sup> to work on a much more constructive approach that led to the UN Principles on Business & Human Rights which is something we believe very strongly in and are still working very closely with the UN in implementing. We are now at the phase where countries are working on national implementation plans.**

**Q.** How would you differentiate between the two?

**These are UN principles that the UN developed with participation from business including the ICC.**

**Q.** But separating those from the Principles on Human Rights – what is the

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<sup>4</sup> Served as UN Secretary-General from January 1997 to December 2006.

<sup>5</sup> Acting UN Special Representative on Business & Human Rights.

fundamental difference?

The fundamental difference is that one recognizes the distinctive roles and responsibilities of the various parts of society in promoting and respecting human rights whereas the other one created a misunderstanding of what those roles and responsibilities are.

**Q.** But once again, if a private business with a known unfavorable, universal human rights record were going to ask the ICC for its help in either dispute resolution services or policy-making, would any such request be denied because of that business's negative reputation?

The principles are UN principles and we were called upon as a global business organization, along with other international organizations to participate in their elaboration and now we are in the phase of implementation.

**Q.** But would the ICC ever say "no" to a company with a bad reputation?

The ICC is a place where businesses come voluntarily. Membership in the ICC is voluntary and if companies feel we can be helpful to them, they become members and use our products and services. We try to generate consensus among business worldwide across sectors and geographies and mobilize business through collective global business action ... through policy recommendations, rules, dispute resolution instruments, providing a global forum for chambers of commerce. ICC facilitates cross-border trade and investment and international business transactions because it believes in "world peace through world trade" as did ICC's founding fathers who were known as "Merchants of Peace." The ICC believes that if people trade and invest and learn to know about each other by exchanging goods and services, they are less likely to exchange bombs and that this would contribute to global prosperity and promote world peace. This was the aspiration behind the founding of ICC in 1919. So we still very much believe in that overarching objective and we try and put it into practice in very concrete ways in everything that we do. We organize every two years an annual congress of chambers of commerce so that they can come together and exchange best practices on how to serve their small and medium-sized company members. That's one way of contributing to world peace through world trade. And we develop rules to resolve peacefully commercial disputes through ICC's dispute resolution, via arbitration or other types of dispute settlement services that we have. We bring recommendations to the WTO and other IGOs (intergovernmental organizations) in ways that would promote cross-border trade and investment so that, for example, cross-border trade and investment can be an enabler of the realization of sustainable development goals. We think that all of that goes to business fulfilling its corporate citizenship role in improving the world.

**Q.** And with this increase in global trade, the potential for exponential growth in the ICC appears to be on the horizon. With more and more countries joining in world

trade, I would think that the ICC's membership roster would be growing and its services more in demand...especially with the potential now of completing the objectives of the Doha Rounds and implementing FTAs. Are you seeing an uptick in demand for ICC services by businesses in more countries?

**We would hope that our role in an increasingly integrated global economy would be a global business organization that tries to bring businesses together and have it interact with intergovernmental organizations, for example, to foster a stable and more prosperous global economy and find global solutions to global challenges like climate change and issues of that nature. But the center of economic gravity is shifting eastward [and south] in the world and that is a fact. So the countries that participate in world trade ebbs and flows during history and is not a static thing. We are seeing that shift and indeed an increasing number of companies in emerging economies and also from developing economies taking part in international trade and investment. Most of the investment flows now have changed in the sense that they, until fairly recently, were basically developed OECD<sup>6</sup> countries investing in other countries in the world. We now have many countries from the south investing in countries from the north and what we are seeing increasingly, which I think is a very positive thing, is countries from the south investing in countries from the south.**

**Q.** Assuming that more nation-states do fully participate in integrated global trade and investment causing a commensurate increase in ICC membership and a greater demand for its services, do you believe that the ICC has the necessary staff and capabilities resources to handle this?

**What is true is that the number of companies engaged in global commerce is increasing and we hope that they see value in the global business organization that is the ICC. We have global coverage in a sense that we have a global network of 90 or so "national committees" that bring together the ICC business membership in these countries and we have what we call "direct" members in another 30 or so countries where we don't have an ICC national organization but where companies or business associations can join ICC directly. But in most countries, 90 of them, we have a local ICC organization called the ICC national committee, which is either an independent structure or is housed in an existing business organization – be it a chamber of commerce or an industrial federation ... it really varies according to the country.**

**Q.** In addition to its alternative dispute resolution resolutions (ADR), the ICC provides businesses with full, contractual templates and related forms as well as individual clauses. These services were bolstered as a result of the ICC Study on Developing Neutral Legal Standards for International Contracts. According to the ICC's website, more than 130 countries

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<sup>6</sup> The Organisation for Economic Co-operation and Development (OECD) is a forum of countries self-described as committed to democracy and the world economy by providing a platform for business entities to compare policy experiences, identify sound practices, and coordinate its members' domestic and international policies.

have used its services and over 20,000 disputes have been settled since its founding in the early 1900s.

**Yes, and the ICC has different types of clauses, for instance, an anti-corruption clause can be included in a contract.**

**Q.** And as international trading partners continue to grapple with matters of “choice of forum” and “choice of law” – that is, where the dispute will be heard and under which country’s laws or private sector rules will the conflict be decided – these clauses appear to offer well-prepared material. I see that the ICC has a well-developed dispute resolution body (DRB) which can be composed of a single arbiter or a panel of three – depending upon the agreement of the parties and the nature of the issue. The ICC appears to invoke a rigorous process of arbiter selection, requiring each candidate to disclose fully any potential conflict of interest which could possibly taint his or her decision. Also, the arbiter must be of a nationality different from those of the disputing parties.

**The ICC Court of Arbitration has existed since 1923 and is a truly global institution based on rules developed through global business. They are developed by practitioners, including in-house counsel.**

**Q.** But your way of paying costs is different. You have a filing fee of \$3,000 USD with a cap of \$500,000 in expenses depending on the value of the case. I was pleased to see that even if the parties have pre-agreed in a contract that the losing will pay the arbiter’s or mediator’s costs (usually because one of the parties holds a dominant position), it appears that if the parties do subject themselves to the jurisdiction of the ICC, ICC rules may apportion the costs between the parties – regardless of contractual language used – by weighing their respective market standings and influence involved. This seems to be a much fairer process.

**We always try to be balanced with everything that we do. This applies to policy-making as well as dispute settlement. For example, we try and help those small and medium-sized companies engaging in international trade. We have a whole suite of model contracts that have been developed by our ICC Commission on Commercial Law and Practice, especially for smaller companies that do not have huge in-house legal resources. These contracts allow them to start the process of establishing contractual relations with a potential international trading partner. Afterwards, they will of course turn to their respective legal counsel to get specific advice. But what we provide are models that can be used to establish various types of different business relations and the suite is growing in order to provide companies with templates that help promote business relationships in a way that is helpful to both parties.**

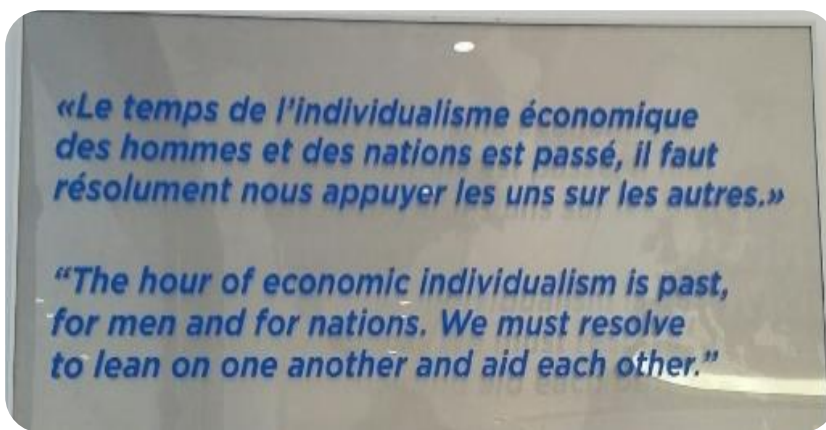
**Q.** So, perhaps, by providing businesses with model template contracts and clauses – especially those which include anti-corruption clauses – might be the ICC’s way of demonstrating its commitment towards corporate citizenship and to a fair balance among its shareholders? By offering such clauses, do you believe that certain issues are raised,



like environmental degradation, which may prompt businesses to think differently about what issues are necessary and important to be addressed in their trade relations?

Through ICC tools and policy recommendations, we seek to address the interlinkage between global issues of importance to business; we are constantly examining what we can do as a global, non-sectoral, horizontal business organization. We have 11 policy commissions that look at things from different thematic angles, but then we are able to get these commissions to work together to or to look at an issue from different perspectives to try to blend these and reach a consensus.

**Q** The ICC's website states that business emissions trajectory will peak around 2020 and globally achieve net zero emissions well before the end of the century while keeping cumulative carbon emissions within one trillion tonnes as required by the UN's IPCC (Intergovernmental Panel on Climate Change). The ICC also believes this objective is



achievable and compatible with continued economic growth and human development if all actors work together in this urgent and long-term climate battle. With unchecked greed and corruption prevalent in many governments and businesses, as well as with a media and social networking drive to consume more and more, how is this possible?

**We have always taken the position that environmental**

protection and caring for the environment is not incompatible with economic activity and this is why the actors that are involved in business on a day-to-day basis need to work together with the governments that are going to set the overall frameworks for this to function. I think that we are seeing a lot more of that. We are seeing, for example, with this business and climate summit that took place in May which was well in advance of the actual COP21,<sup>7</sup> that obviously there is a whole preparatory process to the COP in which business is closely involved. We thought it was very promising to see what the organization of an actual business summit could clearly establish – not as an afterthought, but rather as kind of a prerequisite to discussions – that business really wants to play its role in being part of the solution on this and is, in fact, the enabler of whatever framework governments agree upon. And we hope they will agree upon something meaningful.

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<sup>7</sup> Conference of Parties meeting in Paris in December, 2015, with the goal of honing a universal action plan on fighting climate change.

**Q.** Was this a first time an ICC sponsored business and climate change summit has taken place?

**No, we have taken part in that process ever since the inception of the UNCCC<sup>8</sup> and before with the discussions that led to the Kyoto Protocol.<sup>9</sup> Historically, we have been a part of the discussions that started with the *Brundtland Report on Sustainable Development* and a relatively narrow-definition to something more broadly-defined with three pillars – economic, social, and environmental. And we have been a part of the whole process of the UN in the Rio and the Rio+ discussions.<sup>10</sup> In the 1990s, the ICC established the World Industry Council for the Environment which then merged with another organization and created the World Business Council on Sustainable Development – another business organization focused on sustainable development but involving larger global companies. ICC has been involved in these areas for a long time.**

**Q.** So you are working with the scientific community as well?

**We work with anyone who wants to work with us.**

**Q.** With 98.7% of the scientific community concurring on this issue, NGOs and intergovernmental entities have also been key to the dissemination of critical information in order for world citizens to take notice and act accordingly. What role has the business community played in this regard?

**I think that business looks at it from a very practical standpoint. They see, to be very honest, this to be a business opportunity. I think that it is the best way to coalesce business interests playing a part at a practical level in making this happen by showing to them the opportunities that arise from climate change. And if they are able to put their capacity to bring people, technology, innovation, and capital together to develop technology enabled by trade and investment, and make it as widely available as possible at a scale that is needed to have an impact, that will make a tremendous contribution to address climate change. Business is already rising to the challenge because it is already doing a lot, but if COP21 provides companies with a practical overarching global regulatory framework, I think that will help tremendously because it will set some degree of certainty on their capacity to plan for the development of those activities in the long term.**

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<sup>8</sup> The United Nations Climate Change Convention.

<sup>9</sup> Also known as the Kyoto Protocol, adopted in Kyoto, Japan in 1997, the agreement is an international treaty extending the 1992 United Nations Framework Convention of Climate Change (UNFCCC) that obliges nation-state parties to reduce greenhouse gases.

<sup>10</sup> Also known as the *Earth Summit 2012* and the *United Nations Conference on Sustainable Development* (UNCSD), this was the third international conference on sustainable development to attempt to reconcile universal economic and environmental goals. It involved 192 UN nation-state members, businesses, and NGOs.

**Q.** Climate change realities are being manifested through extreme weather events. In the US alone, fires and drought have plagued the Southwestern and Northwestern states that grow the majority of our produce. Forest fires are devastating entire regions and communities and exhausting resources in the fight. Portions of the Midwest and almost all of the Southeast have been, at one time or another in 2015 alone, inundated by floods – threatening crops and livelihoods. Perhaps an East-West water pipeline to help alleviate the catastrophic effects of climate change could be a potential business opportunity? And with rising ocean waters threatening much of the Atlantic Coastline – could there not be more emphasis on developing and perfecting the desalinization of saltwater? Another example of business impact in the US is the insurance industry. Purchasing and/or developing real estate along the Atlantic Coast is facing new challenges. NASA is already in the process of moving its base inward – the costs are going to be high, however, if not prohibitive. And if nothing changes radically, the trajectory for the next 75 years is dire – especially for states like Florida, Mississippi, and Louisiana as well as for the entire City of Manhattan which will largely be under water. So the insurance industry must rethink its strategy in maintaining a sound bottom line. In devastation, there do appear to be new business opportunities as you say.

**There was an international conference on disaster risk in Sendai, Japan in March (2015) which was a UN process, but we contributed a discussion paper essentially to highlight the economic disruptions that can arise from such disasters and what companies had learned in terms of their own lessons in planning for these things and what they could suggest that governments might learn from their experiences in terms of putting in place some basic mechanisms and policies to look at those. So again, we look at that very much from the standpoint of the ICC playing a constructive role on behalf of business in terms of discussions that have an impact on society at large and in which there is a need for global solutions and approaches to which we feel we can contribute by bringing local businesses together and by putting forward views and recommendations that hopefully are the product of a discussion, a consensus among the membership that will inform and help governments.**

**Q.** In 2013 in northern Japan, the tsunami leveling of the Fukushima nuclear power plant rendered that part of Japan a toxic waste dump. Most was farmland in that region has now been rendered unusable. Are privately-operated utility businesses also included in these discussions?

**We brought a very big business delegation to that conference because engagement between stakeholders, especially between business and government, and that interplay allows ideas to percolate and can contribute to balanced solutions.**

**Q.** Saudi Aramco, one of the world's largest producers of crude oil, is witnessing the price of oil decrease dramatically. This is a country largely dominated by continuous sunshine and could be an exporter of energy extracted from clean sources as

opposed to nonrenewable fossil fuels. Does the ICC help businesses review the science and topography to help see the potential opportunities?

One of the things that we try to do is to identify new developments and help businesses understand what the consequences are, or going to be. For example, ICC's Commission on Intellectual Property commission has had discussions at its recent meetings on the impact of 3-D printing from an intellectual property point of view, to understand what those impacts are going to be. So (1) it is our role to provide input into policy discussions – that are not usually initiated by us, they are initiated by governments. In the consultative process, we are asked as a business representative organization to provide input and to participate. (2) We have a role in producing normative products that help business to help itself – these are model contracts, these are rules, including dispute resolution and everything else that we do to oil the wheels of trade that is done on a voluntary basis and that is developed by business for business use. And (3), we are looking at the future and seeing what issues are on the horizon and exploring how we can deal with them.

We like to think of ICC policy work as constituted of these two main elements – policy advocacy and rules-writing – as two things are very much interlinked and they feed off one another. This combination is probably a defining characteristic of the ICC as a business organization. The ICC's role in policy advocacy is to try to formulate recommendations to influence discussions and processes which are not initiated by us but in which business has a stake and can help bring to fruition. Of course, we are always mindful of the overarching mission of ICC to promote cross-border trade investment in an environment that allow these to flourish. The other part of ICC's role is the rule-making part, which is the production of rules, codes, model contracts etc. that can help businesses conduct international trade and investment.

**Q.** Large trading blocs like the EU have been experiencing economic problems with several of its member countries – particularly with Greece most recently. Puerto Rico has had a similar experience with the US; there has always been that portion of the populace who has wanted independence yet there remains an intricate economic tie. Is the ICC prepared to help rebuild economies in territories or countries that have detached from the larger trading unit? Is there more of a focus on developing the sustainability of smaller regions?

The ICC works at different levels. Here at the level of the ICC international secretariat, our role is to convey the results of ICC's work to the intergovernmental world – that is, to global intergovernmental and other types of international institutions. But then there is a division of labor within the ICC that is such that we count upon our national committees – which bring together ICC members at the national level – to take the work that we do to their national governments. And, of course, one of the ways that they can make themselves relevant in their national context is showing the relevance of the international work that ICC does to the national context. The members of ICC, at the end of the day, are companies that exist in some kind of a national jurisdiction. What they have in common is that they are interested in furthering international trade and investment because that is part of their activity and they are keenly interested in that. They will get involved in discussions at the national level and what we hope is that the things that ICC tries to do to

further consensus-building and solutions to global challenges also have something to be learned from, and are applicable at, the regional level or national level – although, as a global, multi-sectional, business organization, the focus is at the global level. What we see, though, is that with the global economy being increasingly integrated that there are economic shocks that can be very localized but that will have ripple effects throughout parts of the world that would never have thought that they would be affected, because of the global economic integration. I remember Australians telling me that their stock market took a hit after the banking crisis in Cyprus. It was difficult to understand how a European economy, not even the size of Tasmania, could have an impact on the Australian stock market and the value of companies there. Global economic integration has many benefits in the sense that it shows the connection between various policy fields and the need for policy and regulatory coherence on a global level. Yet it also has downsides that need addressing. Where the Asian financial crisis had an impact on the global financial system is much in the same way as that of the global financial crisis of 2008, which started out, in part, in the US with the subprime crisis, and ended up affecting the whole of the global financial system. This required a global approach to rethinking the financial regulatory systems and that was done, in part, by the G20<sup>11</sup> with a large financial regulation track of its work and the Basel Committee<sup>12</sup> in trying to conceive of new prudential rules. These events had a global impact in terms of policy ramifications and economic consequences.



And now on to the Paris talks in December?

We are preparing.

## About the Interviewee

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Stefano Bertasi was born in Montreal and grew up in Ottawa, Ontario, Canada. Bertasi secured his Master's in International Political Economy from the Norman Paterson School of International Affairs, Carleton University in Ottawa. Following his graduation, he worked for the Canadian Council of Chief Executives (formerly the Business Council on National Issues). While working in Canada, Bertasi worked on national and international economic issues, including trade issues. He has spent the last 19 years at the International Chamber of Commerce (ICC) and currently serves as its Executive Director of the Department of Policy and Business Practices.

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<sup>11</sup> Also known as the “Group of Twenty,” the G20 is an international forum for central bank governors and governments from 20 major economies including the US, the UK, the EU, China, India, France, Germany, and Japan.

<sup>12</sup> The Basel Committee on Banking Supervision (BCBS) is a group of banking supervisory authorities established in 1974 by the central bank governors of the top 10 world economies. This forum provides for regular cooperation on banking supervisory matters and its primary objective is to improve the quality of banking supervision globally.