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# **On the High Road:** Trade, International Standards and National Competitiveness

### Introduction

What's fair when it comes to setting the terms of market access? The rules of the World Trade Organisation (WTO) were meant to answer this question, as well as settle disputes surrounding it. On these grounds, it was also sold as the best means to open markets, encourage economic development, and facilitate economic exchange between countries, large and small – in effect, lifting all boats. Yet now, some ten years later, the organisation is facing a tidal wave of charges regarding the uneven power of its member countries and persistent barriers to exchange. Some of the most vocal critics hail from the developing world. Their frustration over unequal market access, agricultural subsidies, and the inability 'to right the rules' of trade culminated in disruption of the 1999 WTO meetings in Seattle, the collapse of WTO talks at Cancun in 2003, and the cautious optimism over recent gains in Geneva.

At issue is whether the rules of international trade are being used to hold up or push ahead prosperity in the developing world. Besides the enormous problems of agricultural-related trade, rules of origin and various international and unilateral standards are especially contentious. They range from WTO-approved sanitary and phytosanitary[1] measures to other potential non-tariff barriers, such as health and process standards, including worker rights and certification of environmental stewardship. A long history of these measures being used for protectionist purposes made their inclusion within the WTO difficult from the start. To this day, linking a country's market access to its compliance with ILO core labour standards is a matter of strong debate. Indeed, suspicions over the WTO as a genuinely global institution has turned old enemies into new allies, with both free traders and advocates of poverty reduction in the developing world now describing 'free trade' as a better means to fair trade than what currently operates under the WTO.

Such ongoing dissatisfaction may make it seem as if raising the bar in the developing world is tantamount to shutting the door on national competitiveness, economic growth and development. But recent trends suggest just the opposite. As later explored, the use of public and private standards over the past decade has opened doors that otherwise might have remained shut for moral, legal, health or economic reasons. Examples include buyer-led solutions to supply chain management in China, the development of garment industries in


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1 *'Phytosanitary' refers to plant health standards (e.g. free of pests).*

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countries where none might otherwise have existed, the use of public–private partnerships to assist countries in meeting international quality standards and, finally, a wide variety of voluntary certification schemes that extend across the globe.

Collectively, these examples suggest how the global marketplace is changing. Prices obviously still matter, but the best price may no longer be the cheapest price. Today, company and stakeholder reports on environmental stewardship and worker rights protection are readily found and actively monitored in the public arena. Innovations in technology and the issue networks that followed in their wake have imposed ‘moral costs’ this past decade, ones meant to insist that ‘fair trade’ and ‘virtuous production’ are the only basis for doing legitimate business. Perhaps for this reason, a growing number of US and EU manufacturers and buyers are no longer looking to avoid the ‘spotlight’ of stakeholder scrutiny as much as seek its light as a value-added and supply change management device.[2] In the past two years alone, members of the US-based Fair Labor Association and the GAP Corporation have released reports detailing their supply chain, going so far as to name suppliers violating their codes of conduct.

This linkage of market access to vaulted purpose now runs through many a supply chain, but it is the growing number of preferential trade agreements attempting to do the same that reflects an even more recent trend. It is one that holds governments as accountable to virtue as the businesses on which they depend for job creation and tax revenue. Preferential market access in recent years has been linked to such goals as limiting civil conflict, arms sales, job losses and worker exploitation.

The positive economic impact of these linkages on developing countries is raising important questions with regard to conventional wisdom on foreign investor behaviour. Put simply, it is no longer so certain that the linkage of market access and international standards compliance in the developing world has to come at the price of foreign direct investment and national competitiveness. Rather, a new ‘high road’ appears on the way, one deeply tied, however, to trade rules operating at the regional, bilateral and commodity-specific level. In what follows, I focus especially on these trade arrangements as they offer the best point of entry into identifying new patterns of globalisation and economic cooperation and conflict under way.

2 *Debora L. Spar, ‘The Spotlight and the Bottom Line: How Multinationals Export Human Rights’,* Foreign Affairs, *March/April 1998.*

**Taking exception: a moral history of conditional trade**

The drive to create international standards to govern trade dates back centuries. Its link to issues of social and economic well-being is most famously connected to the anti-slavery movements that grew in influence around the mid-1700s in Europe and later the United States. A series of national laws and international conventions prohibiting trade in slaves, and slave and indentured labour-made products resulted. Countries also imposed laws and signed agreements to ban the import of goods owing to their impact on public health, animal welfare and the environment. In some cases, the goal was to change practices in the exporting country and, in others, to limit challenges to 'public morality' at home. The 1912 International Opium Convention is an example of an effort to affect both sending and receiving countries. The Convention not only set out to control trade in this narcotic, but also to restrict its use in both sending and receiving countries, including provisions to shut down opium dens and make possession of opium illegal.

The idea that countries had a right to take such 'moral exception' to the practices and products of other nations persisted even as increases in global trade were pushing for greater harmonisation of standards. In fact, even the world's first general multilateral trade agreement included an 'exceptions' clause. Specifically, the 1927 'Convention Relating to the Simplification of Customs Formalities' allowed countries to exempt themselves from providing market access and equal treatment in cases where other and future obligations to protect 'the health of human beings, plants and animals (particularly the International Opium Convention), . . . [and] public morals' existed.[3] These exceptions appeared in other commercial treaties of the time as well, but later took a most comprehensive form as Article 20 in the next major multilateral trade agreement – the 1947 General Agreement on Tariffs and Trade (GATT), precursor to the WTO.

Article 20, also known as the 'exceptions clause', allowed member countries to depart from core GATT principles only as long as the exceptions were 'not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or [act as] a disguised restriction on international trade'. Further, Article 20 could be invoked only with respect to a select number of issues. Chief

3 *Quoted in Steven Charnovitz, 'The Moral Exception in Trade Policy'*, Virginia Journal of International Law *38 (1998)*.

among them, as earlier identified, was a country's need to protect 'public morals' (Section a) and 'human, plant and animal life and health' (Section b). Article 20 also had a section allowing countries to invoke the exception clause to conserve 'exhaustible natural resources' (Section g) and to ban goods made with prison labour (Section e).

Prior to the GATT, a number of developing countries also tried to incorporate related provisions in the failed International Trade Organisation, but as a means to protect themselves against substandard working conditions in other countries. They feared that these conditions in an open market could lead only to a race to the bottom and threaten employment levels in their own country. The 1944 Preamble to the International Labour Organisation (ILO)'s constitution made a similar observation, finding that 'the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve conditions in their own countries'. Until recently, however, compliance with ILO core labour standards was not linked to trade agreements. Even now, they are only through bilateral and regional trade agreements, and non-reciprocal preference programmes such as the Generalised System of Preferences (GSP).

**The value of being different: export competitiveness as standards compliance**

The GSP programme offers reduced tariff rates on a wide variety of goods. For over 30 years, it has been an important means for developing countries to pursue economic development through international trade. And, although the US and EU GSP programmes differ in important ways, both equally demonstrate how international standards may affect a developing country's export competitiveness. Specifically, the US programme has included since 1984 a sanctioning mechanism that allows any party to submit a petition against a beneficiary country for worker rights violations. If the petition is successful, the country's preferential tariff rates are suspended until conditions improve. The EU programme also allows for the suspension of privileges, but in contrast to the US programme it includes an incentive-based ('GSP Plus') component.

The Indian government recently challenged the EU's 'GSP Plus' programme. It argued that differentiated tariff rates were a violation of the WTO's 'enabling

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clause', the provision that allows for 'special and differential treatment' for all developing countries. In April 2004, the WTO found, however, that so long as *similarly situated* GSP beneficiaries have equal access to incentive programmes then these benefits are 'non-discriminatory'. This is a landmark decision, and is one that opens the way to differentiate the tariff rates of developing countries in terms other than their per capita income levels. It lays the legal groundwork, in other words, for campaigns to link a developing country's market access to the 'virtue' of its national systems of production, and the political and social institutions that support them.

The newly proposed EU GSP programme, set to run from 2006 to 2015, can only drive this campaign forward. It takes sustainable development and good governance as its goal, promising to offer further reductions in tariff rates to developing countries that accept core international conventions regarding social rights, environmental protection and good governance.[4] The programme builds on the GSP programme that has been in operation since 2001. It includes the 'Everything But Arms' (EBA) initiative offering duty-free and quota-free access to the world's 50 poorest countries. At present, over thirty Sub-Saharan African countries benefit from the EBA programme. Textiles comprise over 70% of EBA imports, making the case that markets respond rather quickly to these trade initiatives.

With the variety and nature of trade agreements increasing, the export competitiveness of developing countries is becoming linked not only to their capacity to meet international standards but also to their securing trade agreements that reward them for doing so. Cambodia is one such example. Its bilateral textile trade agreement with the United States, first signed in 1999, promised increased US market access to Cambodia's textile and garment sector in exchange for improvements in its working conditions. The ILO monitors the situation, making its findings publicly available, going so far as to list the names of factories in violation of Cambodian labour law.

Still, rather than fleeing from the scrutiny, the overseas business community in Cambodia came to appreciate that public accountability was a means of competitive advantage. In fact, neither employment nor foreign direct investment in the garment sector declined in the wake of the agreement. Instead, both increased, alongside

4 ***The initial criteria are laid out in EU Council Regulation 2501/2001.***

greater pressure for the government to become more efficient and responsive to the needs of various stakeholders. That is to say, a push for long-overdue improvements in social and economic governance arose out of this trade agreement, creating most notably an arbitration council and a tripartite advisory body comprised of labour, government and business representatives.

Conventional wisdom nevertheless argues that linking a country's market access to its compliance with international labour standards is sure to discourage investment, and hurt the export competitiveness of developing countries especially. But this may not be the case. Take Lesotho, for example. The country is a founding beneficiary country of the US African Growth and Opportunity Act (AGOA), a trade programme implemented in 2000 to increase economic openness, good governance and environmental protection in Africa. It allows for duty-free and quota-free access to apparel made in Africa from US fabric, yarn and thread. 'Lesser developing' beneficiary countries, such as Lesotho, are entitled to similar terms, but for fabric imported from anywhere in the world. These terms have made Lesotho an attractive site for foreign investors. Its garment exports to the US also increased 90% between 2000 and 2002.

AGOA beneficiary countries are also at risk of losing benefits if found deliberately violating a range of social and human rights. Swaziland, for example, nearly lost its AGOA beneficiary status for failing to protect workers' rights to strike and their freedom of association. In April 2004, a new Industrial Relations Act was put in place, partly in response to pressure from local business groups. To understand why, it bears keeping in mind that each county's duty-free apparel exports fall under an AGOA-wide import cap that increases annually. As such, the race is on to export apparel to the US ahead of others in the region, but not at the risk of losing beneficiary status. The latter concern will quickly become part of the calculus if the US government enforces the social, economic and political principles underpinning the AGOA. It will do so by putting a market price on an ever-widening array of standards (e.g. political regime type).

Many developing countries are quick to claim the imposition of rules are not of their own making, but this movement to marry market access to morality may very well shift advocacy for 'fair trade', changing it from a

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largely ‘North–South’ and ‘North’ NGO-driven campaign to one that pits developing countries against one another. There are already signs of this process under way. The bulk of anti-dumping cases brought before the WTO have been between developing countries. Now, with the end of the Multi-Fibre Agreement (MFA), textile and garment business associations in the developing world are joining with counterparts in the US and EU to lobby the WTO against the distributive consequences of a post-MFA world, the origins of which they attribute not to market forces but instead to the ‘unfair’ trade practices of others, especially China. Thus far, supporters of this campaign, the Istanbul Declaration of Partners in the Global Alliance for Fair Trade in Textiles and Clothing, have made no mention of labour and environmental standards, limiting themselves instead to currency valuation and state subsidies alone as ‘unfair’ practices. But the historical precedent certainly exists for possibly doing so.

**Looking ahead: from old divisions to new partnerships**

These new alliances imply that ‘taking exception’ to the practices of another country is only a principled means to foster development if some scope exists to sanction non-compliance elsewhere as well. The trade agreements that pushed Cambodia and Lesotho where they are today, in other words, should not be read as ‘models’ or in testimony to the triumph of regulatory schemes. Rather, the fragility of their success, hinging as it does on so much else, means that regulations need to be combined with forces at work in the global economy. Industry-wide voluntary schemes, for example, ensure the value of good practices, while public–private partnerships work to keep their price within means. They do so by improving government operations, channelling information to lower the costs of compliance with international standards, and giving means to small, otherwise marginalised businesses in the developing world. Access to the benefits of these private and quasi-private schemes is in some cases conditioned on the support of framework agreements, such as the Organisation for Economic Development’s Guidelines for Multinational Corporations.

In other cases, industry members police each other as a means to guarantee market access for all. The fight to grant normal trade relations to China, for example, was won in part because of the US business community’s support of voluntary business principles to guide their business operations in that country, and especially to prevent the use of prison-made goods in export market supply chains. These promises open the way for public scrutiny and ideally better standards. The Kimberly Process, for example, claimed that it could certify countries prohibiting an outflow of illegal gems are as good as free from 'conflict diamonds'. But the initiative quickly ran into criticism for not sanctioning members who violated the rules. In July 2004, the Republic of Congo was removed from the membership list, earning the industry kudos for finally taking a stand.

As the above examples suggest, using market access to improve corporate social responsibility is not the providence of any one type of group alone. The same can be said of sustainable development as well. But to better understand how international standards categorically affect market access, more work on the part of governments must be done to ensure that the challenge of standards compliance is more opportunity than a constraint against economic betterment.