

Geoff Moore
Editor

The International Society of Business, Economics, and Ethics Book Series

Fairness in International Trade



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Fairness in International Trade



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Introduction to Fairness in International Trade

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The chapters in this book all have their origins in the International Society for Business, Economics and Ethics (ISBEE) World Congress that was held in Cape Town, South Africa in July 2008 (see www.isbee.org) under the title ‘Global Fairness – Local Integrity’. ISBEE, as many will know, aims to be a truly global association which draws together scholars and practitioners from all continents. In doing so, it helps to counter the kind of parochialism that is all too often a temptation – to work with others and write for others that share similar cultural assumptions. South Africa in general, and Cape Town in particular, was a good venue to host such a conference with its history as a meeting place for the peoples of the world.

The World Congress of ISBEE is sometimes referred to as the Olympics of Business Ethics conferences because it meets every four years. A lot of work, however, takes place in between Congresses because one of the key contributions that ISBEE makes is to co-ordinate Global Research Projects. These are loose but global networks of academics working on related areas with the World Congress as the initial focal point for the dissemination of that research. I had the privilege of co-ordinating one of the two Global Research Projects for the 2008 World Congress – Fairness in International Trade and Investment – and the papers from that research project form the second part of the book. The first part of the book contains a careful selection of other papers from the World Congress.

Part I: Economic Development, Wealth Creation and Africa

Given that the World Congress was being held in Africa for the first time, there is a deliberate bias towards African scholarship here with three of the five chapters being by African authors. This part of the book begins, however, with a chapter based on an edited version of one of the keynote addresses given by **Paul Collier**. We were, indeed, privileged to have Prof. Collier with us. His work on development economics and African economics in particular is well known. In his speech he reviewed the economic divergence of the poorest one billion from the other five billion people in the world. These people, he argued, lack any credible hope of ever

46 emerging from their poverty, and their position has been made worse by commodity
47 booms and the recent rise in food prices. He criticised the ‘bottom of the pyramid’
48 solution which sees people in the developing world as consumers, but also criticised
49 micro-credit which sees them as entrepreneurs. What these people need from busi-
50 ness, he argued, is to become wage-earning producers in manufacturing industries.
51 And to enable this solutions are needed to both restrictive World Trade Organisation
52 (WTO) policies and the powerful agricultural lobby in developed countries. So here
53 the WTO emerges as a key player in enabling the bottom billion to break free from
54 the chains of poverty – an issue that is considered in much more detail in the second
55 part of the book.

56 The chapter by **Georges Enderle** is a more reflective piece, but nonetheless is
57 related both to Paul Collier’s chapter which precedes it and to the three African
58 chapters which follow. He considers the concepts of wealth and wealth creation
59 which, as he argues, are often assumed in discussions of business ethics – we are all
60 *for* wealth creation. But Enderle shows that this is often because we have either
61 a simplistic understanding of wealth (as in making money), or a vague concept
62 (as in adding value). Instead, he argues that the concept of wealth is a rich and
63 varied one – one that includes physical, financial, human and social capital wealth,
64 takes both private and public forms, involves a consideration of both wealth cre-
65 ation and distribution, and has both material and spiritual aspects. Sustainability,
66 and therefore intergenerational considerations, are also essential elements of any
67 serious consideration of wealth creation. Hence there are challenges here for busi-
68 ness and business ethics in considering the purpose of business – what it is for,
69 what kinds of goods it produces or services it provides – rather than just how it
70 goes about its business. In relation to development economics, this raises a ques-
71 tion about a single-minded concentration on material wealth measured in monetary
72 terms, important as that clearly is. Perhaps a wider understanding of wealth, and
73 a focus on well-being and quality of life measures rather than just GDP per head,
74 would help to ensure that development is truly beneficial to those whose need is
75 greatest.

76 **Symphorien Ntibagiriwa’s** chapter links with the issues of wealth creation
77 and economic development. He makes the argument that cultural values under-
78 pin the pursuit of self-interest and rational choice that have led to growth and
79 development in western economies. That these cultural values are fundamental to
80 economic growth is often an unstated assumption, and an assumption that then
81 leads to the simplistic conclusion that self-interest and rational choice (*western* val-
82 ues) can and perhaps should be universalised. In showing that this is not the case,
83 Ntibagiriwa derives a powerful explanation for the failure of economic development
84 in sub-Saharan Africa and, by considering shared African values, he argues for the
85 development of an ‘Ubuntu economy’ which is true to Africa’s cultural heritage.
86 The concept of Ubuntu has an ontological basis to do with the nature of our shared
87 humanity but also normative implications in fostering harmony in both society and
88 with the ecological environment. There may be challenges here for Collier’s pro-
89 posals which may seem to suggest, at best, the export of a western economic model
90 and, at worst, western economic colonialism.

91 **Munjaradzi Murove's** chapter on Black Economic Empowerment (BEE)
 92 reviews the problems with both capitalism as applied in South Africa (that it had
 93 tamed Africans into being victims of expropriation) and colonisation (that it had
 94 expropriated African resources and was, therefore, a form of legalised robbery). He
 95 then moves on to the commonplace that political independence has not meant economic
 96 independence or control; the problem remains that western countries are in
 97 favour of economic decolonisation only in so far as it provides fertile ground for
 98 perpetuating western economic interests. This leads on to a consideration of the
 99 policy of BEE, an attempt to draw indigenous Africans into capitalist forms of business.
 100 But he argues that this has merely served to produce a partnership between
 101 an African ruling class and international capitalism and that its benefits have not
 102 been widely shared. Drawing on Veblen's Institutional Evolutionary Economics, he
 103 argues that BEE will merely create a class of African capitalists whose economic
 104 standing will make it impossible for them to be in solidarity with the majority of the
 105 African poor.

106 The first part of the book concludes with **Christine Gichure's** chapter in which
 107 we see the impact of economic colonialism very directly as she discusses the case
 108 of the Kenyan cut flower industry. Here the (quite possibly ignorant but nonetheless
 109 not innocent) demands of western consumers are mediated through western companies
 110 and have serious effects on Kenyan employees in the industry. She provides a
 111 summary of the issues to illustrate the deleterious knock-on effects down the supply
 112 chain. In support of Murove she argues that this has resulted in exploitation and the
 113 violation of some basic rights of some of the more vulnerable stakeholders.

114 In considering theoretical perspectives that might help to resolve these issues, she
 115 draws particularly on Pope Benedict's encyclical *Caritas in Veritate* to argue for the
 116 common good as the missing link between ethical sourcing and moral responsibility.
 117 This moves moral responsibility from satisfying minimal requirements or complying
 118 with regulation to meeting aspirations of an ethical ideal based in distributive
 119 justice and gratuitousness. There are links here with African Ubuntu philosophy
 120 (see Ntibagiriwa's chapter).

124 **Part II: Fairness in International Trade – A Global Perspective**

126 We move then to the second part of the book which, as noted above, contains the
 127 papers from the ISBEE Global Research Project on Fairness in International Trade
 128 and Investment. International trade and investment are, perhaps, the most visible
 129 form of globalisation and raise issues that touch on the lives of hundreds of millions
 130 of people across the world. One focal point for this activity is the WTO and this
 131 was taken as the starting point for the five regional projects – from Africa, Latin
 132 America, Japan, North America, and Europe – that made up the global project. The
 133 order in which these are presented is quite deliberate – to allow the perspectives from
 134 the developing world to speak first rather than, as so often, to find them speaking
 135 second and on an agenda that has already been set.

The questions that each regional project agreed to review were as follows:

1. To what extent are the workings and outcomes of the WTO perceived as fair in your region/continent?
2. What are the main ethical issues regarding international trade and investment (or alternatively the WTO) in your region/continent?
3. What developments are there in your region/continent to address the above ethical issues?

These questions have, perhaps inevitably, been interpreted broadly by the different regions, and here I summarise the contributions and then attempt a global overview from these five projects. We begin with **Piet Naude's** chapter on Africa. He identifies Africa's dire economic situation: that with 13% of the world's population it has only 1% of the world's GDP; that over 40% of the sub-Saharan population lives on less than US\$1 per day. He then traces the historical development of Africa including the slave trade, colonisation, de-colonisation and the development of the current global financial system which, he argues, has always been centrally managed with a severe democratic deficit in decision-making power as a result. He notes a general Afro-pessimism – something similar to Paul Collier's idea that the bottom billion (of which many are in Africa) lack credible hope.

In turning to trade and the role of the WTO Naude notes Africa's lack of ability to participate, that the agenda is not pro-development, the inappropriateness of a 'one-size-fits-all' strategy for trade liberalisation, and the need for aid to meet adjustment costs. But he also notes Africa's need to regain its own sense of self-worth and, in a manner similar to Ntibagiriwa, the need to reconstruct Africa's own identity. This will require special and differential treatment (as agreed in principle by the WTO) and, more generally, a redefinition of distributive justice. But he also turns to Ubuntu philosophy as something that Africa may be able to offer not only as an appropriate underpinning philosophy for African economic development (see Ntibagiriwa's chapter again), but for the global trading system in general. The ancient wisdom of interconnectedness and reciprocity may be part of what Africa can contribute as we face the challenges of sustainable development.

Elio Ferrato and Cecilia Arruda's chapter reports on the Latin American perspective. In a similar fashion to the chapter on Africa, they provide evidence of the lack of economic progress that has been made across Latin America. The chapter then produces a litany of protectionist measures, operated under WTO sanction, against these countries. As a result, it seems that they may be condemned to being the suppliers of primary goods only, instead of gaining the economic benefits of adding value in-country and exporting higher value goods. About the only positive aspects that they are able to report on is the impulse for the development of an understanding of the benefits of free trade among Latin American countries and, more specifically, some benefits deriving from Trade-Related Aspects of Intellectual Property Rights (TRIPS).

With these kind of challenges from developing countries, how do the developed nations view the WTO? We look first at **Iwao Taka's** contribution from Japan. He

181 identifies that, while broadly in agreement with WTO principles, Japan's history
182 (particularly when it took protective measures during its own post-World War II
183 development) has led Japan to be sympathetic to developing countries' needs for
184 special treatment. Japan also recognizes, along with other countries, that WTO out-
185 comes are not always fair and that the WTO does not always function as it should. In
186 the light of the latter, Japan's strategy has moved from negotiating WTO-based mul-
187 tilateral agreements to bilateral Economic Partnership Agreements (EPAs), though
188 still operating within WTO guidelines. But there is also evidence that, while fair in
189 terms of process, the outcomes of EPAs are not always fair to the bilateral partners.
190 Japan is also sensitive to its own continued protectionism in relation to food security
191 in general and rice production in particular.

192 This leads Taka to consider the purposes of globalization and the WTO and,
193 drawing on a Rawlsian analysis, he concludes that in both cases the purpose must
194 be to share the benefits of globalization and improve the situation of the least advan-
195 taged countries. This leads him to show how Japan has taken its responsibilities in
196 this regard, as the world's second largest economy, seriously. So he identifies Japan's
197 contribution to investment in Asian countries, and its more recent work in solving
198 food production and poverty problems in Africa, particularly through infrastruc-
199 ture investment. He also notes the private sector's contribution to such development
200 through projects in education, healthcare and security. All in all, then, it seems Japan
201 sees the benefits of globalization and of WTO-style processes to free up trade, but is
202 both sensitive to developing countries' needs and prepared to make its contribution
203 to ensure the benefits of globalization are shared.

204 The chapter by **Fred Bird, Thomas Vance and Peter Woolstencroft** takes a
205 'big picture' perspective on fairness in international trade, focusing particularly on
206 North America (Mexico, Canada and USA). They begin by discussing the trading
207 relations between these three countries, noting that Canada has used WTO dispute
208 resolution procedures successfully against the USA, and claiming that multi-lateral
209 trade relations like those embodied in the WTO can be used to serve the interests of
210 economically weaker nations. They then note four typical and competing normative
211 views of what represents fairness in trade, each of which is or has been evident in
212 North American trade – protectionism, the hegemonic liberal fair play approach, a
213 concern for outcomes under a distributive justice approach, and anti-globalization
214 dissent in the name of the environment or the working classes.

215 They acknowledge that any universal resolution between these normative views
216 is unlikely, but offer some common points of reference which might usefully be
217 used to inform and help towards resolution in such debates. These comprise respect
218 for flexibility, the importance of institutions, greater attention to the commutative
219 justice principles for fair exchanges between nations with asymmetrical economic
220 power, the need to find a fitting balance between local, national, regional and inter-
221 national trade, and finally more concern for the ways false pricing and abusive
222 transfer pricing distort international trading relations. In particular, they focus on
223 the way in which such transfer pricing can distort international trade relations and
224 suggest that there may be a role here for the WTO in shaping transfer pricing
225 policy.

226 Finally, we turn to my own chapter (**Moore**) which offers a critical perspective
 227 on European trade relations with African, Caribbean and Pacific (ACP) countries.
 228 The recent focus for these relations has been the negotiation of WTO-compatible bi-
 229 lateral Economic Partnership Agreements (EPAs – see also Taka’s chapter above).
 230 These have given rise to concern for five main reasons: their detrimental effects on
 231 the ability of the individual ACP regions to achieve local integration; the need for
 232 reform in local institutional arrangements for EPAs to have beneficial effects; the
 233 estimated direct trade and fiscal effects, which are generally predicted to be poor
 234 (see again Taka’s chapter on Japan in this respect); the introduction of ‘Singapore’
 235 issues to do with investment, competition, government procurement and services
 236 which are not required for such an agreement to be WTO-compatible; and issues
 237 over the amount and conditionality of aid to support ACP countries by mitigating
 238 supply side constraints such as poor infrastructure, weak production facilities and
 239 low levels of human resource capacity.

240 The position with regard to signing these EPAs is summarized in the chapter as
 241 of December 2008. Since that time further interim EPAs have been signed, but the
 242 overall situation – developing countries generally signing because they have most
 243 to lose while Least Developed Countries (LDCs) tending not to sign – remains the
 244 case. In other words, the contentious nature of EPAs is still very much in evidence.

245 Assessing fairness in international trade is problematic, but I discuss conven-
 246 tional procedural and distributive approaches and suggest, from virtue ethics, that an
 247 Aristotelian, *teleological* question over the purpose of EPAs (how they will support
 248 and benefit community both within developing countries and between developing
 249 and developed countries) may be a helpful addition. Applying these principles to
 250 the case of EPAs leads to various conclusions: the EU has generally both prioritized
 251 and compromised on procedural fairness whereas the ACP countries have, unsur-
 252 prisingly, sought but failed to achieve distributive fairness. Asking questions about
 253 community and purpose, which the ACP countries have been better at doing than
 254 developed countries, may help to ensure that the necessary flexibility is built in to
 255 enable LDCs in particular to develop at their own pace and thus genuinely benefit
 256 from trade liberalization.

257 Taking these five chapters together, then, what key themes emerge? We can
 258 discern five:

- 259
- 260 1. The benefits of international trade have clearly not been fairly distributed to date,
 261 with developing countries lagging far behind and in danger of losing out even
 262 further by being condemned to be, at best, the providers of primary goods;
- 263 2. Protectionism has played a key part in developed countries’ economic progress
 264 and hence the inappropriateness of a ‘one-size-fits-all’ approach to development
 265 becomes apparent. This leads to the need for flexibility of approach to allow
 266 developing countries to protect infant and fragile industries and to liberalise
 267 when the time is right;
- 268 3. The over-riding purpose of trade liberalisation should be pro-development and,
 269 though this came out to only a limited degree, increasingly pro-*sustainable*
 270 development;

- 271 4. There is an appropriate degree of critical analysis of developed countries’
272 approaches, and some evidence of these countries taking their responsibili-
273 ties seriously towards developing countries in terms of aid and technological
274 assistance, but questions remain over self-interested motives;
- 275 5. Developing countries may well have something to offer in relation to their
276 understanding of community, of interconnectedness and reciprocity, that will be
277 important as we strive towards a greater degree of fairness in international trade.

278
279 One final but important point is that the WTO came in for repeated criticism
280 throughout these chapters. As the key organisation at the centre of international
281 trade agreements it is both a relatively easy target for criticism and a fundamentally
282 important organisation if trade is to be for the common good. This raises the question
283 about the role and purpose of the WTO – whether it should be concerned solely
284 with trade liberalisation or should take on a more development-oriented stance. Not
285 surprisingly the dividing line between the camps taking these alternative positions
286 is broadly defined by developing countries on one side of the line and developed
287 countries on the other. It seems that resolution of this issue is crucial if the concerns
288 expressed here over the observed unfairness in international trade are to be resolved.

289 The contribution of this book towards this debate, and more generally towards
290 fairness in international trade, then, is more than simply academic commentary and
291 critique. There is a practical edge to the various dissatisfactions expressed here. It is
292 certainly my hope, and a hope that is evidently shared by the other contributors, that
293 the future of international trade is, indeed, fairer. If this book makes even a small
294 contribution towards the goal of the common good for all, it will have served its
295 purpose.

296
297 Durham
298 November 2009

Geoff Moore

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Part I
Economic Development, Wealth Creation
and Africa

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Chapter 1

The Bottom Billion and What We Can Do to Help

Paul Collier

1.1 Introduction

Paul Collier was introduced by Georges Enderle:

Let me now introduce our first speaker, Professor Paul Collier. For people like me who are not experts in development economics but concerned about globalisation and development, Prof. Collier is best known for his recent book about why poor countries are failing and what can be done about it. He developed a perspective for overcoming poverty that lies between those who think development has failed completely and those who advocate the substantial increase of aid believing that the problem could be solved that way.

Prof. Collier is from Oxford University where he is the Director of the Centre for the Study of African Economies. He has previously served as Director for Development Research at the World Bank from 1998 to 2003 and he was a senior advisor to the former Prime Minister of UK, Tony Blair, as part of his Commission for Africa. He is carrying out current research on the challenges facing low income countries including research on the economics of conflict, governance and macro-economic policy with a strong focus on the effect of AIDS, exchange rates, and trade policy. We are particularly grateful for Prof. Collier for interrupting his family vacation and flying to Cape Town last night to speak to us, so please give him a warm welcome.

1.2 Paul Collier

Well thank you very much for inviting me. I think the ethical discussion on globalisation is being horribly and dysfunctionally polarised. There are two camps, and there has been a dialogue to the death between them. The one camp, which is implacably hostile towards globalisation and business in all its forms, sees global capitalism as evil. And there is another bunch of denying optimists, which see globalisation and business as a panacea. I think both of these camps are seriously wrong.

P. Collier (✉)

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46 My book, *The Bottom Billion* (2007), is about a divergence, a term for what we
47 used to call developing countries. When I grew up the world looked rather stark
48 where there were 1 billion people living in rich countries and 5 billion people in
49 poor countries. And that is still how, for example, the United Nation's Millennium
50 Development Goals rate the performance amongst the 5 billion people living in
51 developing countries. The world has not been quite balanced and has not been so
52 for quite a long time. But I think that the world is about the 5 billion versus the
53 1 billion, or perhaps better the 1 billion, 4 billion, 1 billion. And that's the shape of
54 the world we need to look at.

55 Yes, there are 1 billion people living at the top in the rich countries that have
56 comfortably "made it". Then there are 4 billion people that are living in countries
57 that are converging on that 1 billion at the top, and that are converging at rates which
58 have no historical precedence. But that means 1 billion people are left at the bottom.
59 One billion people living in about 60 countries that probably for the last 40 years
60 have stagnated. And because they have stagnated and everybody else is growing,
61 what we have is a process of divergence, divergence between those billion at the
62 bottom and everybody else. And a divergence especially between the 1 billion at the
63 bottom and the next 4 billion.

64 Now there are still a lot of poor people amongst those 4 billion. There are many
65 poor people in China. But the poorest people are in Chad. And there is a big differ-
66 ence between being poor in China and being poor in Chad, and that can be summed
67 up in one word – and that word is hope. A poor family in China has a credible
68 prospect that their children will grow up in a transformed society. The parents will
69 stay poor for the rest of their lives, but their children are likely to grow up in an
70 economy that is rich enough to make them fully participating members of a modern
71 global society.

72 But a poor family in Chad does not have that credible hope. The last 40 years
73 have been stagnant and the danger is that the next 40 years will be the same.
74 So the big divergence between the bottom billion and the rest is that of credible
75 hope and the absence of credible hope in those societies. And that is both a
76 human tragedy on a massive scale and a nightmare globally because the world,
77 although economically divergent, is socially integrated, and 1 billion people living
78 in societies that cannot provide credible hope is quite a bill for the future world to
79 pay off.

80 So, my book is about why that divergence has happened, what has gone wrong,
81 what the four traps¹ are that have prevented the 60 now poorest countries from
82 growing, and then more particularly what can be done about it. And I do not want
83 to go through the book today. I wrote the book so that you could read it at your
84 leisure on a beach. Sixty thousand people have bought it and I now know that

87 ¹ The four traps are the conflict trap, the natural resource trap, being landlocked with bad
88 neighbours and bad governance in a small country.

91 many people have indeed read it on a beach on their vacation, and that is what I
92 recommend.

93 Now what I want to do first is move on a little bit from that process of diver-
94 gence. That process of divergence is a very long slow process over the last 40 years
95 and there are two reasons which we can now say have complicated it. One is com-
96 modity booms, and commodity booms have provided an enormous opportunity for
97 some of the countries of the bottom billion. Take a country like Angola. Angola is
98 getting oil revenues of something over \$50 billion US per year and that is much
99 more than the entire net inflow of revenue to the 60 countries at the bottom. So how
100 Angola uses its oil money is a first order issue of opportunities for transformation,
101 and rapid transformation at that. There were opportunities like this that happened
102 before in the 1970s, and usually they became lost opportunities. They could have
103 been used for transformation, but that would have turned the politics of the coun-
104 try very sour. So a country like Nigeria is actually poorer now than if it hadn't had
105 the first barrel of oil. So that is the first problem with the recent phenomena of
106 commodities.

107 And then the more recent issue in relation to commodity prices has been the
108 rise in food prices. And just as the commodity booms are a big opportunity for
109 some of the countries at the bottom, so the enormous increase in food prices are
110 a real nightmare, not just a potential nightmare, but a current nightmare for a lot of
111 countries at the bottom. Food price rises are hitting one segment of the population
112 very hard indeed and that is the urban poor, the urban population, because they have
113 to buy their food. The rural population is to some extent protected because they
114 grow their own food. The urban population has to buy their food. For not only do
115 the urban poor have less money, but as you get poorer, a higher share of your budget
116 goes on food. So the urban poor are spending about half their budget on food. And
117 that is a really big nightmare in itself, but then worse than that is that those at the
118 bottom of the food chain are the children of the urban poor.

119 We now know from nutrition studies that when children are malnourished for
120 a continuous period of more than 2 years, it causes stunting. The stunting causes
121 not only irreparable, irreversible physical damage, it causes irreparable, irreversible
122 mental damage. So unless we can bring global food prices down fast, the current
123 generation of children will grow up and will have irreversible damage done to it and
124 we will witness the problems that will arise from this for another 70 or 80 years.

125 So the slow crisis of economic divergence in the countries of the bottom billion
126 has been made more complicated by the huge opportunities, the high risk opportuni-
127 ties that commodity booms have led to, coupled with the current crisis of exploding
128 global food prices.

129 And now I want to turn to what businesses can and should be doing about it. And
130 let me start off with this slow process of the economic divergence of the 60 countries
131 at the bottom of the world economy and what could probably be done about it. There
132 is a business discourse on this and I do not want to be disparaging about it, but I want
133 to suggest that to an extent it is disappointing.

134
135

136 The business discourse which I hear most often, and even though I have written
137 a book called *The Bottom Billion*, they termed it the “Bottom of the Pyramid”,²
138 and this idea is very fashionable in business. I am not the writer of the “Bottom of
139 the Pyramid”. The guys who wrote that missed the point. For there is basically an
140 opportunity for business, but it is not an opportunity for the people at the bottom as
141 consumers. In fact, really poor people are so poor that there is not much of a market
142 at all. Treating these people as *consumers*, misses the point. The real opportunity
143 is to harness them as *producers*, because the tragedy of these billion people is that
144 they are so unproductive. That’s why they are very poor. But we now know how
145 to organise economic life so that they, ordinary people, are much more productive
146 than they have ever been in history. That is what business does, it organises ordinary
147 people to be productive. That is what the bottom billion need. They need to be
148 treated as producers, not just as consumers. And business needs to work its magic
149 and raise their productivity and hence their income.

150 Now to an extent business is focussed on people as producers, but then it flips
151 over from what I regard as the obvious focus and it goes all the way to treat people as
152 entrepreneurs. And that is this huge movement for micro-credit, for micro-finance.
153 And again I do not want to be disparaging, but frankly this flip from treating peo-
154 ple as consumers who are so poor that they do not represent a sensible market to
155 target, to treating them as entrepreneurs, growing their own businesses, is also so
156 silly. For some of them will be entrepreneurs, but the reality of these terribly poor
157 countries in Africa is that far too many people are being forced into the role of
158 entrepreneur.

159 Most people in most societies are not suited to be entrepreneurs. The success of
160 an entrepreneur is about risk taking, of an obsessive concern for details, all these per-
161 sonal characteristic that most people just do not have. That is why in most societies
162 where people are given the choice, most people prefer to participate in production
163 as wage earners rather than to act as entrepreneurs. And that is very sensible. Those
164 ordinary people are much better as wage earners, for they do not need to make the
165 everyday decisions themselves as entrepreneurs. And in the societies of the bottom
166 billion, they are thrust into the role of entrepreneurs because there are no jobs. So
167 then the job of business is obvious – to teach ordinary people to become decent wage
168 earners. These wage-based jobs that provide the organisation with what it needs also
169 make ordinary people more productive.

170 Now, some of this is happening, and there is a new wave of *social* entrepreneurs,
171 and I think it is a hugely exciting phenomenon. I have lived through three instances
172 of public concern with developing economies. The first instance came after the war,
173 where the big public enemy was the World Bank, the United Nations and the big
174 democracies. And then about 20 years ago we got a new way which was the com-
175 passionate organisation, the compassionate NGOs. And they had huge energy, but
176 they were not really very good at looking after business strategy. And now the new
177 way of social entrepreneurship combines all the compassion of entrepreneurs with
178

179
180 ² See the references for details.

181 all the business “savvy” and flexibility required. And there is only one thing that is
182 missing at the moment, and that is any sense of being strategic, intervening, provid-
183 ing the businesses which in a particular environment can scale up and make an
184 overall massive difference to these economies.

185 So, what I urge is to become more strategic and pursue those opportunities in
186 particular environments which have the ability to scale up. The big thing that powered
187 Asia’s poverty was Asia breaking into global manufacturing. And that really
188 happened only from the 1980s on. Until the 1980s global manufacturing was basically
189 a developed country activity. But that has changed. Take the case of buttons.
190 Two-thirds of all the buttons made in the world are now made in one city. This
191 is as a result of what is known as clustering – the formation of clusters of mutu-
192 ally supporting firms (suppliers of various forms, manufacturers, distributors) which
193 develop a combined technological expertise. This would be an ideal, scalable tech-
194 nology for the bottom billion, but the difficulty is in breaking in to that kind of cycle
195 of economic development.

196 For the Least Developed Countries (LDCs) a system known as “Everything But
197 Arms” (EBA) exists. This was originally adopted by the European Commission,
198 granting duty-free access to imports of all products from all LDCs without any quan-
199 titative restrictions, except to arms and munitions. But in practice this is ineffective
200 and is, in effect, no more than gesture politics. It might be better termed EBM –
201 “Everything But Manufacturing”! What Africa needs is temporary access to devel-
202 oped markets in order to be able to break in to these markets and develop the kind of
203 manufacturing base that would provide long-term economic development. We need
204 a temporary waiver of World Trade Organisation trade laws, perhaps for a period of
205 2 years or so, for that to be possible.

206 However, one of the traps that I identified in my book is the problem of being
207 landlocked with bad neighbours. This means that, even if a manufacturing base
208 could be established in some of these countries, the problem of poor transport
209 infrastructure in neighbouring countries would mean that the supply chain would
210 be costly and difficult to maintain. For that reason the best place for manufacturing
211 to be developed is in coastal areas. For that reason too, it may be that e-services may
212 be part of the solution.

213 I want to return finally to the problem of the present food crisis and the need to
214 bring world food prices down, in order to make one further point. Western societies
215 have the solution to this problem. In the USA one third of grain is now grown for
216 bio-fuels instead of for food. In the European Union there is a ban on production
217 using genetically modified crops. Changes to either or both of these policies would
218 make a huge difference to the quantity of food produced and hence to its price.
219 But, as usual, there is another factor here and that is that both of these situations
220 are being exploited by the greedy agricultural lobby. So, we need to find solutions
221 to this kind of protectionism if we are to help solve the problem of the bottom
222 billion.

223 As I said towards the end of my book, our approach toward the bottom billion
224 has been failing. Unfortunately, many of these countries are heading down, not up,
225 and they are collectively diverging from the rest of the world. But it does not have

226 to be like that. If we could narrow the target onto these bottom billion and broaden
227 the range of instruments that we bring to bear on the problem, we can solve it.

228 Thank you.
229

230

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232

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01 **Chapter 2**

02 **A Rich Concept of Wealth Creation Beyond**
03 **Profit Maximization and Adding Value**
04

05
06
07 **Georges Enderle**
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12
13 *“Making money” can be destroying wealth while creating*
14 *wealth can be losing money.*

15 *A thorough understanding of wealth creation enables us to*
16 *sharpen our economic critique of fashionable and short-sighted*
17 *management recipes and to bring the power of ethics to bear*
18 *where it matters most.*

19 **2.1 Need for a Fresh Look at the Creation of Wealth**
20

21 The purpose of this chapter is to take a fresh look at the concept of the creation of
22 wealth. We need a fresh look because the notion of wealth creation we encounter is
23 often very simple (as in “making money”) or extremely vague (as in “adding value”).
24 Moreover, the urgency for a fresh look becomes even more articulated and pressing
25 when we envision the global importance of wealth creation and its widespread fac-
26 tual neglect. Not only need we better understand what wealth creation really is,
27 but we also need to understand how it should be valued in the global context from
28 moral, cultural and religious perspectives. Therefore, the search for the meaning
29 of wealth creation can’t be conducted but in both a critical and a constructive
30 approach.^{1,2}
31

32
33 _____
34 G. Enderle (✉)

35 Ryan Professor of International Business Ethics, Mendoza College of Business, University of
36 Notre Dame, Notre Dame, IN, USA
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37 ¹ On a personal note, I may add my exposure to and my interest in the question of wealth creation,
38 having taught and done research in China for many years.

39 “To be rich is glorious,” a famous saying attributed to Deng Xiaoping in the mid 1980s (see
40 note 2), marked a radical change of attitude towards wealth and prosperity, one that came to con-
41 stitute a core value of the moral foundation for China’s economic reform and open-door policy. It
42 has been embraced by millions and millions of Chinese and proved, overall, to be quite success-
43 ful. I personally have been fortunate, since 1994, to observe and study the remarkable economic
44 development in China and particularly in Shanghai, to seek possible lessons applicable to other
45 parts of the globe and to reconsider my own views with regard to poverty and wealth and business
responsibility.

In order to illustrate the huge gap between the global importance of wealth creation and the attention paid to it, I would like to point to three concerns about globalization and the roles and responsibilities of corporations.

2.1.1 Winners and Losers in the Process of Wealth Creation Over the Last 50 Years

The first concern is highlighted in the fascinating and powerful historical account “why some [nations] are so rich and some so poor,” of David Landes (1999), who scrutinizes the winners and losers in the process of wealth creation over the last

These Chinese challenges are in stark contrast to what I had experienced before my involvement with China and in other regions of the world. Highly motivated by an eye-opening trip to India in summer 1970, I wanted to complement my education in theology with studies in economics, especially on poverty and income inequality. My focus was clearly on the poor, not the rich. How could the rich be “glorious” when, as Jesus said, “it is easier for a camel to go through the eye of a needle than for someone who is rich to enter the kingdom of God” (Luke 18: 25)? Although living in Europe, I was strongly influenced by the Latin American theology of liberation, the preferential option for the poor, and the debate on the pastoral letter *Economic Justice for All* of the U.S. Catholic bishops (Enderle, 2002b). To fight against poverty made sense. Jesus’ saying that “you always have the poor with you” never meant to me to accept the fact of poverty in resignation and to give up the hope to essentially eradicate poverty. Thus I wrote my “habilitation” (Enderle, 1987) in business ethics on economic and ethical aspects of poverty in Switzerland and, by doing so, discovered how poverty research can open up a wide range of perspectives that are also of great relevance to business and economic ethics in general (see Enderle, 1991). But at that time I didn’t realize the importance of the creation of wealth.

In the 1990s I was increasingly exposed to two very different types of continental experiences. I couldn’t help comparing them on a continuous basis, although such comparisons are certainly incomplete and somewhat biased and unfair. My connections to and activities in Latin America, and particularly my involvement in the long preparation of the World Congress of Business, Economics, and Ethics in São Paulo (2000), helped me to understand more deeply the ethical challenges of business ethics on that continent and the presence of Catholicism in its multiple forms (see Enderle, 2003). My trips to East Asian countries and my studies of some of their core ethical issues opened my Western eyes to a very new and highly complex reality with which I still have difficulty coming to grips (see Enderle, 1995; Lu and Enderle, 2006).

In juxtaposing and comparing those countries’ experiences, I’m beginning to understand how important a proper concept of and a determined focus on wealth creation are precisely for addressing the issues of poverty and inequality of income and wealth. Furthermore, these vital problems cannot be dealt with in a purely technical and value-free manner. Culture and religion obviously matter and their impact, for better or worse, needs to be investigated and evaluated.

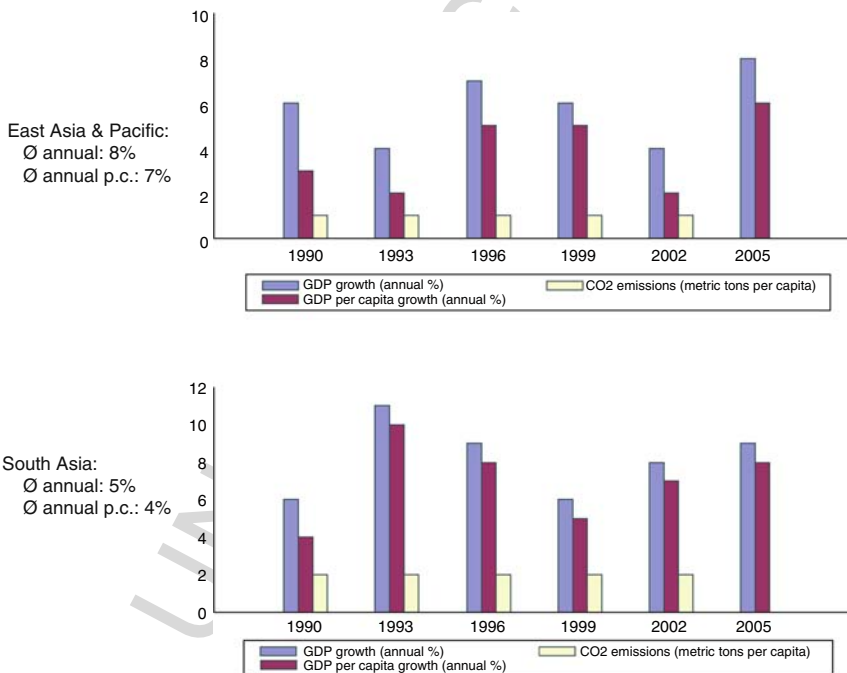
²Remark about the saying “to be rich is glorious”: This saying (“zhi fù guāng róng”), actually, was neither directly uttered nor denied by Deng Xiaoping. A journalist asked the leader in an interview on September 2, 1986: “How would Mao Zedong see the current situation?” and proposed the answer that remained uncontested by Deng Xiaoping: “In such a way as the current leaders maintain that to be rich is glorious...” (*Deng Xiaoping’s Selected Works in Chinese*, vol.3, Beijing: People’s Publishing House, 1993, p. 174). I acknowledge my gratitude to Xiaohu Lu for this information.

91 50 years. On the winners' side, in addition to "the thirty wonderful years from
 92 1945 to 1975" of France and the "economic miracle" in Germany, he highlights
 93 the East Asian success stories of Japan, the four "Little Tigers" (South Korea,
 94 Taiwan, Singapore, and Hong Kong), and the regional followers such as Malaysia,
 95 Thailand, and Indonesia, referring, among others, to the World Bank's study *The*
 96 *East Asian Miracle* (1993), and adding China in his "Epilogue 1999" (Landes, 1999,
 97 pp. 524–531). The losers are the Middle East, Latin America, the countries of the
 98 Communist-Socialist bloc, and sub-Saharan Africa.

99 We may add some historical trends based on the World Bank's "World
 100 Development Indicators." The first set of charts (Tables 2.1, 2.2, 2.3 and 2.4; World
 101 Bank, 2007) depicts the annual growth rates in percent of the Gross Domestic
 102 Product (GDP) in different world regions (showing only the values of every third
 103 year and with varying scales of the vertical axis). It also contains the GDP growth
 104 rates in percent per capita, accounting for the changes of the respective populations
 105 over the years. Of course, these indicators can provide only a very rough picture of
 106 what might be called "creation of wealth."

107 Among others, it does not account for environmental degradation. Therefore,
 108 we supplement the growth rates with CO₂ emissions (metric tons per capita) as
 109 an indicator of this kind of degradation. It turns out that the "winners" over the
 110 last 15 years are East Asia and the Pacific as well as South Asia. Little economic
 111 growth with some negative annual growth rates can be found, in decreasing order,
 112

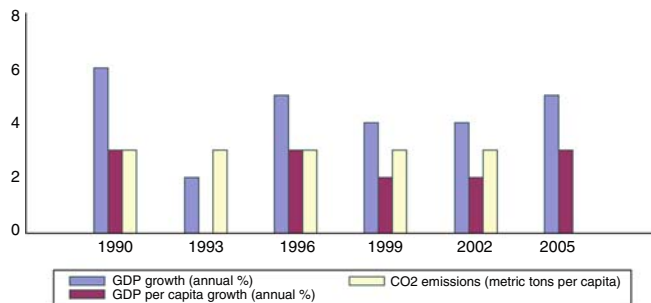
113 **Table 2.1** Strong economic growth: GDP growth, GDP per capita growth, CO₂ emissions



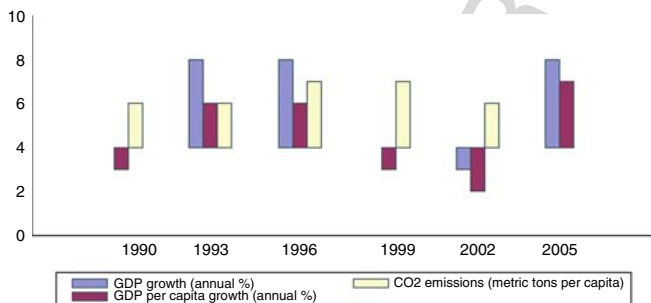
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Table 2.2 Little economic growth: GDP growth, GDP per capita growth, CO₂ emissions

Middle East & North Africa:
 Ø annual: 4%
 Ø annual p.c.: 2%



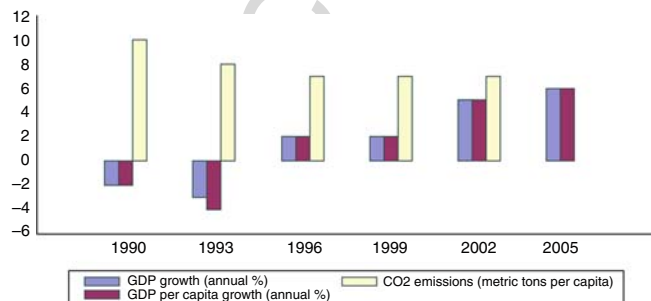
Latin America & Caribbean:
 Ø annual: 3%
 Ø annual p.c.: 2%



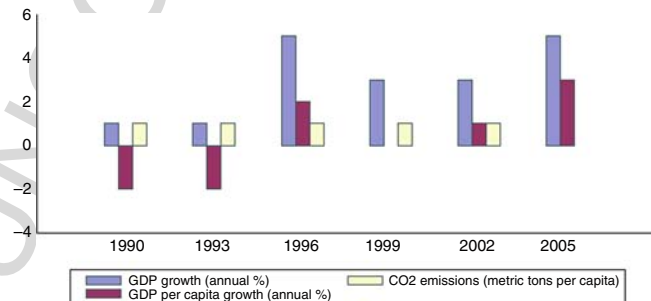
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Table 2.3 Little economic growth: GDP growth, GDP per capita growth, CO₂ emissions

Europe & Central Asia:
 Ø annual: 1%
 Ø annual p.c.: 1%

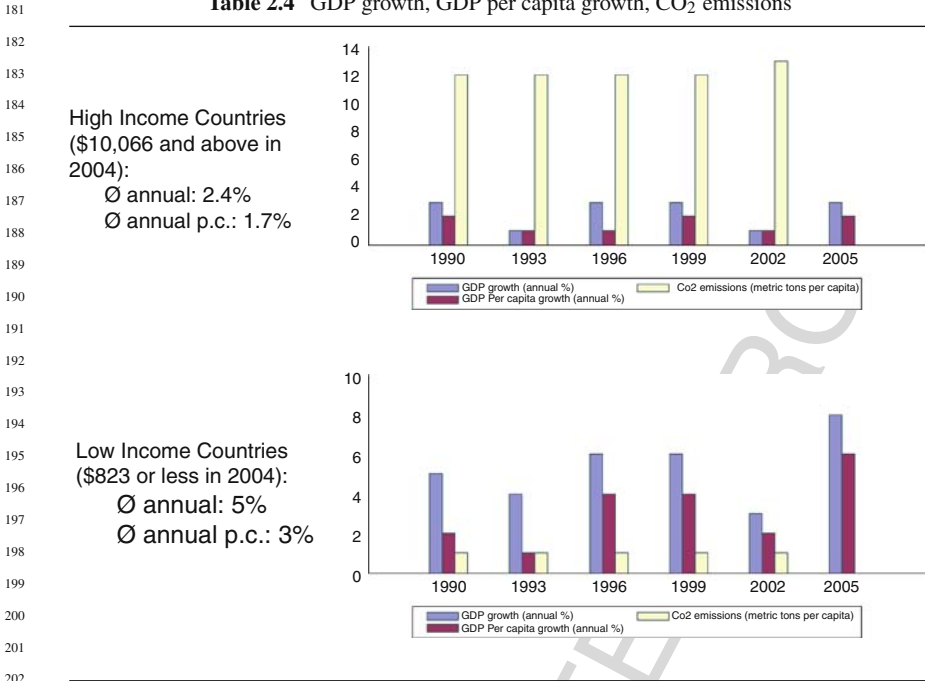


Sub-Saharan Africa:
 Ø annual: 3%
 Ø annual p.c.: 0%



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Table 2.4 GDP growth, GDP per capita growth, CO₂ emissions



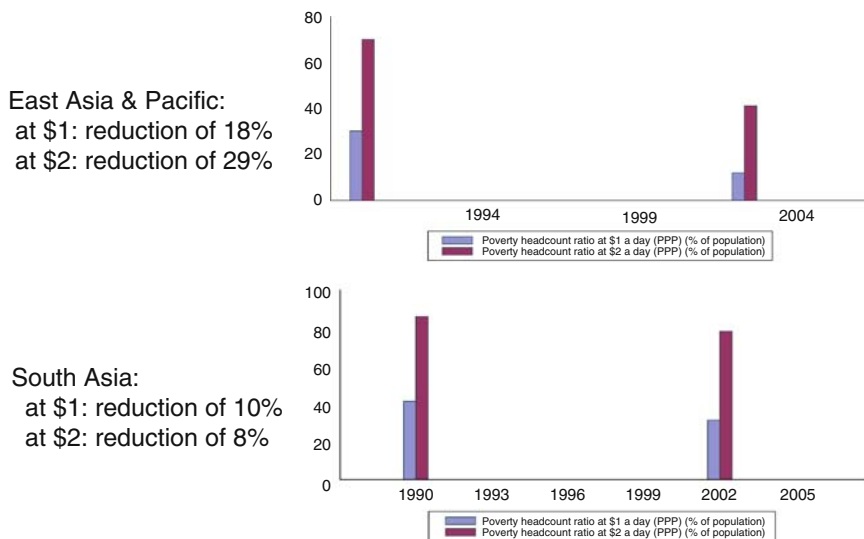
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in the Middle East and North Africa, Latin America and the Caribbean, Europe and Central Asia, and Sub-Saharan Africa. Overall, High Income countries (\$10,066 and above in 2004) showed low annual growth rates of GDP and GDP per capita (an average of 2.4% and 1.7% respectively), but very high levels of CO₂ emissions (12 and more metric tons per capita). In contrast, Low Income countries (\$823 or less in 2004) had higher growth rates (i.e., 5% and 3% respectively) and very low levels of CO₂ emissions (1 metric ton per capita).

The second set of charts (Tables 2.5, 2.6 and 2.7; World Bank, 2007) shows the ratio of the poverty population as an important aspect of the unequal distribution of wealth, namely the poverty headcount ratio at \$1 and \$2 a day (in purchasing power parity) as percentage of the entire population in 1990 and 2002 (which are the only available data for that period of time). While the poverty ratios decreased dramatically in East Asia and the Pacific and considerably in South Asia, they declined only slightly in Latin America and the Caribbean and in the Middle East and North Africa, stagnated in Sub-Saharan Africa and even increased markedly in Europe and Central Asia.

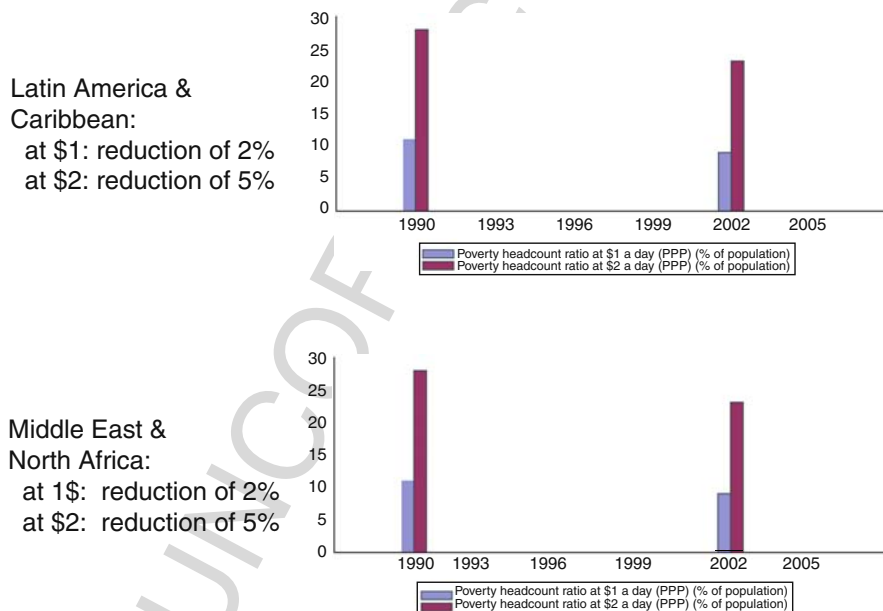
Obviously, these very diverse developments have been caused by multiple factors which cannot be discussed at present. But these facts are enormous and provide paramount import to the question of how we may understand the creation of wealth with its environmental and distributional implications.

Table 2.5 Significant poverty reduction: Poverty headcount at \$1 and \$2 a day (PPP) (% in population in 1990 and 2002)



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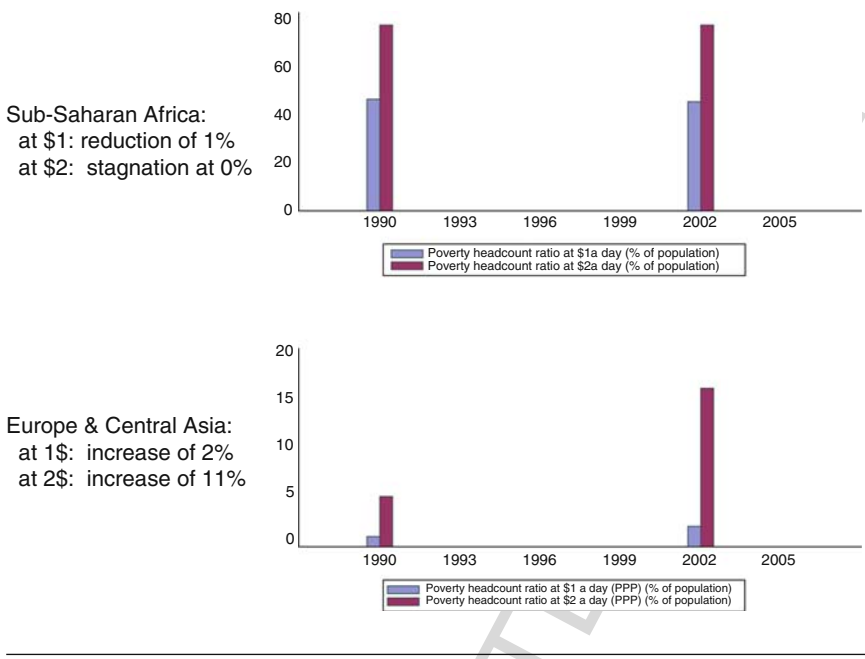
Table 2.6 Modest or no poverty reduction: Poverty headcount at \$1 and \$2 a day (PPP) (% in population)



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UNCSF

Table 2.7 Stagnation or poverty increase: Poverty headcount at \$1 and \$2 a day (PPP) (% in population)



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2.1.2 Wealth Creation: A Blind Spot of CSR?

A second concern relates to the worldwide discussions about “corporate social responsibility,” or CSR, that have gained considerable momentum in the last 10 years. Corporations are expected to care about their environmental impact, to behave as corporate citizens, to defend freedom on the internet, to support cultural and sports events in their communities, to help the victims of natural disasters such as the tsunami and Katrina, to provide health care at reduced prices or for free to the needy who can’t afford it, etc. Against the backdrop of this wealth of expectations, it is striking that, quite often, the financial and economic responsibilities of business organizations seem to be ignored, and, more specifically, no attention is paid to the questions of how companies can and should create wealth. In fact, creating wealth seems to have nothing to do with the social responsibility of companies.

2.1.3 What Is the Economic Underpinning of “Maximizing Shareholder Value” and “Adding Value”?

Finally, surveying the management literature, a third concern arises. It seems fair to say that a large part of this literature assumes the companies’ objective of

316 “maximizing shareholder value,” giving it no critical examination in economic
 317 terms. A prime example is found in the survey “The Good Company” published
 318 by *The Economist* in January 2005. The authors present and criticize the almost
 319 irresistible rise of the CSR movement and conclude by falling back on Milton
 320 Friedman’s catchy but poorly grounded slogan of 1970 “The business of business
 321 is business. Period.” Moreover, when the broader objective of “adding value” is
 322 adopted, it is unfortunately often used as a black box that can be filled with any type
 323 of so-called value. Indeed, the notion of wealth creation is not seriously scrutinized
 324 even by prominent writers like J. Collins and J. Porras (Collins and Porras, 1994;
 325 Collins, 2001). Here again, in the management literature, we can often observe a
 326 strange phenomenon that the notion of wealth creation is taken for granted without
 327 critical reflection.

329 2.2 Conceptual Clarifications: What Is the Creation 330 of Wealth? 331

332
 333 Wealth can be defined in several ways. As Robert Heilbroner states (1987, p. 880),
 334 “wealth is a fundamental concept in economics indeed, perhaps the conceptual start-
 335 ing point for the discipline. Despite its centrality, however, the concept of wealth has
 336 never been a matter of general consensus.” As for the term itself, it figures promi-
 337 nently in Adam Smith’s work, *An Inquiry Into the Nature and Causes of the Wealth
 338 of Nations* (1776), but is conspicuously absent from Gunnar Myrdal’s *Asian Drama:
 339 An Inquiry Into the Poverty of Nations* (1968) and is complemented with its oppo-
 340 site in David Landes’s book title, *The Wealth and Poverty of Nations: Why Some
 341 Are So Rich and Some So Poor* (1999). It is noteworthy to see how Smith’s “wealth”
 342 is translated into other languages: as *Wohlstand* prosperity (not as: *Reichtum* riches,
 343 *Wohlfahrt* welfare, *Vermögen* wealth) in German, *richesse* riches in French, *riqueza*
 344 riches in Spanish and *fù* rich in Chinese. Figure 2.1 offers an overview of the com-
 345 ponents of wealth creation as they are presented in the following. How this concept
 346 can be applied to wealth creation in China is discussed elsewhere (Enderle, 2010).

347 In order to discuss the concept of wealth, we first might concentrate on what is
 348 meant by the wealth of a single nation. While this approach may seem outmoded
 349 and inappropriate because of the “decline of the nation-state” in present times, the
 350 increasing number of pressing international challenges and the extraordinary power
 351 of many transnational corporations, however, it provides some advantages when
 352 compared to other approaches. When we ask for the “wealth of a nation,” it is diffi-
 353 cult to deny that wealth should encompass both private and public goods or assets,
 354 that is, endowments of two types: those that can be attributed to and controlled by
 355 individual actors, be they persons, groups or organizations, and those from which
 356 no actor inside the nation can be excluded. (In technical economic terms, “public
 357 goods” are defined by the characteristics of non-rivalry and non-exclusive consump-
 358 tion; see Enderle, 2000.) For instance, a SARS-free environment is a “public good”
 359 and a SARS-threatened environment a “public bad” that has clearly a material com-
 360 ponent, even though it might be difficult to put a price on it. It is obvious that the
 functioning of the markets and the production of private goods depend on such

	WEALTH	
<p>CREATING</p> <p>≠ possessing ≠ acquiring</p> <p>but making something new and better</p>	<p style="text-align: center;"><i>Contents</i> Physical, financial, human, social capital</p> <p style="text-align: center;"><i>Forms</i></p> <p style="text-align: center;">Private wealth public wealth</p> <p style="text-align: center;"><i>Process</i></p> <p style="text-align: center;">Production distribution</p> <p style="text-align: center;"><i>Aspects:</i></p> <p style="text-align: center;">Material spiritual</p> <p style="text-align: center;"><i>Time horizon:</i> Sustainable in terms of expanding real freedoms that people enjoy (Sen)</p>	<p>MOTIVATIONS for creating wealth</p> <p>self- and other – regarding</p> <p>self-interest joy of finding entrepreneurial spirit service to others</p>
<p><i>Examples of countries:</i></p> <p>“The thirty wonderful years from 1945 to 1975” of France “The economic miracle” of Germany (after 1945) “The East Asian Miracle” (1960–1990) in Japan, South Korea, Singapore, Hong Kong, Malaysia, Thailand, and Indonesia China (since 1980)</p> <p><i>Examples of companies:</i></p> <p>Medtronic Inc. Grameen Bank</p>		

Fig. 2.1 A rich concept of wealth creation

public goods and public bads. In contrast, when speaking of the wealth of an individual or a company, we usually consider only the assets under its control while ignoring the public goods it also benefits (or suffers) from. In the international realm, public goods are only beginning to be discussed, although they are of increasing importance and often the driving force for transnational regimes and institutions (see, e.g., Kaul et al., 1999).

We may define the wealth of a nation as the total amount of economically relevant private and public assets including physical (i.e., natural and produced), financial, human, and “social” capital. Consequently, the creation of wealth includes the production of public as well as private assets, which indicates the important but limited role of the market and price mechanism. Wealth is primarily a stock (an economically relevant quantity at a certain point in time); but, in a broader sense, it also

406 includes flows (increasing or decreasing quantities over a certain period of time).
407 This basic distinction in economics is particularly relevant for our discussion on
408 wealth because flows such as income per person, a commonly used indicator of
409 the development of a country, express the economic situation of an economic actor
410 only inadequately; the expected flows in the future are subject to a great deal of
411 uncertainty and risk.

412 Another fundamental issue, fraught with multiple difficulties, is the question of
413 how wealth as “economically relevant stocks and flows” can be properly expressed
414 in monetary terms and added up to a total amount of money. From the recent experi-
415 ences of the U.S. stock market, we all know that there might be huge gaps between
416 the real economic and the monetary performances of companies, as the monetary
417 indicators are only reliable if the markets function properly. Even then, this pertains
418 only to private and not to public goods. In other words, sound economic thinking
419 offers serious caveats against equating money with wealth. “Making money” can be
420 destroying wealth while creating wealth can be losing money. It goes without saying
421 that making money and creating wealth should go hand in hand.

422 What do we mean by the “creation” of wealth? Obviously, wealth creation is both
423 more than possessing wealth and is only one form of increasing wealth. According
424 to Jacob Viner, “Aristotle . . . insisted that wealth was essential for nobility, but
425 it must be inherited wealth. Wealth was also an essential need of the state, but it
426 should be obtained by piracy or brigandage, and by war for the conquest of slaves,
427 and should be maintained by slave works” (quotation in Novak, 1993, p. 105). In the
428 course of history, the colonial powers acquired a great deal of wealth, usually with
429 no regard for legal and ethical concerns, which, by and large, amounted to a redis-
430 tribution rather than a creation of wealth. In the capitalistic system, the “acquisitive
431 spirit,” “the accumulation of capital,” and the “acquisition of companies” do not
432 necessarily entail the creation of wealth, properly speaking. It is, therefore, crucial
433 to investigate precisely what this concept of “creation” means.

434 To create is to make something new and better. Take the example of Medtronic
435 Inc., which is proud to be “the world’s leading medical technology company, pro-
436 viding lifelong solutions to chronic disease” (<http://www.medtronic.com>). In its
437 over 50-year history, it has developed a wide range of medical devices, from heart
438 pacemakers to devices to alleviate neurological and spinal disorders and to manage
439 diabetes, and it continues to be in the forefront of the industry (see *Financial Times*,
440 “Medtronic shows off future of healthcare,” February 8, 2002). Inspired to serve the
441 customers, its innovative spirit has revolutionized not only its products and services
442 but also its production processes, organization, culture, and identity, while yielding
443 continuous financial success. As this company illustrates, while wealth creation has
444 a lot to do with technological innovation, it is more than that, since the innovation
445 is made feasible and successful in economic and financial terms. Aiming at material
446 improvement for the benefit of human lives, wealth creation includes both a mate-
447 rial and a spiritual side and goes beyond the mere acquisition and accumulation of
448 wealth. It is a qualitative transformation of wealth.

449 On a national scale, the meaning of wealth creation can be easily understood
450 against the backdrop of the debacle of a war. In the aftermath of the Second World

451 War, Germany and Japan had to create, to a large extent, new economies; and China,
452 after the traumatic civil war of the Cultural Revolution (1966–1976), engaged in a
453 transformation process from a centrally planned to a market-oriented economy. In
454 those situations, creating wealth is a national objective that mobilizes a great many
455 forces for a new and better future. In general, the state and companies operate on
456 a broad consensus regarding the need for the creation of both public and private
457 wealth. Without a doubt, the material side of these endeavors is essential, but the
458 spiritual (or ideological) side is indispensable as well. As a good example for both
459 the material and spiritual commitment of companies to participate in public wealth
460 creation, we may recall Konosuke Matsushita's determination in 1954 to continue,
461 despite serious financial difficulties, the joint venture with Philips. "I definitely do
462 not think that the tie-up has been a failure... I did not choose to form a technical tie-
463 up with Philips in order to stimulate the growth of Matsushita Electric. I did not do
464 it to gain personal publicity. I did it in order to bring the underdeveloped electronics
465 industry in Japan up to world standards more quickly" (Yamaguchi, 1997, p. 6).³

466 In further exploring the notion of wealth, we may question its purpose and use,
467 first in economic terms and then in noneconomic terms as well. Besides the fact
468 that wealth creation can have intrinsic value (for instance, the hard and diligent
469 work and great enjoyment of producing life-saving medical equipment), wealth has
470 instrumental value, being usable for consumption or investment. If consumption is
471 the sole purpose, the road to poverty is predetermined. For an historic example, we
472 may recall the decline of Spain in the seventeenth century. As Landes writes (1999,
473 p. 175), "Spain . . . became (or stayed) poor because it had too much money. The
474 nations that did the work learned and kept good habits, while seeking new ways to
475 do the job faster and better. The Spanish, on the other hand, indulged their penchant
476 for status, leisure, and enjoyment, what Carlo Cipolla calls 'the prevalent *hidalgo*
477 mentality'." And Landes offers a moral (relevant to the United States of today):
478 "Easy money is bad for you. It represents short-run gain that will be paid for in
479 immediate distortions and later regrets" (p. 173).

483 ³ One might ask whether this innovative spirit leading to wealth creation is one or even the essential
484 feature of capitalism? Different scholars offer a variety of answers. David Landes argues that it was
485 already in the Europe of the Middle Ages when the division of labor and widening of the market
486 encouraged technological innovation (Landes, 1999, p. 45). For the peculiarly European cultivation
487 of invention, as distinct from the Chinese attitude, he stresses the importance of the market.
488 "Enterprise was free in Europe. Innovation worked and paid, and rulers and vested interests were
489 limited in their ability to prevent or discourage innovation. Success bred imitation and emulation;
490 also a sense of power that would in the long run raise men almost to the level of gods" (p. 59).

491 For Michael Novak, the innovative spirit becomes the hallmark of capitalism. Criticizing Max
492 Weber who holds "economic rationality" to be the essence of capitalism and drawing on Hayek,
493 Schumpeter, Kirzner and others, Novak states: "The heart of capitalism . . . lies in discovery, inno-
494 vation, and invention. Its fundamental activity is insight into what needs to be done to provide a
495 new good or service. The distinctive materials of capitalism are not numbers already assembled for
calculation by the logic of the past. On the contrary, its distinctive materials are new possibilities
glimpsed by surprise through enterprising imagination" (Novak, 1993, p. 10).

Investment is necessary for both wealth maintenance and growth. Of course, if the investment rate is very high, the present generation may carry an undue burden of reduced consumption for the benefit of future generations. However, today's consumer society tends to move in the opposite direction with a high preference for consumption to the detriment of investment. This trend becomes particularly clear when we take into serious account not only "the nature of wealth" but also "the wealth of nature."⁴ One can reasonably argue that humankind at present is over-exploiting nature, the costs of which future generations will have to pay. It is therefore imperative to include the concept of sustainability in our notions of consumption, investment, and wealth. Wealth creation must be "sustainable," fulfilling the demand "to meet the needs of the present without compromising the ability of future generations to meet their own needs" (as defined by the World Commission on Environment and Development, see WCED, 1987, p. 8).

While this definition clearly presupposes a wide, intergenerational time horizon, it does not specify "the needs" of the present generation and "the ability" of future generations to meet their own needs. I therefore suggest adopting Amartya Sen's "capability approach," masterfully crafted in *Development as Freedom* (1999), in order to substantiate the concepts of needs and capabilities in this definition of sustainability. Development is defined as "a process of expanding the real freedoms that people enjoy" (Sen, 1999, p. 3). Although Sen does not directly refer to the WCED definition, from the outset he mentions "worsening threats to our environment and to the sustainability of our economic and social lives." He argues that:

individual agency is, ultimately, central to addressing these deprivations. On the other hand, the freedom of agency that we individually have is inescapably qualified and constrained by the social, political and economic opportunities that are available to us . . . It is important to give simultaneous recognition to the centrality of individual freedom *and* to the force of social influence on the extent and reach of individual freedom. To counter the problems that we face, we have to see individual freedom as a social commitment. (Sen, 1999, pp. xi–xii)

In addition, it is easily ignored that wealth creation involves a distributive dimension, permeating all of its stages from the preconditions to the generation process, the outcome, and the use for and allocation within consumption and investment. In fact, the productive and the distributive dimensions of wealth creation are intrinsically interrelated. However, the separation between "producing the pie" and "sharing the pie" has marked for too long the ideological struggle between "the right" and "the left," despite its flawed economic underpinning. The time has now come to correct this misleading separation and to take the interrelations between the two dimensions (again) into account.

Having clarified different aspects of the concept of wealth creation, we now turn to the question of motivation. What motivates people, companies, and countries to engage in wealth creation? Common answers in the economic and sociological

⁴ An interesting attempt to take nature into account has been made in the report to the Club of Rome by Wouter Van Dieren (1995).

541 literature are self-interest, greed, the will to survive, the desire for power aggran-
542 dization, the enjoyment of riches, and the glory, honor, and well-being of nations.
543 However, these motivations, taken individually or in mixed combinations, are rarely
544 related specifically to the creation of wealth, but instead drive economic activities
545 in general and, most often, incite merely the acquisition and possession of wealth.
546 When economic activities clearly focus on wealth creation, other motivations such
547 as the entrepreneurial spirit, the desire to serve others, and the *joie de trouver* (or the
548 “joy of finding” that, in Landes’s judgment [1999, p. 58], was the distinctive motiva-
549 tion in medieval Europe as compared to Islamic countries and China) become more
550 important. At the same time, the purpose of business and consequently its role in
551 society gets elevated. Business is no longer just about making money and acquir-
552 ing wealth, relegated to the role of the ugly, yet indispensable servant that provides
553 others with the material means to pursue higher, i.e., spiritual ends. Accordingly, it
554 does not deserve a low reputation that is, unfortunately, even reinforced by those
555 who stress the purely material and instrumental view. Rather, it is a creative and
556 thus noble activity including both material and spiritual aspects, driven by a mix of
557 motivations that are self- and other-regarding.

558 We may ask why, in history, wealth creation has often been ignored, disregarded
559 or even treated with contempt. It seems to me that these attitudes depend on the val-
560 uation of the material world and the “bodiliness” of the human person as well as on
561 the notion of creation. If the material world is considered inferior or even evil and
562 if hostility towards the human body prevails, wealth cannot but share these quali-
563 ties and is likely to be denigrated. Operating under those assumptions, it becomes
564 nonsensical to produce such wealth, were it not for another, really valuable purpose.
565 Moreover, without proper understanding, the creation of wealth cannot be really
566 appreciated for its capacity to serve as a purpose of economic activity that mat-
567 ters more than the possession and acquisition of wealth. In sum, the determined
568 affirmation that wealth creation is both good and necessary constitutes an essential
569 prerequisite for thriving business in the long run. This necessarily includes, as men-
570 tioned above, a distributive dimension that permeates the entire creation process. It
571 deeply affects the motivation for wealth creation as this motivation, in turn, strongly
572 impacts wealth distribution.

573 What has been developed in the previous conceptual clarifications of wealth
574 creation can be substantiated with Benjamin Friedman’s work on *The Moral*
575 *Consequences of Economic Growth* (2005). A prominent economist, he provides
576 the facts and the analyses of how economic growth or stagnation may interact
577 with the moral character of society and its social and political development over
578 time. Carefully researching the histories of the United States, Britain, France, and
579 Germany as well as the economics and politics in the developing world, he devel-
580 ops a deep understanding of “economic growth,” similar to our notion of wealth
581 creation. Economic growth is the production of a combination of private and pub-
582 lic goods by both market forces and public policy. It should be broadly based and
583 sustainable, thus involving necessarily a distributional and an environmental dimen-
584 sion. Economic growth has not only negative side-effects but also bears moral
585 benefits in terms of openness of opportunities, tolerance of diversity, economic

586 and social mobility, commitment to fairness, and dedication to democracy. In turn,
 587 the moral quality of society affects economic activity and policy. Consequently,
 588 Friedman conceives economic growth in both material and moral terms and rejects
 589 opposing material versus moral considerations as a deeply flawed and false choice.

592 **2.3 Challenges for Business Ethics**

594 After exploring the meaning of wealth creation, we now try to relate it to business
 595 ethics. But, by doing so, aren't we sending owls to Athens? Isn't this relationship
 596 so obvious that any thought would be superfluous?⁵ After all, business is about pro-
 597 ducing wealth and ethics has to make sure that this is done properly. Nevertheless, I
 598 would like to argue that we need to pay serious attention to this relationship because,
 599 without this focus, business ethics becomes a superficial undertaking, evading the
 600 struggle with arguably the central issue of economic activity while expanding its
 601 reach far beyond what it can and should deliver.

602 In my view, a thorough understanding of wealth creation enables us to sharpen
 603 our economic critique of fashionable and short-sighted management recipes and to
 604 bring the power of ethics to bear where it matters most. From the conceptual analysis
 605 in the previous section we can draw a number of lessons for a sound, comprehensive,
 606 and differentiated understanding of business ethics. To equate business with just
 607 making money is not only questionable from the ethical perspective, one that asks
 608 for the ethical quality of both its means and its ends, but also from the economic
 609 perspective. Without adequate economic underpinning, making a lot of money can
 610 entail the destruction of much wealth, as the recent debacles of Enron and the like
 611 have demonstrated.⁶

612 It is relatively easy, though necessary as well, to criticize scandalous business
 613 behavior. But from the perspective of wealth creation, examples of an innovative
 614 spirit and best practices of "making things new and better" are more inspiring
 615 and should play a more prominent role in business ethics research and teaching.
 616 They would also highlight the fact that wealth creation forces the economic actor
 617 to look beyond the short term and definitively adopt a long-term perspective as
 618 well, in which "sustainability" is the key. As examples we may mention Medtronic
 619 Inc. (see above), Rohner Textil AG (www.climatex.com), and the Grameen Bank
 620 (www.grameen-info.org; the latter two companies being featured in Enderle, 2004).

624 ⁵ One might wonder if this is the reason why an entry on "wealth" (and on "poverty" as well) is
 625 missing in the *Encyclopedic Dictionary of Business Ethics* (Werhane and Freeman, 1997, 2005).

626 ⁶ With the benefit of hindsight we wouldn't qualify Enron as a company that created enormous
 627 wealth in the late 1990s despite its spectacular published financial results: its operating results,
 628 for instance, increased from \$515 million in 1997 to \$698 million in 1998, \$957 million in 1999,
 629 and \$1.266 billion in 2000. The bankruptcy filing lists \$31.2 billion of debt, later revised to \$40
 630 billion and the asset values estimated at \$62 billion in the Chapter 11 filing were later revised to
 \$38 billion (Tonge et al., 2003, p. 5).

631 When exploring the concept of the wealth of nations, we concluded that it should
632 encompass both private and public wealth. As we know from economic theory, prop-
633 erly functioning markets are powerful instruments to create private wealth, but they
634 fail in creating public wealth. This involves far-reaching implications for business
635 ethics. Business ethics should not be limited to the creation of private wealth and
636 reduced to corporate ethics, that is, the ethics of business organizations, because the
637 economy is bigger than the realm of markets and companies. Rather, business ethics
638 should include the ethics of the economic system (and therefore go beyond “market
639 morality”). It is only in this context that the creation of wealth with its productive
640 and distributive dimension and, we may add, the re-distribution of wealth, can be
641 treated in a proper and comprehensive manner.

642 With regard to globalization, wealth creation provides a focus for business ethics,
643 the importance of which cannot be overestimated. As long as globalization is the
644 acquisition of wealth, most often by the rich from the poor, it does not create but
645 only reshuffles and redistributes wealth, although accumulated wealth may mas-
646 querade as created wealth. The creation of sustainable wealth is a highly complex
647 and demanding process and cannot be achieved without paying serious attention
648 to its distributional preconditions and consequences. Moreover, if it is true at the
649 national level that the creation of private wealth necessitates a certain amount of
650 public wealth, the same is likely to hold at the international and global levels. Given
651 the difficulties in creating public wealth at the local and national levels, one can
652 easily imagine the almost insurmountable problems to do so at the global level.

653 These difficulties in creating wealth call for a thorough examination of motiva-
654 tions. They should be strong and effective, providing the driving force necessary
655 not simply for acquiring and possessing wealth but, more importantly, for creat-
656 ing wealth. Furthermore, they should aim not only at private, but also at public
657 wealth at all levels, from the local to the global. Recalling the array of motiva-
658 tions indicated above, I suggest considering a mix of motivations that are self- as
659 well as other-regarding. Certainly, self-interest and the honor of the country remain
660 powerful driving forces and, properly understood, are ethically legitimate. But if
661 they are purported as the sole important motivations (for economic activity), they
662 are questionable on empirical grounds and can involve grave inconsistencies (for
663 instance, the self-interest of the manager may conflict with the self-interest of his
664 company, or the honor of the country may require the sacrifice of the individual’s
665 interests). For the very creation of wealth, as mentioned above, other motivations
666 such as the entrepreneurial spirit, service to others, and the joy of finding (that
667 might be combined with the will to make a decent living for oneself and one’s
668 family) assume more importance and are indispensable to producing public wealth.
669 Generally speaking, the enormous challenges of creating wealth require a shift in
670 motivations that shape the cultures of companies, countries and the world. But such
671 a shift cannot take place unless it is internalized and advanced by individuals.

672 The motivation for wealth creation can be further strengthened to the extent
673 that the production of economic wealth is intrinsically coupled with the produc-
674 tion of non-economic, e.g., social and environmental, wealth, thus designed “to hit
675 two birds with one stone.” No doubt, to achieve this is an even bigger challenge

676 to the entrepreneurial spirit, but the gain is bigger as well. At the organizational
677 level, companies can employ strategies that simultaneously fulfill both economic
678 and also social and environmental responsibilities so that the different dimensions
679 of corporate activities reinforce rather than weaken each other. To give a few exam-
680 ples: Activities such as feeding hungry workers in poor areas will improve their
681 productivity. Empowerment of workers on the shop floor will have a similar wealth-
682 enhancing effect. Extending a plantation's water system into the local squatter
683 community or investing in a hospital will improve worker health and motivation
684 with a resulting productivity and positive cash-flow impact. In the environmental
685 realm, programs to reduce energy consumption can enhance economic wealth. In
686 other words, economic growth not only generates the means for social and envi-
687 ronmental progress, but also social and environmental advances can enhance the
688 economic performance of companies. As Benjamin Friedman points out for the
689 societal level, there is also interaction between economic, social, and environmen-
690 tal activities at the corporate level. To account for this interrelationship, we may
691 speak of a "balanced concept of the firm," which, in my view, is one of the top chal-
692 lenges for corporate ethics in the twenty-first century (see Enderle and Tavis, 1998;
693 Enderle, 2002a).

694 Having said this, we should not forget that wealth creation at the national as well
695 as the international level is a combined production of private and public wealth.
696 This means that companies cannot generate wealth without benefiting from pub-
697 lic wealth, and public wealth cannot be created without profiting from companies.
698 In addition, this implies that companies should not be held responsible for nearly
699 everything as many champions of CSR seem to demand; however, they do bear
700 responsibility (shared with other social actors) for creating public wealth, which
701 those deny who claim that profit maximization be the sole responsibility of business.
702

703 2.4 Conclusion

704
705
706 In this essay we have tried to show the need for taking a fresh look at the creation
707 of wealth. From a global perspective it is crucially important to understand why
708 some countries are so rich and some are so poor. From a business perspective and
709 in the wake of the financial and economic crisis it seems necessary to better cali-
710 brate the purpose of the corporation. We suggest adopting a multifaceted concept
711 of wealth and a genuine understanding of its creation. Wealth is more than financial
712 capital by including physical, human, and social capital. Wealth is not only private
713 wealth but also encompasses public wealth, both influencing each other in multiple
714 ways. Because the process of wealth production inescapably involves a distributive
715 pattern, wealth creation and wealth distribution, strictly speaking, cannot be sepa-
716 rated (often "wealth distribution" actually meaning wealth *re*-distribution.) Wealth
717 is not merely material but also has a spiritual side, which ennobles its creation to a
718 truly human activity. By placing wealth creation in the time horizon of sustainabil-
719 ity enriched by Sen's capability approach, one overcomes an exclusively short-term
720 view and integrates an intergenerational fairness perspective. The emphasis on

721 creating as distinct from possessing and acquiring highlights the need for innovation
 722 in both private and public wealth creation and requires “mixed” motivations (that is
 723 self- *and* other regarding) in order to overcome the exclusive and thus insufficient
 724 motivations of either self-interest or collective interests.

725 Such a rich concept of wealth creation involves far-reaching consequences for
 726 business ethics. It brings the power of ethics to bear where it matters most: the proper
 727 understanding of wealth, its creation and the motivations thereof. The purpose of
 728 business becomes a noble and sustainable goal that diligently serves customers,
 729 attracts talented and committed employees, provides decent returns to investors and
 730 protects the environment. Because the wealth of a nation (and of similar entities
 731 from the local to the global level) results from the combination of private and public
 732 wealth, business ethics should include the ethics of economic systems and deal with
 733 the proper roles the various social actors should play in this systemic context. With
 734 regard to globalization, business ethics should not content itself with the acquisition
 735 and/or redistribution of wealth; rather it should focus on genuine wealth creation,
 736 particularly among the losers of globalization.

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01 **Chapter 3**
02 **Cultural Values, Economic Growth**
03 **and Development**
04
05
06

07 **Symphorien Ntibatirirwa**
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12

13 **3.1 Introductory Background**
14

15 The intention behind this chapter is to raise awareness of the importance of cul-
16 tural beliefs and values as an important factor, one of the root-sources of economic
17 development that should be taken seriously, particularly in Africa. So far little or
18 no attention has been paid to the cultural factor in Africa's economic development.
19 Cultural values in Africa have been mostly perceived negatively in economic mat-
20 ters both by African economists, policymakers and planners themselves as well as
21 the consultants of the international institutions and Western donors. As a conse-
22 quence, there is a tendency to shift away from them, even from those values such
23 as solidarity and cooperation which, nowadays, are important in today's economic
24 business. Much attention is concentrated on the claim that appropriate economic
25 policies (mostly neo-liberal policies) necessarily achieve economic growth and
26 development.

27 Accordingly, this chapter consists of six major points. In the first point I will
28 outline the issues that are at stake in the whole reflection. The second point considers
29 the sense of neo-liberal's claim and underlines its limits. The third point questions
30 the link between self-interest and economic growth and development by considering
31 the economic experiences of East Asia and Sub-Saharan Africa. The aim of this
32 point is to suggest that one needs to look beyond the mere concept of self-interest as
33 the basis of economic development. In the fourth section I will review the principle
34 of self-interest against its historico-cultural background in order to show that what
35 led to economic development is not the self-interest per se but rather cultural beliefs
36 and values that produced it. My main objective is to show the necessary link between
37 cultural values, economic growth and development (fifth section), by paying more
38 attention on the case of Africa (sixth section). In the conclusion I summarize the
39 macro-argument and give the implications of my reflection.
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3.2 The Issues at Stake

Four key issues are at stake in this reflection. The first one is the issue of the impact of people's cultural beliefs and values on economic development. I am aware that certain cultural beliefs and values of a people could enhance or hamper their economic development. In this reflection, and as far as African economic development is concerned, I am much more inclined to place weight on those beliefs and values that would likely enhance economic development.

The second issue is a practical follow up of the first: it is the whole issue of how what people believe and value can be validated in terms of policies of economic development. Nowadays, the concept of participation has become the catchword in developing countries. However, it is not enough for people to "participate" if the model of economic development proposed to them is based on a cultural foundation which is not theirs. Participation in a perspective of economic development which is not rooted in one's cultural beliefs and values could only be contingent rather than essential. I believe that participation could only be essential if it applies to those economic development projects that are founded on the beliefs and values of the people concerned.

The third issue is the philosophical foundation of economic development. In effect, what people believe and value are based on their being or ontological status. In other words, the beliefs and values people hold are a reflection of their identity, that is, their sense of self. Thus, ultimately, it is from this ontological status that a given people structure its own economic development that cannot easily be transferred to another people whose ontological status is different. What we are as a people determines the way we structure and shape our economic development (economy being, qualitatively, a cultural phenomenon) (see Throsby, 2001: 7ff).

Yet, and this is the fourth issue at stake, the way people view themselves and live in the world can be enhanced or hampered by others with whom they do not share the ontological status, as has been the case with slavery and colonisation or other forms of domination. The problem here is the refusal of the difference based on the fact that a group of people can feel powerful enough to universalise its way of life, thus undermining the whole issue of particularity. How can what certain people claim to be universal be appropriated in another context that has its own particularities (see Gyekye, 1997)? Cultural values matter (cf. Harrison and Huntington, 2000; Sen, 2006, Ch. 6); and my effort will consist in showing how they matter (see Section 3.6).

3.3 Making Sense of the Neo-liberal's Claim

The proponents of the neo-liberal economics have often tried to make us believe that the freedom to pursue one's self-interest as well as one's rational choice lead to successful economic growth and development. Accordingly, neo-liberal economists, planners and policymakers tended to universalize this claim, and insistently argued that appropriate economic policies effectively implemented produce everywhere

the same results independently of cultural values (see Williamson, 1993; Olson, 1982; Hayek, 1949, 1978; Downs, 1957). Some of these economists and policy-makers often support their argument by the view that modern economics is based on mathematical methods that are universal¹ (see Rosenberg, 1992; Yonay, 1998; Hodgson, 2001). Thus, policies and principles of economic development that are derived from it are universally applicable irrespective of the culture in which they are applied. Accordingly, they suggested that developing countries should embrace the neo-liberal economic policies for them to escape from the trap of economic underdevelopment and poverty. This, indeed, has been the case with the ten macroeconomic principles that constitute the core of the Washington Consensus² (Williamson, 1990: 1993).

The economic success of South East Asian countries on the one hand and the failure of economic development in Sub-Saharan Africa on the other, are increasingly proving that the “economic” argument alone cannot be taken as a dogma: self-interest and rationality do not seem to be the only avenues for economic growth and development to take place in any given society. One other avenue to be explored is the link between cultural values and economic growth and development. My concern is that even though they cannot be taken as the sole factor,³ cultural values are crucial for economic growth and development. Economic growth and development can occur only if they are a substantiation of a people’s beliefs and values. For alien economic policies to be effective in a cultural system other than that which generated them, they need to be appropriated by such culture.

¹ In his recent publication, the winner of the prestigious Myrdal prize 2008, Erik Reinert (2007: 42–46) has complained about the quantification and the mathematics being the only recognized form of doing economics, and thus, requested for room to bring qualitative analysis back into academic economics.

² Principle 1: Fiscal discipline;

Principle 2: Concentration of public expenditure on public goods including education, health and infrastructure;

Principle 3: Tax reform toward broadening the tax base with moderate marginal tax rates;

Principle 4: Interest rates to be market determined and positive;

Principle 5: Competitive exchange rates;

Principle 6: Trade liberalization;

Principle 7: Openness to foreign direct investment;

Principle 8: Privatization of state enterprises;

Principle 9: Deregulation – abolishment of regulations that impede entry or restrict competition, except for those justified on safety, environmental, and consumer protection grounds, and prudential oversight of financial institutions;

Principle 10: Legal security for property rights.

³ For instance, in his *Cultural Factors and Economic Performance in East Asia and Latin America*, Jiang Shixue (2008) argues that “each culture has its own unique positive and negative components, but the positive ones cannot automatically create better economic performance in the absence of other necessary conditions like sound economic policies, effective institutions, favourable world economic situations, the right timing of a nation’s entry into industrialisation, and political stability.”

3.4 Questioning the Link Between Self-Interest and Economic Growth

The claim that “the freedom to pursue one’s self-interest leads to economic growth” comes from Adam Smith’s reflection on how the wealth of a nation could be increased (Smith, 1965). Smith believed that human behaviour is guided by self-interest. However, when one looks at the way the economic perspective based on the principle of self-interest is failing in Africa, particularly with the Structural Adjustment Program of the 1980s on the one hand, and the economic success the South East Asia on the other, one cannot but wonder whether self-interest really leads to economic efficiency as neo-liberal economists and policymakers would make us to believe.

The idea of self-interest is apparently, if not obviously, in contradiction with the earlier ideas in his book, *The Theory of Moral Sentiments* (1808) in which Smith developed the concept of sympathy considered to be the concern for the interest of the other. Sympathy requires the benefactor to suspend his own interest for the sake of the beneficiary. Although this altruism does not necessarily give Adam Smith communitarian credentials of the African or Oriental type, one may wonder whether the spirit of sympathy could not increase wealth in the same way as self-interest does, if oriented in economic matters. So that one can say that sympathy could lead to economic success just as self-interest does.

I am aware, as Smith would be, that the motive to satisfy one’s self-interest and the interest of others both come from the same human tendency to sympathise with self and with the beneficiary (Khalil, 2001). However, in so far as the economic discourse of neo-liberalism lays much emphasis on self-interest rather than on the interest of the other, the centre of focus in neo-liberal economic ordering is self-interest. There are a number of issues that are raised here. Would people really achieve economic success if they behaved in an exclusively self-interested way (see Sen, 1987: 21)? Even if economic success were to be achieved, to what extent can one really say that it is only the principle of self-interest that led to such a success? Do people really behave in an exclusively self-interested way in economic matters? Are there no other aspects that may serve as catalysts of economic success such that self-interest is but one of them or not even necessary? Amartya Sen has this crucial question: “the real issue is whether there is plurality of motivations, or whether self-interest alone drives human beings” in economic matters (Sen, 1987: 13).

This series of questions led Mark Lutz and Kenneth Lux to explore the possibility of a *Humanistic Economics* as can be seen in their conclusive observation:

Where it has been acknowledged that human behaviour might have another dimension than self-interest, it has been decided that this part of the person is irrelevant to economics and therefore is outside the scope of science. [...] Such an exclusion is theoretically wanting, empirically questionable, a serious social mistake with unfortunate consequences (Lutz and Lux, 1988: 102).

The idea of self-interest was boldly underlined at the time when the production of goods and services was being developed thanks to the development of natural

181 sciences and their technological dividends, especially in England. Furthermore this
182 increasing production required larger markets which were being conquered in the
183 new English colonies in various parts of the world. This seems to lead one to believe
184 that the principle of self-interest may achieve economic growth and development
185 only for those who can sell or buy and who actually have the means to do so. On the
186 contrary it does not work for those who cannot buy or sell, and hence are excluded.
187 According to Michael Todaro (1989: 84), the principle of self-interest and the so-
188 called invisible hand of the market that results from it often act not to promote the
189 general welfare, but rather to lift up those who are already well-off while leaving
190 others behind.

191 There is here a whole argument that runs counter to the ethical theory of utilitar-
192 ianism, but I will not play on this field for the time being. But what Todaro seems to
193 be saying is that for self-interest to work there must be other conditions that must be
194 fulfilled. Thus I would go as far as saying that it is not just having something to sell
195 on the market and/or having the means to buy that matters. But one must also have
196 in oneself self-interest as a value, more precisely, an economic value. The question
197 is to what extent this is the case.

198 According to Amartya Sen (1987), in the case of the economic success of Japan,
199 there is empirical evidence showing that there were systematic departures from the
200 self-interested behaviour in the direction of cultural values such as duty, loyalty,
201 good will that played an important role in the Japanese economic success (cf. Lutz
202 and Lux, 1988: 84). Sen himself was drawing on the reflection of Michio Morishima
203 (1982), a Japanese scholar who argued that what has played an important role in the
204 Japanese economy is much more the Japanese spirit which is rooted in Shintoist and
205 Confucian values. Nowadays it is being argued that the economic success in other
206 South East Asian countries is also being achieved thanks to the same Confucian
207 values (Granato et al., 1996; Franke et al., 1991; Hofstede and Bond, 1988). Onis
208 (1995) argued that, the East Asian economic miracle has been possible thanks
209 to the developmental state provided by the Confucian heritage which emphasizes
210 hierarchy and group solidarity. The group solidarity provides a ground for coop-
211 eration within the same East Asian society, while the hierarchical authority of the
212 government provides incentives, political framework, the infrastructure and other
213 means necessary for the enterprises of its country to compete on the international
214 scene.

215 Economists and policymakers who defend the philosophy of self-interest in eco-
216 nomic growth and development argue that, in the case of Africa, the state has been an
217 obstacle to self-interest and its success, and thus is a hindrance to economic growth
218 and development. This argument is built on the debate between the libertarians
219 defending the priority of the individual over the community, and the communitar-
220 ians who defend the priority of the community over the individual. Hence those
221 who believe that in Africa the state is an obstacle to the principle of self-interest
222 and its economic achievements are the libertarians who argue that in the African
223 culture, the community is hampering individual freedom and responsibilities, and
224 hence an obstacle to the individual flourishing (Kenyan, 2006; cf. Dalacoura, 2002;
225 Nozick, 1974). It is true that the community can effectively be a limit or an obstacle

226 to individual freedom and responsibility; but it is equally true that the commu-
 227 nity can be a context in which the individual flourishes more than if one were left
 228 alone, particularly when the values which the community cherishes are harmonised
 229 with those which the individual cherishes for mutual advantage (see Mbiti, 1970;
 230 Tshamalenga, 1985; Shutte, 1993; Gyekye, 1997; Sandel, 1982, 1996, Taylor, 1989,
 231 MacIntyre, 1981).

232 In the case of the Asian economic miracle, it has been observed that the state,
 233 far from being a handicap for the market economy that is thought to result from
 234 the principle of self-interest, played an important role in the economic development
 235 (Biel, 2000: 202; Dasgupta, 1998; Onis, 1995). Furthermore, even in Latin America,
 236 the introduction of the neo-liberal principles in the 1980s required an authoritar-
 237 ian state to deal with opposition from the rent-seekers who had benefited from the
 238 structuralist import substitution policies.

239 Of course, my intention is not to advocate for authoritarianism in the present
 240 era of political liberalism in so far as I believe that democracy is a historico-
 241 political achievement which people embrace as they become aware of their political
 242 nature. My point here is that it is possible to achieve economic growth and devel-
 243 opment with community-centred interest just as it can be achieved with individual
 244 self-interest. If this were found to be the case, the traditional values of African com-
 245 munitarian society should be explored to see whether they may not be pregnant
 246 with economic potentials. In fact, the point of incompatibility between self-interest
 247 as the ground of economic growth and development and African culture has not yet
 248 been tackled as an issue. I should say that certain societies, especially the African
 249 one, have been misled by the link between capitalism and individualism built in the
 250 belief that self-interested individuals and the subsequent invisible hand of the mar-
 251 ket increase wealth. This has been the case with the introduction of neo-liberalism
 252 in Africa in the 1980s and the subsequent trade liberalisation, privatisation of state
 253 enterprise, and deregulation of national economies (see note 2). The neo-liberal
 254 economists and policymakers have been so dogmatic to the extent that it was eas-
 255 ily forgotten that capitalism could be possible even in non-individualistic societies.
 256 Yet it is clear that the neo-liberal capitalist (which I consider to be linked with
 257 individualism), with its private markets, well defined property right, entrepreneur-
 258 ship, is but one version of capitalism. To be precise, the market-led capitalism of
 259 the United States of America and the United Kingdom is not the corporate capi-
 260 talism of Japan and South Korea; the social-democratic capitalism of Scandinavia
 261 and Austria is not the state-led capitalism of France (see Brauer et al., 1999). Is
 262 a capitalist version that fits with the structures of African society, for instance,
 263 conceivable?

264 Thus, the problem might not be the belief itself since it might work for some
 265 societies. The real problem lies in the tendency to universalize it as if it is the only
 266 possibility. The implication is that other avenues are neglected and undermined,
 267 especially for those countries which are historically, politically and economically
 268 dependent. The consequence is that the victims of this economic dogma find them-
 269 selves confused about what values really lead to economic growth and development.
 270 And under the pressure of achieving this economic growth and development in the

271 short term, they don't strive to make a difference which would be derived from the
272 validation of their cultural beliefs and values.

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275 **3.5 Viewing the Principle of “Self-Interest”** 276 **Against Its Historico-cultural Background**

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278 The point I want to substantiate in this section is that what achieves economic suc-
279 cess is not the self-interest per se but rather the cultural beliefs and values from
280 which it resulted. If Smith claimed that the freedom to pursue one's self-interest
281 leads to the increase of wealth for a nation, it is apparently because he was reflect-
282 ing in a new cultural environment where the individual was henceforth sovereign.
283 And indeed, the sovereignty of the individual was a new conception of the human
284 being which came to the fore as a result of the intellectual and historical mutations
285 of 17th/18th century in Europe. This means that the individual who became now the
286 source of wealth of the nation was the product of a new cultural universe in Europe.
287 Here are the salient characteristics of this new culture:

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290 **3.5.1 Human Sovereignty**

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292 The first characteristic of the new culture is the human sovereignty over the natural
293 world. This aspect is better described by Klaus Nürnberger, in his book, *Beyond*
294 *Marx and Market* (1998: 31):

295

296 No part of reality is forbidden ground for human investigation and utilisation. There are no
297 uncanny forces, magical powers, divine beings or eternal principles which human beings
298 must fear, respect, or obey. Human beings are masters over the world.

299 This reality itself was henceforth discovered by means of investigation (empir-
300 ical philosophy of John Locke and David Hume), penetrated by logical thought
301 (Rationalist philosophy of René Descartes) and manipulated for the desired result
302 (technological advances). The implication of this was a culture which gave human
303 beings a new way of looking at the world and affirming themselves (Nürnberger,
304 1998: 31).

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307 **3.5.2 Individual Sovereignty**

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309 This characteristic is, in fact, the implication of the first one and has been empha-
310 sized by a great number of western philosophers. The first philosopher who
311 underlined boldly the sovereignty of the individual is René Descartes with his
312 famous principle: “I think therefore I am”. The implication of this principle was
313 that from then on, the human being was the creator of his own self, his world,
314 and depended on no one else except his own individual self. John Locke is another
315 defender of individual sovereignty. He argued that people are equal and that every

316 individual has the right to self-preservation. This self-preservation goes with per-
 317 sonal property. Every individual has a property in his own person. Locke shares his
 318 thought on the sovereignty of the individual with Thomas Hobbes, although this lat-
 319 ter viewed the individual from a negative perspective as can be seen in his principle:
 320 “Man is a wolf against man”. Yet this does not prevent him from sharing with Locke
 321 the view of the individual as an atomic unit sufficient unto itself, interacting with
 322 others primarily in the pursuit of their self-interest (Ingersoll and Matthews, 1991:
 323 37–38). Another important figure in the defence of individual sovereignty is Kant.
 324 The idea that lurks behind Kant’s categorical imperatives is that the individual is the
 325 starting point of universality.

326 Finally, that the individual is sovereign means that the society plays a second role.
 327 That is what Jeremy Bentham affirms when he views the community as a fiction
 328 and a collection of individuals, and that no objective social interest exists except
 329 individual interest independently of fictitious society.

330 One may summarise these different views on the individual as follows: The indi-
 331 vidual who was now defined by reason (the thinking being) became the source of
 332 not only morality (Kant’s categorical imperatives), but also of every aspect of life:
 333 Political life (democracy as a political system of equal and free individuals), social
 334 life (the individual could now act unconstrained by the society and the hierarchi-
 335 cal authority), religious life (the individual is no longer defined by any divinity),
 336 moral life (against Aristotelian teleological definition of human action), and eco-
 337 nomic life (one’s self-interest and rational choice increase a nation’s wealth) (cf.
 338 MacIntyre, 1981).

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3.5.3 *Freedom*

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3.5.4 *Private Property*

356 The fourth salient feature of the culture that fuelled the classical economy is the
 357 emphasis on private property which goes with self-interest. Private property is
 358 viewed as an expression of human potential and an indication of human creativ-
 359 ity (Ingersoll and Matthews, 1991: 39). According to Jean Jacques Rousseau, there

361 is a link between freedom and private property: private property is an instrument
362 without which one's freedom cannot be secured. Linked with private property
363 is the whole notion of self-interest which has been emphasized by Hutchison,
364 Hume, Tucker, Furgeson, Mandeville, and in a particular way Adam Smith (see
365 Haney, 1921).

367 **3.5.5 Materialism**

369 The materialist outlook of the new culture can be seen from two important aspects,
370 namely a new sense of value and labour. According to Jeremy Bentham, the human
371 being is governed solely by the hedonistic principle of seeking pleasure and avoid-
372 ing pain. And utility maximising is the only standard of evaluation. He further
373 argued that money is the most accurate measure of the quantity of pain or plea-
374 sure a human being can be made to receive. Accordingly, the valuation of what
375 is good or bad, profitable or not, pleasure or pain, rests solely on the subjective
376 judgement of the individual with money as the measure of welfare (Bentham, 1970:
377 Ch. 1). Such a notion of value is also connected with the individual and one's self-
378 interest. However, this materialist conception of value is very limited. At most it
379 could cover what people can do (quantification of our pain or pleasure), but it does
380 cover what people can be (qualification of our pain or pleasure). In other words
381 one's pain or pleasure is quantified in terms of money (exchange value) but not
382 qualified.

384 Materialism can also be seen in the instrumentalisation of labour. The tradi-
385 tional belief in labour as an important social resource and the means by which
386 a society advances was rejected. Accordingly, in his *Political Discourses* David
387 Hume (1987) argued that everything in the world is purchased by labour, and that
388 our passions are the only cause of labour. Jeremy Bentham argued that the love
389 of labour is a contradiction in terms. From the utilitarian point of view labour is
390 not undertaken for the benefit of those performing the labour, but for those hiring
391 labour power to generate exchange value. Workers must be bribed to expend effort
392 through payment of wages. Even Adam Smith tended to limit productivity to trad-
393 able commodities to the extent that even people themselves are viewed as other
394 commodities.

396 **3.5.6 Reason**

399 The new culture emphasized reason as the regulator of everything. It is said that
400 when individuals use their reason and industry in the pursuit of personal gain,
401 everyone in the society gains. This means that reason is the criterion for the dis-
402 tribution of profits and burdens in a given society, particularly a utilitarian society.
403 Economically, the role of reason is to instruct people on how to secure these desires
404 most efficiently (Ingersoll and Matthews, 1991: 38). However, from the contractual
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406 point of view, the role of reason is to deal with conflicts which arise because self-
 407 interest leads people to desire the same object. Thus the traditional understanding
 408 of reason as the essential characteristics of human nature is seemingly dropped as
 409 reason is considered mostly from an instrumental perspective rather than compre-
 410 hensively. According to David Hume, reason is and ought only to be the slave of the
 411 passions and can never pretend to any office other than to serve and obey them.

412 The above characteristics underlie the cultural value system which gives the
 413 individual a particular ontological status. People in turn orient all the aspects of
 414 their life in a way that responds to this ontological status. Thus classical economic
 415 liberalism and the liberal revival in the 1980s can be understood against this back-
 416 ground. The appeal to a minimal involvement of the state in the economy was the
 417 outcome of such a culture and the ontological status it produced. Adam Smith's
 418 economic thought has been revived as a ground of universal economic develop-
 419 ment inherited from this cultural value system. His assumptions of self-interest
 420 and *laissez-faire* economic policy developed from and within this cultural envi-
 421 ronment. That economics is concerned with wealth of the nations, that economic
 422 activity is embedded in the pursuit of wealth, and that the mainspring of economic
 423 activity is self-interest, can only be understood against this cultural and individual's
 424 ontological background.

425 In today's economic thinking, one major feature of these beliefs that goes with
 426 self-interest as a principle of economic growth is rationality. Self-interested produc-
 427 ers and consumers mindful of economic growth and development are presupposed
 428 to be utility and profit maximizers who respond rationally and efficiently to market
 429 signals. Rationality is thus the central characteristic of the self-interested economic
 430 people, and consists in the logical application of economic means to attain particular
 431 economic ends. The human being becomes that being whose economic behaviour
 432 conforms to the dictates of reason. Accordingly, the neo-liberal economists tend to
 433 advise the policymakers of the developing countries to simply get "the price right".

434 Rationality as a major feature that underlies economic behaviour is emphasized
 435 by various theorists who treasure the neoclassical economics. Bill Gerrard (1993:
 436 52), for instance, argues that the axiom of rationality is the cornerstone of modern
 437 economics. Economic behaviour is interpreted as the outcome of optimizing choices
 438 by rational economic agents. Daniel Hausman (1992: 278) posits that "much of the
 439 methodological distinctiveness of economics stems from the remarkable fact that
 440 a theory of rationality lies at its theoretical core". Ann Cudd (1993: 102) argues
 441 that rationality is the capacity inherent primarily in individuals, and these agents
 442 act to maximise their subjectively given utility, and thus to give substance to their
 443 self-interest.

444 From what I have developed so far, it is clear that what achieves economic suc-
 445 cess is not self-interest *per se* but the set of cultural beliefs and values from which
 446 it resulted. The claim I am trying to establish so far is that economic growth and
 447 development is a product of the validation or substantiation of peoples' cultural
 448 beliefs and values. In the next section, I would like to consider this necessary link
 449 between cultural values and economic growth and development by paying much
 450 more attention to the case of Africa.

3.6 Cultural Values, Economic Growth and Development: The Necessary Link

The cultural outlook I have just reviewed has been so intuitive to its promoters that it tended to be universalised to other societies to the point that their cultural beliefs and values (henceforth viewed as traditional) came to be considered as economically worthless (cf. Mehmet, 1995). Indeed, this has become a background against which the developing nations are viewed and advised for their economic growth and development. In the 1960s and 1970s, for instance, modernisation theorists argued that, for underdeveloped nations to achieve economic growth and development, they have to take the same road that modern societies took (see Rostow, 1960; cf. Weber, 1971).

The consequence of all this is that most of the societies of the south, particularly in Africa south of the Sahara, came to neglect unduly their cultural beliefs and values arguably because they lacked the potentials and the rationality peculiar to the modern economics. But this neglect is more a result of the complex of economic powerlessness felt by some societies that their beliefs and values are economically barren without exploration. For instance, Etounga Manguellé (1990), in his celebrated *L'Afrique a-t-elle besoin d'un programme d'ajustement culturel?*,⁴ argues that Africa needs a programme of cultural adjustment that would transform its mentality to one which is consistent with values in the rest of the world. Of course, it is not clear what those universal values are that he is referring to. However, one may presume that Manguellé is referring to western values.

According to Sally Matthews (2004: 380), a project of economic development premised upon a set of values cannot succeed in the absence of those values. A project which has its roots in particular assumptions and values cannot succeed in the absence of the relevant assumptions and values. Thus, Manguellé's suggestion can be interpreted as follows: if Africans want to achieve the economic growth and development of the West, they first have to espouse the type of beliefs and values upon which it is premised. This was the argument developed by the proponents of the modernisation theory. Despite the injunction of this theory in Africa (one may refer to certain colonial approaches such as assimilation practiced by France) as well as Western influences, most Africans still retain most of their values: they still converse in their own languages, still have their African style homes, African food, and Africans' world views and values systems remain noticeably different from those of the West (Matthews, 2004: 379). I shall come to the meaning of this in terms of Africa's economic development later. For the time being, I would like to consider another African who has an argument similar to that of Manguellé.

Axelle Kabou (1991) argues that, although they never appear on the long list of official causes of underdevelopment, African cultures and mentalities are the main

⁴ Does Africa need a cultural adjustment program (my translation).

496 obstacles to development. Effectively it may be true that some mentalities and atti-
 497 tudes can effectively be obstacles to economic growth and development. One may
 498 refer, for instance, to those mentalities that tend to limit people's production to their
 499 immediate consumption with little or no conception of the long term.⁵ A communal,
 500 paternalistic outlook can hamper the spirit of creativity, initiatives and innovation.
 501 Much emphasis on family ties is often the source of nepotistic behaviour linked to
 502 incompetence of which Africa is often accused. One may also refer to the fact that
 503 some traditional religious faiths do emphasize detachment from material goods and
 504 wealth. But those mentalities cannot take priority to the fact that people produce
 505 for their subsistence or produce to acquire what they do not produce; this being
 506 the starting point of economics. Neither can they take priority on the fact that peo-
 507 ple produce and exchange as part of their self-realisation or self-actualisation and
 508 self-transcendence.

509 Manguellé and Kabou seem to be biased to the point of considering only the neg-
 510 ative aspects of African culture that effectively have a negative impact of economic
 511 development. Messay Kebede (2004) might be right to suggest that they need to
 512 undergo a mental decolonisation so as to emancipate their views from non-African
 513 constructs. The communal outlook thought to be an obstacle to creativity and ini-
 514 tiative is also the ground of economic cooperation. In effect, the extended family,
 515 for instance, is, indeed, the nucleus for a cooperative spirit, solidarity, care and self-
 516 help. The family could be the source of the value which consists in considering and
 517 protecting the goods and the services of a company as one's own (see Wong, 1988).
 518 Paternalistic behaviour can be the source of authority that managers need to lead
 519 their companies (see Reddy, 2009). At the same time, this paternalistic behaviour
 520 could be the source of a kind of leadership strong enough to ensure accountability
 521 (cf. Asante, 1991: 69).

522 Thus, there is a link between what one believes and what one lives (*passage du*
 523 *cru au vécu*).⁶ In other words, as Asante (1991: 68) puts it, "it is the totality of the
 524 values, norms, attitudes, beliefs of a society which shapes its social, political and
 525 economic organisation and inculcates a general feeling towards development." This
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529 ⁵ This point could be deepened especially when dealing with the concept of time in the African
 530 context. For instance, John Mbiti (1970) argues that in traditional Africa, there are only two
 531 aspects of time: the present (*sasa*) and the past (*Zamani*). The consequence of this conception
 532 of time would lead one to believe that planning for the future is rather speculative. If this were
 533 the case, then it would be difficult to talk of planning of economic development (Nyang, 1994).
 534 However Mbiti was obviously mistaken since in all Bantu languages there is the future tense as
 535 well. And the akamba culture of which Mbiti is part is not an exception. Yet it may be possi-
 536 ble that what Mbiti might have had in mind is that the past, the present and the future merge
 537 in the same way as the individual is ontologically part of the community in the African con-
 538 ception of the human being. If this was the case, is it not the prospective nature of economic
 539 development that would be endangered along with the meaning that people derive from the future
 540 (Diagne, 2004)?

⁶ For a more extended reflection on the point, one could refer to my article "Le miracle asiatique":
 qu'apprendre de l'expérience asiatique du développement (The Asian miracle: what can be learned
 from the Asian experience of development), in *Ethique et Société*, 2006, 3 (1): 18-34.

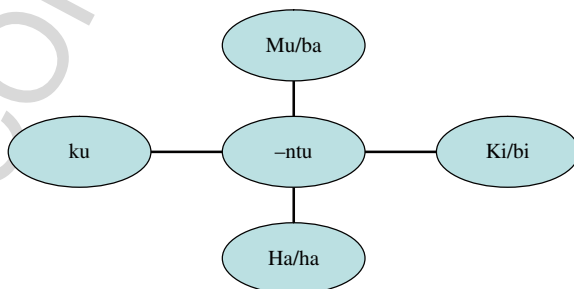
541 is the case irrespective of whether the culture of such a people is individualistic or
 542 communal. Thus, Messay Kebede (1999) argues that,

543 The depiction of development in terms of mere satisfaction of needs rather than validation
 544 of beliefs largely explains the underdevelopment of Africa. By not being a program of
 545 corroboration of beliefs, development fails to be animated by a competitive, insatiable, and
 546 creative spirit.

547 Michael McPherson (1987) argues that economics itself is part of a cultural
 548 milieu. This point is also echoed by David Throsby when he says: “The fact that
 549 economic agents live, breath and make decisions within a cultural environment
 550 is readily observable” (Throsby, 2001: 9). The cultural milieu, in large measure,
 551 endows economic goods and activities with meaning and presents people with the
 552 matrix of constraints and opportunities within which they develop themselves.
 553

554 **3.7 Linking African Cultural Values to Africa’s Economic**
 555 **Growth and Development**
 556

557 The crucial question one should ask at this juncture is how African cultural values
 558 are structured and what kind of economic development could fit with this cultural
 559 value system. I shall attempt a response to this question by considering how the
 560 Bantu people conceive of themselves and reality. The Bantu are a group of Africans
 561 who occupy almost all the Southern part of the Equator and its surroundings. They
 562 cover more than 60% of the African population in Sub-Saharan Africa, and occupy
 563 geographically one third of the whole African continent (Kagame, 1976). This may
 564 justify why most African and non-African thinkers tend to refer to Bantu philosoph-
 565 ical principles to make the point of what unifies Africans (Tempels, 1959; Jahn,
 566 1961; Eboussi-Boulaga, 1981). According to Alexis Kagame,⁷ the lowest common
 567 denominator of the Bantu people is the fact that their value system is structured
 568 according to the way they conceive of the categories of being in their ontology
 569 (Kagame, 1976, cf. Kagame, 1956). There are four of these categories (Fig. 3.1),
 570 namely:
 571



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582 **Fig. 3.1** The structure of the
 583 Bantu universe
 584

585 ⁷ Kagame collected data on 180 languages from the Bantu zone, read 300 books on the various Bantu.

- 586 – The category of *mu-ntu* (plural: *ba-ntu*): intelligent (or rational) being(s). It is the
 587 category of human beings;
- 588 – The categories of *ki-ntu* (plural: *bi-ntu*): non-intelligent beings. It is the category
 589 of things including animals, plants, and inanimate beings such as stones;
- 590 – The category of *ha-ntu*: Spatio-temporal being. It is the category of time and
 591 space;
- 592 – And finally, the category of *ku-ntu*: Modal being. It refers to the way different
 593 beings are shaped, their position, their relation, their colour, etc.

594

595 All these four categories (mu, ki, ha, ku) are built on the same root, *ntu* (being)⁸
 596 and are arranged in a hierarchical order with the human being standing at the top
 597 of the hierarchy. Contrary to what Nhlanhla Mkhize (2008: 41) holds, it is obvious
 598 from the above figure that *ntu* is not only reserved to human beings. Mkhize (2008:
 599 38) rightly talks of the cosmic unity but fails to discover that *ntu* underlies it, maybe
 600 because the four categories seem to be unknown to him.

601 There has been a question of why “bu” of (*u*)*bu-ntu*,⁹ for instance, does not
 602 constitute a fifth category. According to Kagame (1976), with the concept of
 603 *u-bu-ntu*, one is already in the formal logic as a condition for (African) philos-
 604 ophizing. In effect, the Bantu distinguish between the concrete and the abstract.
 605 They separate the abstract of accidentality expressing entities which do not exist
 606 independently in nature such as *u-bu-gabo* (courage, force, and virility), *u-bu-*
 607 *shingantaha* (integrity, equity); and the abstract of substantiality. Both of them are
 608 connoted by *-bu*. *Ubuntu* (humanity or humanness) enters in the latter category.
 609 Of course, *ubuntu* as a metaphysical concept has moral implications. In effect,
 610 *ubuntu* is a moral character and even a value of people when they live, act and
 611 behave in the way that fosters harmony in the society and the universe around
 612 them. The use of *ubuntu* of Southern Africa refers to this moral character or value.
 613 In fact, when one says that people are living according to the value of *ubuntu*,
 614 one means that these people live in a way that fulfils their nature as intelligent
 615 beings.¹⁰

616

617

618

619 ⁸ Kagame claimed that these four categories correspond to the ten Aristotelian categories (one
 620 substance and nine accidents). However, his biographer, Kagabo (2006: 236), questioned this claim
 621 arguing that Aristotelian categories are classes of predicates while Kagame’s categories are classes
 622 of beings. However, this is not to say that Kagame is wrong since as far as the Bantu languages are
 623 concerned, Kagame is right to stress that any conceivable entity comes down to one of those four
 624 and there is no entity outside those four categories (Kagame cited by Kagabo, *ibid.*).

625 ⁹ According to Ramose (1999: 41, see also Mkhize, 2008: 41) *ubuntu* has two particles, the prefix
 626 *ubu* and the stem *ntu*. But actually there three particles: *u* which is an article, *bu* which denotes the
 627 abstract. For instance the Bantu would refer to the dog-ness of a dog as *u-bu-bwa*, the animality
 628 of an animal as *u-bu-koko*. When *bu* is combined with the stem *-ntu*, it means the humanness or
 629 humanity.

630 ¹⁰ I am also using the word “intelligent” to mean “comprehensive rationality” that allows people to
 transcend calculations geared to substantiating their personal interests rather than harmony in
 the universe.

631 What these Bantu categories of beings underlie is the notion of community. The
 632 human being, the *mu-ntu*, is first of all part of the universal community (the com-
 633 munity of *ntu*) which includes beings other than the human being. In other words,
 634 the different realities of the universe belong together. As Mkhize (2008: 38) rightly
 635 puts it, different realities of the universe form the cosmic unity.

636 Secondly, the human being belongs to the human community (family, clan, vil-
 637 lage, etc.) from which one is born. One is *mu-ntu* among the *ba-ntu*. The *mntu* is
 638 conceived of as part of the social web which incorporates other *Bantu*. These *Bantu*
 639 include human beings actually living (the present generation), human beings who
 640 are dead (the past generation), and human beings who are not yet born (the future
 641 generation). This sense of community which is not limited to the present generation
 642 is peculiar to African way of life. For Dickson Kwesi, it is a characteristic mark that
 643 defines African-ness (Kwesi, 1977). In Southern Africa, this sense of the (human)
 644 community is expressed in the following popular Zulu and Xhosa saying: “*umuntu*
 645 *ngumuntu ngabantu*”¹¹ (a person depends on other people to be a person; or better,
 646 you are a person in that you carry within yourself your humanity and the humanity
 647 of others).

648 Thus, in the African value system, the first value is the value of the community.
 649 The ontological primacy of the community in the African value system may lead one
 650 to wonder what happens to individual agency. In effect, one may be made to believe
 651 that the individual is swallowed up by the community to the extent that one cannot
 652 have a freedom and responsibility of one’s own. Kwame Gyekye (1997) felt uncom-
 653 forttable with the seeming radicality of the African sense of community and asked
 654 himself whether a moderate perspective of the African community can be envisaged.
 655 In fact, his whole book, *Tradition and Modernity* is an effort to substantiate such
 656 a moderate perspective. However, the African value system naturally accommo-
 657 dates both the individual as well as the community as ontologically interdependent
 658 without reducing the ontological density and the primacy of the community. I have
 659 developed this point elsewhere by making a distinction between the human being as
 660 a being-with/in-self (*umuntu-w’-ubuntu*) and human being as being-with/in-others
 661 (*umuntu-mu-bantu*) (see Ntibatirirwa, 1999, 2003: 75–77). Maybe what I could add
 662 here is the fact that the value of *ubuntu* is both an ontological and moral value of
 663 people individually as they live according to their nature as well as collectively when
 664 their interdependence is geared to achieving social harmony.

665 There is a host of moral values that go with the value of the community. I will
 666 not dwell much on them but will only refer the reader to the reflections of thinkers
 667 such Julius Nyerere who tried to build a political and economic system based on the
 668 values of the family (*ujaama*), cooperation, sharing, care and compassion (Nyerere,
 669 1968); Kaunda (1968) whose humanism is built on such values as mutual aid, coop-
 670 eration, responsibility and concern for others; and Senghor (1964) who emphasized
 671 communion, participation and sympathy. All these thinkers who also happen to be
 672

673
 674 ¹¹ This saying is also found in other languages such as Sesotho (*Motho ke motho ka batho*), in
 675 Kirundi and Kinyarwanda (*Umuntu ni umuntu mu Bantu*).

676 the fathers of Africa's independence aimed at building a socialist type of economy
 677 on the community and the values that flow from it. However, my observation is that
 678 their socialist response to the Africa's quest of economic development was rather a
 679 question in search of an answer: which economic system is most likely to harmonise
 680 with the African value system and its ontological structure?

681 Today's economic development involves three major actors which tend to compete
 682 in the economic order: the state, the markets, and the people. What the Bantu
 683 conception of reality leads us to is the fact that the three forces have to interact
 684 in synergy for a meaningful development to be achieved. In other words, in the
 685 Bantu conception of reality, economic development should be inclusive rather than
 686 exclusive. Obviously this goes in the opposite sense of the neoliberal belief that self-
 687 interest and rational choice require that the market run the economic show alone,
 688 thus excluding the state and the people. The implication is that the market alone
 689 becomes the agent of economic growth and development, while the role of the state
 690 and the people is reduced to being the patients. On the contrary, the African value
 691 system as can be seen from the Bantu conception of reality would not divide the
 692 actors of economic development into agents and patients, producers whose respon-
 693 sibility is to produce and accumulate on the one hand, and on the other hand the
 694 consumers. The African value system gives us a framework in which all could be
 695 agents whose solidarity and cooperation would lead to economic growth and devel-
 696 opment. In such a framework, one achieves one's humanity as a producer and a
 697 consumer, a buyer and a seller, who responds not only to the forces of the market
 698 but also to both the material and spiritual needs of the being human. This is the very
 699 meaning of *ubuntu*; I mean *ubuntu economy*.

700

701

702 **3.8 Conclusion**

703

704 In this chapter I have tried to challenge the neo-liberal claim that the freedom to
 705 pursue one's self-interest and rational choice lead to economic growth and devel-
 706 opment. I argued that this claim cannot be universalised as neo-liberal economists
 707 and policy-makers have led us to believe. I endeavoured to demonstrate that cultural
 708 values are an important factor that needs to be taken seriously to achieve economic
 709 growth and development. I showed that self-interest and rational choice themselves
 710 are part of a cultural value system. This led me to substantiate the claim that there
 711 is a necessary link between cultural values and economic growth and development.
 712 Against certain arguments that have tried to marginalise the African value system on
 713 the ground that it is an obstacle to economic development, I argued a contrary point
 714 by considering the Bantu conception of themselves and reality. Such a conception
 715 structures a whole system of values that could enhance rather than undermine eco-
 716 nomic growth and development in Africa. The major advantage of the African value
 717 system I underlined is the fact that it guards us against exclusion and the separation
 718 of people into categories of agents and patients in the process of economic develop-
 719 ment. Seen against this background economic growth and development is a product
 720 of the synergy of all actors: the state, the market, and the people.

721 Thus if the argument of the necessary link between cultural values and economic
 722 development is convincing enough, it is misleading to try to universalise the values
 723 of self-interest and rationality as the only ground of economic growth and develop-
 724 ment. Accordingly, my reflection has two major implications. The first implication
 725 is that my argument should be understood as a reflective invitation to political lead-
 726 ers, economists, policymakers to concentrate much effort on creating a political
 727 and socio-economic environment in which cultural values can catalyse economic
 728 growth and development. From this point of view I am in the line of the World Bank
 729 which, in October 1999, declared that culture is an essential component of economic
 730 development that should play an important role in economic processes.

731 The second implication is rather a warning based on the history of economic
 732 development. The experience of the last decades of the 20th century as well as
 733 the present financial crisis have shown us that neither the state alone, nor the
 734 market alone, can lead societies to a meaningful economic growth and develop-
 735 ment. The last years have also witnessed to some kind of collective mobilisation
 736 of marginalised groups against the disempowerment tendency of the state and the
 737 market thanks to the development of civil society movements (Mohan and Stokke,
 738 2000), particularly in developing countries. What one can learn from African values
 739 centred on the community is that what would work to achieve economic develop-
 740 ment is not exclusion but inclusion of all the actors. Accordingly, I am suggesting
 741 that, in the African context, what could achieve economic growth and development
 742 is the synergy of the state, the market and the people. I called this *ubuntu economy*.

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01 **Chapter 4**
02 **Black Economic Empowerment**
03 **and the Post-Apartheid South African Quest**
04 **for the Domestication of Western Capitalism**
05
06
07

08 **Munyaradzi Felix Murove**
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12
13 **4.1 Lay People's Discussion on South African Black Economic**
14 **Empowerment (BEE)**
15

16 We were watching television in a tavern in Sobantu township in South Africa whilst
17 treating ourselves to some nice cold beers and snacks. After some few minutes of
18 adverts, a popular South African black business man appeared on television narrat-
19 ing a story on how he managed to get rich and be where he is today. He looked smart
20 indeed. A three piece charcoal grey suit, elephant leather black shoes, his left hand
21 adorned with a gold watch and a gold marriage ring. His appearance in itself was a
22 story to the effect that he had it all in life. We previously knew him from our mem-
23 ory of the struggle as a tall, slender and cheerful man who had always expressed
24 insurmountable zeal and unsurpassable passion for social, political and economic
25 justice. But now those clothes which he wore during the struggle can no longer fit
26 his body.

27 His appearance on the national television told a story of someone who had it
28 all in life. Rumours from oral tradition circulating among newspapers has it that
29 since he joined the business fraternity 5 years ago, his fortunes have arisen to tens
30 of billions of dollars, and that he stays in a mansion or palace which many third
31 world presidents might envy. Whilst most of his business associates are from Europe
32 and America, all his businesses are in African names. Like all African indigenous
33 names, the names of his companies are pregnant with symbolism. One could read
34 from the symbolism behind these names messages such as, "A new era has dawned
35 in South Africa", "The sun has risen", "Nothing comes easy without going through
36 turmoil of the struggle", "Follow the ancestors" – and the list is inexhaustible. In
37 pursuit of more and more fortunes, he made himself a friend to all companies and
38

39
40 _____
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45

corporations. His message to them was always clear and the most seductive as it was articulated as follows: (a) Previously white owned companies and corporations have no business future in the new South Africa and a new world order. They needed to tune themselves into the new legislation that stipulates that companies should have those who were previously disadvantaged in management positions as well as transforming those who were previously disadvantaged into shareholders. (b) That his participation in their companies or corporations would be to their own self-interest as he is more knowledgeable in the contemporary political and economic policy landscape. (c) His appearance in overseas business meetings on behalf of these companies and corporations would be a wise business decision as such appearance will inevitably be viewed as “overseas companies doing business with Africans who were previously disadvantaged”, hence “overseas companies bringing business transformation to post-colonial Africa”.

The appearance of this African business person on national television business programme was aimed at mentoring young aspiring black Africans on how to become successful business people. His speech went as follows:

- It’s all about believing in yourself.
- You must tell yourself that you can do it.
- You must be focused on what you want to achieve and set goals on how to achieve your dreams.
- Work hard in whatever you do.
- Don’t be discouraged when you don’t achieve that which you had set yourself to achieve.
- Tell yourself that next time your dreams will come true.
- Don’t wait for others to employ you.
- Tell yourself that you are your own employer.
- You are the master of your own dreams and it’s up to you to see to it that they come true.
- Your destiny is within your hands.
- Apply your very best to take advantage of the opportunities before you.

This talk was very touching and inspiring indeed. However the owner of the tavern interrupted and managed to draw all our attention. With a frowned face, and a voice of disbelief in what was being said by our newly empowered businessman, he asked, “Gentlemen how can it be possible for someone who was not even a businessman five years ago to become a multimillionaire within such a short space period of time”? Someone in the group answered this question by saying that Black Economic Empowerment programmes are more lucrative than any other business venture you could ever think of. The owner of the tavern went on to pose a question to the effect that, “Why are these Black Economic Empowerment programmes not accessible to the majority of us who have been involved in businesses for decades? Would it not make empowerment sense if businesses and corporations

91 are to empower the majority of poor people who live under subsistence level than
92 empowering individuals who are already well-off?"¹

95 4.2 Introduction

97 The most controversial issue that is currently sweeping across the post-apartheid
98 South African political and economic landscape is mainly about the ethical justifiability
99 of post-apartheid South African economic policy of Black Economic Empowerment (BEE)/Africanisation/Indigenisation. Such an economic policy has
100 been implemented in many post-colonial African societies without success. Whilst
101 all these post-colonial African economic programmes were prompted by the need
102 to transform capitalism from being a foreign owned economic system to a domesti-
103 cally owned economic system, such transformation did not necessarily result in the
104 domestication of capitalism but rather in a creation of economic inequalities among
105 those who have been previously disadvantaged by colonialism and apartheid. The
106 creation of insurmountable inequalities among those who have been previously dis-
107 advantaged has given rise to a situation where the majority of the South African
108 citizens have come to question the morality of such an economic programme,
109 especially in the face of inadequate government provision of basic needs such as
110 education, health and transport.

112 Arguments that are usually proffered in support of BEE/Indigenisation/
113 Africanisation are as follows:

- 115 (1) The African economy under colonialism and apartheid was based on giving
116 business opportunities to whites as opposed to black people, hence to
117 redress this colonial economic legacy, it is imperative that the post-colonial
118 African government should give preference to black people in all sectors of
119 the economy.
- 120 (2) Since capitalism has been the handmaid of colonialism and apartheid, the
121 continuous existence of this economic system under the hands of those who
122 were the beneficiaries of colonialism and apartheid can only perpetuate neo-
123 colonialism in post-colonial or post-apartheid South Africa.
- 124 (3) Real political power is in the hands of those who own and control the
125 economy. It follows that political power will remain inadequate without
126 economic power by those who were previously disadvantaged to own and
127

130 ¹ I am very much indebted to my friend Muthandeni Duma for introducing me to Zenzele taven-
131 ern, a place where I managed to interact with ordinary people whom we in academia have often
132 marginalized in our academic discourses. The experience of coming face to face with poor and
133 uneducated people engaging in a conversation that has a strong bearing on economic ethics within
134 South African contemporary political and economic changes has motivated me to embark on
135 African Business Ethics as an appropriate focus for the study of business ethics in post-apartheid
South Africa.

control all the sectors of the economy. For that to happen, it is indispensable that governmental legislative authorities should enact laws that promote BEE/Indigenisation/Africanisation in the modus operandi of companies and in the issuing of tenders. In so doing, economic power is being transferred to those who were previously disadvantaged.

- (4) Capitalism in Africa has helped to promote the westernization of Africans and operated in ways that only helped to serve western economic needs. To reverse such a scenario, post-colonial Africa needed to domesticate capitalism, and the most effective way towards the domestication of capitalism was for black Africans to wrest control of this economic system such that African values, modes of production and consumption should become prominent in this economic system. Hence the post-apartheid economic policy of BEE/Indigenisation/Africanisation is regarded as the most effective economic policy towards the domestication of capitalism.

On the other hand, those who argue against BEE/Indigenisation/Africanisation have the following arguments in this debate:

- (1) BEE/Indigenisation/Africanisation amounts to some form of legalized looting by those who have political power and their closest friends.
- (2) BEE/Indigenisation/Africanisation creates a class of African capitalists who will rely heavily on political relatives and friends, thus making it difficult to distinguish between ethical business practices and corrupt business practices.
- (3) In an economic context such as that of South Africa with enormous challenges for economic development, government policy and funding priorities should be focused on urgent issues such as education, health and infrastructure. Ignoring these areas amounts to perpetuating the injustices of the past.
- (4) Beneficiaries of BEE/Indigenisation/Africanisation will not necessarily lead to the domestication of capitalism in Africa. These beneficiaries will end up identifying themselves with yester-year colonial capitalists instead of uplifting the black communities.
- (5) There is no empirical evidence all over post-colonial Africa that can help us to support the view that BEE/Indigenisation/Africanisation will lead to the domestication of western capitalism.

Within the limited scope of this chapter, I will not go into a detailed discussion of all these arguments, rather, my focus will be on ethical challenges that arise from BEE. The first part of this chapter will look into the colonial heritage of BEE in which it is argued that the failure to transmit capitalist values led to the failure of the ascendancy of capitalism. In the second part it will be shown that while the idea of BEE/Indigenisation/Africanisation as a post-colonial African economic transformation policy was aimed at domesticating capitalism or giving it an African flavor, there is no evidence where the policy has succeeded in many parts of post-colonial Africa. This claim will be supported in the third part of the chapter where it is argued

181 that BEE/Indigenization/Africanisation does not necessarily lead to the domestica-
 182 tion of capitalism, but to a creation of a class of capitalists whose economic behavior
 183 is based on the emulation of other capitalists in all parts of the world. In this vein,
 184 this chapter will argue that BEE/Indigenisation/Africanisation policies are mistaken
 185 policies when seen from an economic developmental perspective. Lastly, it is argued
 186 that such policies do lead only to weak participation in global capitalism by African
 187 countries.

190 **4.3 BEE/Ingidenisation/Africanisation and the Colonial** 191 **Heritage**

193 The world renowned African scholar, Ali Mazrui advanced the argument that capi-
 194 talism failed in post-colonial Africa because of the inherent historical problem that
 195 originated in the transmission of capitalist values during the colonial epoch. As he
 196 put it,
 197

198 The colonial master did not normally dig his own land physically, or clean his own cattle,
 199 or sweep his own barn, or wash his own clothes, or change his own tyres. There was always
 200 a Black man around to do the physical chores. . . .The aristocratic legacy of masters and
 201 servants had its adverse consequences for the work ethic in post-colonial Africa, just as it
 202 had on industrial relations in Britain. White masters in Africa drinking their gin and tonic
 203 leisurely while their servants pulled off their boots – this was the colonial caste which
 204 transformed physical labour into a burden of servitude (Mazrui 1986: 233).

205 The implication of the above quotation is that it was part and parcel of the
 206 colonial economic practice that one could accumulate wealth without necessarily
 207 sweating for it. The idea of capitalism through accumulation was severed from
 208 accumulation through hard work and frugality as advocated by Max Weber. Thus
 209 one finds one of the owners of Lever Brothers say that, “. . .the organizing ability
 210 is the particular trait and characteristic of the white man. . .I say this with my lit-
 211 tle experience, that the African native will be the best, and live under the larger
 212 conditions of prosperity when his labour is directed and organized by his white
 213 brother who has all these million years’ start ahead of him” (see Davis 1973:
 214 385).

215 Whilst Weber depicted rational organization as one of the elements inherent in
 216 the spirit of modern capitalism, this element of organized labour was violated in
 217 colonial Africa because colonial capitalistic production often involved manipulation
 218 when the African work force did not appear voluntarily. In this vein, Karl Polanyi
 219 alleged that the colonists used to “impose a hut tax on the native [in order] to force
 220 him to barter away his labour” (Polanyi 1968: 164; see Murove 2005: 394–395).
 221 Karl Polanyi’s argument can be supported by taking recourse to the observation that
 222 was made by Felix Gross about Cecil John Rhodes. Gross said that in order to make
 223 Africans work for him, Rhodes had to devise a plan: “It called for special enticement
 224 to lure them to the farms, and a good psychological understanding of their primitive
 225 though complicated mentality to keep them there. Cecil found out that many Natives

226 needed money to pay their hut-tax. He lent them the money on their promise to work
227 for him. And they never let him down. 'Karrirs', he wrote home, are really safer than
228 the Bank of England" (Gross 1956: 11).

229 It is from such historical evidence where it is argued that BEE/Indigenisation/
230 Africanisation policies are intended to redress the injustices of the past whereby
231 black Africans had their labour used and at the same time found themselves
232 excluded from reaping the fruits of their labour. This is evident where one finds
233 the then Minister of Bantu Affairs, Verwoerd stating that, "There is no place for [the
234 Bantu] in the European Community above the level of certain forms of labour. . . it
235 is of no avail for him to receive a training which drew him away from his own com-
236 munity and misled him by showing him the green pastures of the Europeans but still
237 did not allow him to graze there" (see Lipton 1986: 24). It is in such utterances that
238 it is argued that the demise of these political systems also called for the restructuring
239 of the capitalist economic system in post-colonial or post-Apartheid South Africa
240 as a way of redressing the economic injustices of the past.

241 In this regard, advocates of BEE/Indigenisation/Africanisation argue that one
242 could not redress the injustices of the past solely through political control, rather
243 political control is supposed to be complemented by economic control. It was
244 the greatest conviction of African nationalists that economic control could only
245 be effected through the domestication of capitalism because during colonialism,
246 capitalism had turned Africans into victims of expropriation. Kwame Nkrumah
247 referred to this expropriation as follows, "While missionaries implored the colo-
248 nial subject to lay up his 'treasures in Heaven, where neither moth nor rust doth
249 corrupt', the traders and administrators acquired his minerals and land. There was
250 no intention of processing locally the discovered raw materials. These were intended
251 to feed the metropolitan mills and plants, to be exported back to the colonies
252 later in the form of finished commodities" (Nkrumah 1970: 22). Here the main
253 argument is that African economic relations under colonialism were not about
254 developing or transferring capitalistic values to the colonized. It is also for this rea-
255 son that Nkrumah argued against those who gave moral support to colonialism on
256 the grounds that it was indispensable to Africa's appropriation of capitalism and
257 modernity.

258 According to Nkrumah, colonialism represented the expropriation of African
259 resources. He writes, "In her African colonies, Britain controlled the export of raw
260 materials by preventing their direct shipment to foreign markets. After satisfying
261 the demands of her home industries, she sold the surplus to other nations and netted
262 the profits herself. The colonial farmer and worker had no share in those profits.
263 Nor was any part of them used in providing public works and social services in
264 the colonies" (Nkrumah 1970: 22-23). The economic modus operandi of colonial
265 economic practices could not be severed from the idea of legalized robbery on the
266 grounds that African resources were controlled by their respective colonial powers –
267 be they French, British or Portuguese. The coming of political independence was
268 also followed with what Julius Nyerere called economic nationalism. For Nyerere,
269 economic nationalism was about the control of the economy. In support of economic
270 nationalism Nyerere had this to say,

271 Such an economic expression of nationalism is nothing new in the world; although the man-
 272 ner of the action may have been peculiarly Tanzanian, its motivation is common enough.
 273 Every country – whether it be capitalist, communist, socialist or fascist – wants to control
 274 its own economy. . . .At independence we achieved political control, but all important
 275 industries remained in foreign hands. . . .Whatever economic system the peoples of different
 276 African countries eventually adopt, it is quite certain that sooner or later they will demand
 277 that the key positions of their economy are in the hands of their own citizens (Nyerere
 1968: 262).

278 It is evidently clear that the post-colonial concept of economic nationalism was
 279 about the control of capitalism which African nationalists for so long had suspected
 280 to have been controlled externally. For this reason, an externally controlled capital-
 281 ism as it was under colonialism was deemed exploitative. In pursuit of economic
 282 nationalism, Nyerere became hostile to the whole concept of economic growth and
 283 development through direct foreign investment. He writes, “. . .I do not think there is
 284 any free state in Africa where there is sufficient local capital, or a sufficient number
 285 of local entrepreneurs, for locally based capitalism to dominate the economy. Private
 286 investment in Africa means overwhelming foreign private investment. A capitalistic
 287 economy means a foreign dominated economy. These are the facts of Africa’s situ-
 288 ation. The only way in which national control of the economy can be achieved is
 289 through the economic institutions of socialism” (Nyerere 1968: 264).

290 Those who argue against the idea that colonialism was about the expropriation
 291 of African resources maintain that since African traditional values were prohibitive
 292 to the appropriation of capitalism, there was no way in which Africa would have
 293 developed its own capitalism without the colonial intervention. In other words, the
 294 providential aspect of colonialism to Africa lay in the fact that Africa would have
 295 remained poor and backward if intercourse with western economies did not occur.
 296 One of the most notorious defender of the providence of colonialism, A. J. Hanna
 297 did not mince his words when he said,
 298

299 . . .[I]t is virtually certain that conditions in Africa would still be roughly what they were
 300 a century ago, had it not been for the introduction of European administration, European
 301 instruction, and contact with the European economy. . . .It has often been asserted that
 302 investment in Africa involved injustice to the Africans, since it was a device for draining
 303 the wealth of their continent into the pockets of investors in Europe. This is an elemen-
 304 tary misconception. The mineral and other resources of Africa were useless to the native
 305 inhabitants until they were developed, and they could not be developed without transport,
 306 machinery and skill. By making these things available the European investor, however self-
 307 interested he may have been, was serving Africa; and if his enterprise came to an end
 through bankruptcy, Africa gaining nothing through his misfortune (Hanna 1961: 11–17).

308 As it can be deduced from the above quotation, Hanna’s main argument was that
 309 colonialism was morally justifiable on the grounds that if it were not for colonial-
 310 ism, then the African economy would not have accrued economic benefits from its
 311 contact with the western world. In other words, it was to the benefit of the African
 312 economy that there was colonialism. It is also part of Hanna’s argument that the
 313 expropriation of African resources is morally justifiable because those resources
 314 were not being used at all. Since those African natural resources were not being
 315 used at all, it becomes a reckless mistake for one to interpret the whole colonial

316 economic enterprise as stealing and expropriation of African resources. But Hanna's
 317 reading of the colonial history was not shared by everybody who officially partic-
 318 ipated in colonial administration. Thus one finds the French Colonial Secretary of
 319 State, Albert Sarraut arguing passionately that colonialism was mainly about the
 320 expropriation of African resources. As he puts it,

321 What is the use of painting the truth? At the start colonization was not an act of civilization,
 322 nor was it a desire to civilize. It was an act of force motivated by interests. An episode
 323 in the vital competition which, from man to man, from group to group, has gone on ever
 324 increasing; the people who set out to seize colonies in distant lands were thinking primarily
 325 of themselves, and were working for their own profits, and conquering for their own power.
 326 ... The origin of colonization is nothing else than enterprise of individual interests, a one-
 327 sided and egotistical imposition of the strong upon the weak (see Nkrumah 1970: 21).

328 Surely Sarraut was a pragmatist who did not hesitate to call a spade a spade. In
 329 this type of pragmatism, colonialism was solely about economic expropriation of
 330 the colonized Africans. Accordingly, there wasn't any room for moral justification
 331 of colonialism at all. Since colonialism could not promote the ascendancy of cap-
 332 italism in colonial Africa, it is also the argument of post-colonial African scholars
 333 that colonialism should be seen solely as a moment of expropriation within African
 334 history. This is the argument that was advanced by Ali Mazrui when he said that,

335 The greatest mockery about Western imperialism does not lie in its promotion of capitalism
 336 in Africa; it lies in its failure to do so. ... the West destroyed traditional African economies
 337 without really creating capitalist foundations to replace them. In this sense, the problem of
 338 dependency in African is about who controls capitalism within Africa, rather than about the
 339 merits of capitalism as such. ... Western imperialism transmitted capitalist greed to Africa –
 340 but without capitalist discipline. It transmitted the profit motive – but not the entrepreneurial
 341 persistence and risk-taking (Mazrui 1986: 215).

342 In the light of Mazrui's argument as stated above, colonialism failed to promote
 343 capitalism nor did it create any alternative economic system, hence the problem of
 344 dependency became the main pre-occupation of post-colonial scholars and policy
 345 makers on ownership and control of capitalism in Africa. In this vein, one finds
 346 that most post-colonial African scholars have persistently maintained that the west
 347 were the real owners of capitalism in Africa, hence the second phase of Africa's
 348 struggle for independence was to be focused on economic decolonization. In this
 349 regard, the post-colonial African economy came to be understood as a remnant of
 350 colonialism. Thus one finds Chinweizu saying that, "Political decolonization and
 351 formal independence in Africa have not meant the end of imperialism. They have
 352 only meant a change in the *guise* of imperialism. Political decolonization has not
 353 been accompanied by economic decolonization" (Chinweizu 1999: 769).

354 The idea of economic decolonization fueled the post-colonial African economic
 355 policy of BEE/Indigenisation/Africanisation. Whilst western capitalism tends to
 356 agree on the importance of such a policy in the domestication and appropriation
 357 of capitalism, Chinweizu argued that these western countries are only in favour of
 358 such a policy in so far as it provides fertile ground for the perpetuation of western
 359 economic interests. It is on these grounds that Chinweizu said that the decoloniza-
 360 tion of the economy through indigenization of capitalism remained a contentious

361 issue between the west and post-colonial Africa. He writes, “On economic decolo-
 362 nization, the African states and the West were in sharp conflict. The African states
 363 wanted to wrest control of their economies from a West which has determined
 364 to retain that control. For the West, losing control would mean giving up what
 365 a century of conquest and colonization had achieved for them, and what political
 366 decolonization had aimed to preserve. For the African states, however, not to wrest
 367 away that control would be to defeat the economic aim of their struggle for political
 368 independence” (Chinweizu 1999: 771).

369 As indicated previously, in post-colonial Africa, the most effective instrument
 370 for economic decolonization was indigenization or Africanisation. In this regard,
 371 “Decolonisation was generally seen as no more than Africanisation, in the sense of
 372 putting more Africans into the economic structures inherited from colonial times.”
 373 (Chinweizu 1999: 777). To those western countries who were owners of capitalism
 374 in colonial Africa, Africanisation was preferred on the grounds that those educated
 375 Africans who were also westernized through education would not endanger their
 376 economic interests, but rather they will simply give an African face to western
 377 capitalism. But Chinweizu (1999: 790) argued that the Africanisation of capitalism
 378 could not succeed because those Africans who were supposed to be the agents of
 379 this policy “had enormous appetites for material consumption”. Since they had this
 380 insatiable appetite for consumption, “They craved the best that the industrial world
 381 could offer, and were therefore preoccupied with the distribution for consumption of
 382 whatever income was available from an economy which remained colonial in char-
 383 acter”. Contrary to the economic behavior of African capitalists, “the bourgeoisie of
 384 the Western core were habitual accumulators of capital, highly experienced at it, and
 385 with highly developed productive organization as well as vast sums of already accu-
 386 mulated capital which they could deploy for further accumulation” (*ibid*, 790). Here
 387 Chinweizu’s argument is that the idea of creating a group of African capitalists
 388 who will be responsible for the domestication of capitalism will not prevail because
 389 the consumption habits of African capitalists are contrary to the spirit of accumula-
 390 tion and saving as is the case among western capitalists. The same observation was
 391 also made by Nkrumah when he said that,

392 Thrift has not been a characteristic of our people, largely because they have not enjoyed
 393 enough income to make the question anything but academic. How to instill a need to spend
 394 and save wisely among them has become a major preoccupation now that they are beginning
 395 to enjoy higher incomes and the taste for amenities. Our family system actually discourages
 396 family heads from saving, for the system, in effect, penalizes the man with initiative in
 397 favour of the lazy and the weak. The indigent members of the family live upon the more
 398 fortunate ones. A praiseworthy and useful practice in our past, more or less stagnant soci-
 399 ety based on subsistence farming, it acts today as a break upon ambition and drive. At
 400 the present time, the man who makes a reasonable living finds his money eaten up by his
 401 relatives. . .so that he simply cannot meet his personal obligations, let alone save anything
 402 (Nkrumah 1970: 100).

403 Nkrumah’s pessimism on the domestication of capitalism through indigenization
 404 was based on Max Weber’s theory that said that there was some early connection
 405 between the Protestant ethic of thrift, frugality and hard work and the ascendance

of modern capitalism in western societies. According to Nkrumah, the stumbling-block to the domestication of capitalism through indigenization was in the African traditional communalism which puts emphasis on the need for the individual to demonstrate a sense of concern for the well-being of others through sharing of material possessions. This African traditional prestige motive is thus seen as an inherent hindrance to saving and accumulation of wealth.

Unlike Nyerere, Nkrumah was convinced that the domestication of capitalism was supposed to be attained through indigenous capitalists. For this reason he was distrustful towards foreign capitalists as much as he was towards indigenous capitalists. Since foreign capitalists and indigenous capitalists could not be trusted Nkrumah suggested that the government was the most appropriate agent to bring about the domestication of capitalism. He writes, "We have had enough of European monopoly domination of our economy. We have emancipated ourselves politically, and we have now to take off the economy monopoly that was the objective of foreign political control. This is the crux of our economic policy, and the essential heart of our endeavours. For unless we attain economic freedom, our struggle for independence will have been in vain, and our plans for social and cultural advancement frustrated" (Nkrumah 1970: 102). Many scholars have come to argue that the idea of domesticating capitalism through policies of indigenization/Africanisation/BEE does not have any empirical evidence that shows that such economic policies have yielded the intended results. Many economic developmental theorists have argued that such policies tend to perpetuate the previous colonial economic situation where wealth ends up cornered by a few at the expense of the majority of the populace. Some argue that the indigenized African capitalists are most likely to emulate the accumulation and consumption habits of other capitalists all over the world.

4.4 BEE/Indigenisation/Africanisation and the Problem of Emulation

It has been argued repeatedly by some post-colonial African critics of indigenization that for government to embark on policies aimed at creating a class of African capitalists was an exercise in futility. African scholars such as Claude Ake argued that those who end up benefiting from governmental economic interventions in favour of black economic empowerment are mostly in solidarity with international capitalism rather than with their fellow African poor (Ake 1981: 32). The idea of solidarity between those Africans who are economically empowered and international capitalism has its explanatory logic in Thorstein Veblen's Institutional Evolutionary Economics. In his *The Theory of the Leisure Class*, Veblen argued that the capitalistic practice of economic predation is a shared characteristic among all capitalists despite their backgrounds because, "In order to stand well in the eyes of the community, it is necessary to come up to a certain, somewhat indefinite, conventional standard of wealth. . ." (Veblen 1931: 30). According to Veblen, this predatory habit

451 has no proper explanation besides the seeking of power and honour through endless
452 accumulation and acquisition of wealth. The appetite for acquisition and accumu-
453 lation of wealth among the leisure class (capitalists) manifests itself as insatiable.
454 The need to acquire more becomes too addictive to such an extent that it leads to
455 compulsive acquisitiveness. He writes,

456 But as fast as a person makes new acquisitions, and becomes accustomed to the resulting
457 new standard of wealth, the new standard forthwith ceases to afford appreciably greater
458 satisfaction than the earlier standard did. The tendency in any case is constantly to make the
459 present pecuniary standard the point of departure for a fresh increase of wealth; and this in
460 turn gives rise to a new standard of sufficiency and a new pecuniary classification of one's
461 self as compared with one's neighbours. So far as concerns the present question, the end
462 sought by accumulation is to rank high in comparison with the rest of the community in
463 point of pecuniary strength (Veblen 1931: 31).

464 In the light of Veblen's theory of the evolution of institutional economics, soli-
465 darity between the rich and the poor becomes untenable because those who are
466 capitalists are driven by an insatiable need for wealth whereby that which has been
467 acquired is always inadequate because, as Veblen put it, "the normal average indi-
468 vidual [among the leisure class] will live in chronic dissatisfaction with his present
469 lot" in the sense that, "when he has reached what may be called the normal pecu-
470 niary standard of the community, this chronic dissatisfaction will give place to a
471 restless straining to place a wider and ever-widening pecuniary interval between
472 himself and this average standard" (Veblen 1931: 31). The main psychological rea-
473 son behind this insatiability comes from the fact that in the leisure class, individuals
474 are always driven by the urge to emulate those who belong to their class – thus
475 setting a path to an endless economic state of competitive accumulation without
476 stipulating standards for sufficiency. Within this psychological state of a compulsive
477 urge for endless accumulation, the individual thus severs himself from communal
478 belongingness. According to Veblen, the leisure class is endowed with conspicu-
479 ous consumption patterns that can only be appeased by extraordinary lifestyles. He
480 writes, "The quasi-peaceable gentleman of leisure, then, not only consumes of the
481 stuff of life beyond the minimum required for subsistence and physical efficiency,
482 but his consumption also undergoes a specialization as regards the quality of the
483 goods consumed. He consumes freely and of the best, in food, drink, narcotics,
484 shelter, services, ornaments. . ." (Veblen 1931: 73).

485 Veblen maintained that such consumption habits are vicarious because they are
486 done as a way of expressing one's economic status within the leisure class. But such
487 conspicuous consumption habits are something which the individual is expected
488 to maintain if s/he is to remain honourable within the circles of the leisure class.
489 In characterization of the leisure class which was rendered by Veblen was that "the
490 wealthy class is by nature conservative" in the sense that this class "opposes innova-
491 tion". Its opposition to innovation is not only caused by the factor of vested interest,
492 but this conservatism has "a certain honorific or decorative value". As he puts it,
493 "Conservatism, being an upper-class characteristic, is decorous; and conversely,
494 innovation, being a lower-class phenomenon is vulgar" (Veblen 1931: 198–200).
495 In other words this conservatism

496 makes it incumbent upon all reputable people to follow their lead [i.e., the wealth class]. So
497 that, by virtue of its high position as the avatar of good form, the wealthier class comes to
498 exert a retarding influence upon social development far in excess of that which the simple
499 numerical strength of the class would assign it. Its prescriptive example acts to greatly
500 stiffen the resistance of all other classes against any innovation, and to fix men's affections
501 upon the good institutions handed down from an earlier generation (Veblen 1931: 200).

502 In other words, the conservatism of the leisure class is inevitable because it is
503 parasitic or predatory on the poor. This conservatism of the leisure class becomes
504 a mechanism that safeguards its own class-interests. Consequently, the leisure class
505 adopts an understanding of evolution based on the belief that, "Whatever is, is right";
506 whereas the law of natural selection, as applied to human institutions, gives the
507 axiom: Whatever is, is wrong". Veblen went on to say that such a type of class-
508 interested conservatism perpetuates the existence of unjust or inhumane institutional
509 practices (Veblen 1931: 207). The conservatism of the leisure class is not so much
510 concerned with perpetuating the received moral values, rather, moral values can only
511 be conserved when they help to support the long entrenched economic interests of
512 the leisure class. Thus he characterized the industrial processes and the economic
513 institutions of this leisure class as follows, "Their office is of a parasitic character,
514 and their interest is to divert what substance they may to their own use, and to retain
515 whatever is under their hand. The conventions of the business world have grown up
516 under the selective surveillance of this principle of predation or parasitism. They are
517 conventions of ownership; derivatives, more or less remote, of the ancient predatory
518 culture" (Veblen 1931: 203)

519 For Veblen, the business world of the leisure class is simply predatory and para-
520 sitic in as far as it feeds on the labour of others whom it denies access to the tastes of
521 its class. Such a business practice was archaic; hence it could not be applied in the
522 present context. The continual survival of such business practices owes its indebtedness
523 to the past economic outlooks that cannot be applied to today's socio-economic
524 conditions.

525 The implications of Veblen's theory of Institutional Evolutionary Economics to
526 BEE/Indigenisation/Africanisation economic policy has already been observed by
527 many African developmentalist scholars. Among some of their observations was
528 the idea that BEE economic programmes would inevitably create a class of African
529 capitalists whose economic standing will make it impossible for them to be in soli-
530 darity with the majority of the African poor. Claude Ake advanced the argument that
531 BEE/Indigenisation or Nationalisation economic programmes do not necessarily
532 lead to the decolonization of the African economy as it is generally assumed. Such
533 programmes "[e]ssentially... amount to a new partnership between the African rul-
534 ing class and international capitalism to their mutual benefit and often reduce areas
535 of conflict between them. By operating under the umbrella of the state, foreign cap-
536 ital reduces the visibility of its exploitation while enjoying new immunities" (1981:
537 39). Ake went on to say that,

538 Imperialist exploitation of Africa occurs precisely because of the existence of capitalism in
539 Africa. For the most part, the African ruling class is the creation of Western imperialism and
540 remains largely a tool of Western imperialism. . . .their interests coincide on the fundamental

541 issue of maintaining capitalist relations of production. The African ruling class survives
542 in so far as capitalist relations of production are maintained. And international capitalism
543 maximises its exploitation of Africa by keeping African economies capitalist and dependent
544 (Ake 1981: 35–36).

545 Within such an analysis, there is obviously an echo of Veblen's theory that
546 the leisure class (which Ake has identified as the ruling class) tends to form
547 bonds of solidarity based on their own conventional methods of acquiring and
548 consuming of wealth. Such a solidarity drives the poor to the peripheries of the
549 economy, thus further perpetuating the legacy of economic imperialism which the
550 BEE/Indigenisation/Africanisation policy had purported to terminate. It is partly for
551 this reason that other African scholars have sarcastically argued that indigenisation
552 or BEE is about the indigenisation of privatization. These scholars argue against the
553 old argument that has often been proffered by advocates of indigenisation which
554 says that indigenisation of capitalism does avoid the externalization of profits that
555 are made on African soil. Related to this is also the claim that international capital-
556 ism thrives on the mobility of capital, that is, foreign capitalists can easily relocate
557 their business operations to other countries or regions depending on profitability of
558 such a venture.

559 Against all those arguments, Chanda Chisala argued that we should accept capi-
560 talist practices as they are practiced all over the world and concentrate on improving
561 our African economic environment. Thus Chisala writes,

562 The only way is to change our environment and this will start by changing our atti-
563 tude to the whole idea of capitalism. Capitalism simply means allowing the environment
564 to be as free as possible. We destroy the environment when we start intervening in
565 it in order to force our ideas of who should own what; how much should what he
566 bought for [sic]; how should this one pay that one; who should pay less taxes than who;
567 etc. . . . The answer to our economy simply lies in a true understanding of the capital-
568 ist philosophy, period. And the logic is really simple: the most capitalist nations in the
569 world are the richest countries in the world – can it get simpler than that? It really has
570 nothing to do with constitutions (even though we do need a good constitution); with
571 foreigners; with agriculture; or even with national airlines (Chisala C. "Indigenisation
572 of Privatisation (Part 2): Some General Comments on Privatisation and Capitalism",
573 file://E:\Indigenisation%20of%20Privatisation –Botswana.htm, Accessed 22 April 2007).

574 Chisala's argument as stated above is that African states should just embrace
575 capitalism as it has been practiced in the western world. Programmes that tend to go
576 against the logic of the capitalist system can only be counter productive. The capital-
577 ist logic is based on the idea that in economic matters, the free market should decide
578 on who gets what and who deserves what. A whole hearted embrace of capitalism
579 would also imply that government should not come up with legislation with the
580 aim of aiding a particular segment of the population against the other. Obviously
581 the moment government tries to assist the individual's efforts to accumulation of
582 wealth through legislation and incentives, such actions become ethically problem-
583 atic. Here the problem arises with reference to who should be indigenised among
584 those who have been previously disadvantaged by colonialism or apartheid. If indi-
585 genisation is aimed at correcting the economic oppressions of the past, the question
586 that also arises is that are the beneficiaries of indigenisation the only ones who were

586 disadvantaged? Thus Ray Matikinye critiqued indigenisation in Zimbabwe on the
587 grounds that,

588 A first attempt at indigenisation succeeded in creating a legion of briefcase business-
589 men and petty traders. It also created a small clique of *nouveaux riches*, largely thriving
590 on crony capitalism and feeding on an intricate patronage system. . . . Many complaints
591 revolve round the repeated appearance of the same beneficiaries in different deals and
592 guises. . . . Black empowerment can only succeed in an environment of economic growth
593 buttressed by a vibrant private sector with full accountability all the way down the line
594 (www.theindependent.co.zw/news/2).

595 Matikinye's argument is that the economic policy of BEE/Indigenisation/
596 Africanisation does not solve the problem of economic decay and the resultant
597 poverty among the poor; rather it creates a small African elite class whose econo-
598 mic privileges are the direct result of governmental efforts. A popular critique of
599 BEE among South Africans has been that those who are politically well connected
600 end up remaining the only beneficiaries of BEE.

601 Recently Finance minister Trevor Manuel was interviewed by the London based
602 *Financial Times* in which he suggested that the South African government's econo-
603 mic policy of BEE has to be reviewed. As a followup to Manuel's suggestion,
604 the chief director of BEE, Polo Radebe conceded that, "The problem he highlighted
605 is in the implementation, it's not a problem in the content of the policy. It's the
606 practice of BEE that we need to rectify" (*Mail & Guardian*, April 20–25, 2007).
607 Asked whether it was crucial for there to be a sunset clause, Polo retorted that, "You
608 cannot put a sunset clause on transformation, [because as things are, BEE was] self-
609 propelling" so that the economy will reach a point in the future when 'legislation
610 was no longer necessary'. "That's when the market starts taking care of itself, when
611 equity becomes part of our psyche. . . . At that point I would like to remove that 'B'
612 from BEE so that people stop talking about black people and see empowerment as
613 an integral economic driver"

614 Whilst criticisms of BEE have raged on the grounds that it was mainly enriching a few indi-
615 viduals that were properly connected to the ruling party, Polo Radebe refuted this criticism
616 on the grounds that, "But if we assume that the 67% votes that went to the ANC are a reflec-
617 tion of their support throughout the economy, then it suggests that 67% of the population
618 are in one way or another connected to the ANC. So when you make the argument that
619 politicians, or those with political connections are the ones benefiting, then you are almost
620 suggesting that BEE should be confined to 30% of the population. So for me the discussion
621 always baffles me" (*Mail & Guardian* April 20–25, 2007).

622 Polo however admitted that it was difficult in the light of the present codes to regu-
623 late those who are using BEE for their own personal enrichment: "But how do you
624 determine how rich is rich enough. . . . Even if we were ready to go the route of regu-
625 lation, would these guys give us access to their balance sheets? Much of their wealth
626 is still on paper too. We would start entering murky territory" (*Mail & Guardian*,
627 April 20–25 2007). Whilst Polo is admitting that BEE is being abused by a few
628 individuals, she does not spell out explicitly what has to be done in order to rectify
629 the situation. It is abundantly clear that she admits that the BEE economic policy
630 is beset with enormous moral problems in the sense that such a policy empowers

631 those who are already privileged whilst ignoring the majority of the previously dis-
 632 advantaged. It is mainly for this concern that such an economic policy creates strong
 633 bonds of solidarity between the newly economically empowered black people and
 634 capitalists from the previous colonial or apartheid era. The main presumption of
 635 the advocates of BEE/Indigenisation/Africanisation policies is usually based on the
 636 idea that domestic capitalists are indispensable to the domestication of capitalism,
 637 “and that factors characteristic of traditional society, especially ‘traditional values’,
 638 inhibited the emergence of such elites” (Leys 1994: 16). In this regard, domestic
 639 capitalists are presumed to be in the position to do so. However, since capitalism
 640 is about accumulation, it also follows that those who have accumulated more and
 641 more as a result of BEE/Indigenisation/Africanisation policies will always retain
 642 the advantage of opportunities that present themselves for further accumulation of
 643 wealth. The argument that such policies will inevitably lead to continuous accu-
 644 mulation of wealth by the same individual cannot be easily explained away. For
 645 example, Vuyo Jack said that after making lots of accumulation of wealth through
 646 BEE deals, Mzi Khumalo “notified the public that he was no longer available for
 647 BEE deals”. Jack went on to commend that,

648 Herein lies a good lesson. Once BEE beneficiaries operate in the mainstream economy
 649 without the need for assistance envisaged by BEE, they should no longer monopolise the
 650 opportunities presented by BEE but allow other people to use the policy to gain access to
 651 the mainstream economy. The principle of graduation is simple – if no one graduates, the
 652 school will soon become too full and all students will suffer. . . .The graduation from BEE
 653 will most commonly be based on wealth levels, which government cannot set. Individuals
 654 must determine their own graduation level (Jack & Harris & Harris 2007: 59–60).

655 Here I would like to argue against Jack by saying that graduation by essence
 656 is marked by a completion of a certain set of requirements that are known and
 657 accepted by everyone. As stated above, Jack’s view is that graduation is by self-
 658 determination informed by self-satisfaction of accumulation of limitless wealth. In
 659 a desperate attempt to support this confused rendering of self-graduations he cannot
 660 help but to cite one graduand as adequate representation of the whole BEE empire of
 661 accumulation. What a representative sample! But Jack also raised an issue of ethical
 662 concern to the effect that BEE was actually empowering the same individuals who
 663 are in most cases politically well connected to national centres of political power.
 664 Thus within BEE, Jack avers,

665 The more influential the politician, the greater the attraction the suitors have for him or
 666 her. Furthermore, the more deals the former politician can conclude, the more bankable
 667 he or she becomes as a deal-maker and the stakes get higher. The trend is evident when
 668 tracking the deals entered into, for example, by Tokyo Sexwale, Cyril Ramaphosa and Saki
 669 Macozoma. Their early transactions were smaller in value but increased substantially as
 670 they landed more deals. . . .BEE does not intentionally advocate empowering the same
 671 individuals. Companies seeking Black ownership credentials frequently choose the same
 672 individuals and do not cast their nets wider in search of other Black people to partner with
 673 (Jack & Harris 2007: 60).

674 Obviously if what is stated by Jack is a true expression of how BEE operates,
 675 then the previous claim that has been made by people that this economic policy was

676 designed to help a few is valid. If such a policy can only benefit a few of those
 677 who are well connected politically then in no way can BEE policy ever lead to the
 678 domestication of capitalism. My argument here is that if capitalist accumulation
 679 requires hard work, thrift and frugality as it is generally agreed by economists, an
 680 economic policy that is mainly oriented towards accumulation and political connect-
 681 ivity as the ultimate value without hard work degenerates into some form of
 682 legalised looting. For this reason, other critics of BEE have raised their moral agi-
 683 tation towards this policy on the grounds that such a policy betrays the spirit of
 684 *Ubuntu* which is at the heart of African ethics. This moral agitation was expressed
 685 by Mike Boon when he said that African capitalists “are self-serving and care noth-
 686 ing for the community other than what it can deliver to them personally. . .”(Boon
 687 1996: 48). Other developmental economists have maintained that an economic pol-
 688 icy that elevates individual accumulation without limit does militate against broad
 689 economic development of the country. It is for this reason these critics have argued
 690 that BEE/Indigenisation/Africanisation is just a mistaken policy prompted mainly
 691 by political opportunism and the desire for a luxurious life without any sense of
 692 concern for the well-being of others or the greater good.

695 4.5 BEE/Indigenisation/Africanisation as Mistaken Policies

697 Adebayo Adedeji argued that the idea of indigenisation as a development policy
 698 objective has evolved through various stages of evolution. As he puts it,

700 As a policy, however, one gets the impression that the approach to its development and
 701 application has been rather *ad hoc*, piece-meal and lacking in internal consistency. It has
 702 been a product of circumstances, and at times mainly of politicians reacting to unfavourable
 703 economic situations and the demands of small groups of indigenous businessmen who felt
 704 that the prevailing economic conditions put them in an unfair position *vis-à-vis* their fore-
 705 ign competitors. It was hardly the original work of development planners, although their
 706 involvement became inevitable after political decisions have been made. Just as the articu-
 707 lation of a policy of indigenisation came about in a piece-meal fashion, so the measure for
 708 its realization was equally *ad hoc* and unplanned (Adedeji 1981: 45).

709 The implication of the above quotation is that the economic evolution of indi-
 710 genisation does not reflect a well reflected and planned economic policy. Its
 711 implementation carried with it some form of reaction on the part of African busi-
 712 nessmen to foreign economic relations. Ali Mazrui is more radical on this issue
 713 when he said that the whole thrust towards indigenization policy was aimed at
 714 making multinational companies more relevant to the African context. He writes,

716 The economic interests of the newly westernized Africans become interlinked with those
 717 of the multinationals at some levels. More and more jobs within the multinationals become
 718 accessible to the locals. More and more decision-making roles are Africanised. Increasingly
 719 the faces behind the managerial desks are local. Increasingly the boards of directors co-opt
 720 westernized locals to lend further legitimacy to their operations (Mazrui 1978: 294).

721 In the light of Mazrui's observation we can deduce that the aims of indigenization
722 in post-colonial Africa was partly to give a local semblance to multinational capi-
723 talism by co-opting local personnel. Once co-opted into multinational capitalism,
724 Africans become representatives of multinational capitalism par excellence. In this
725 way, Mazrui maintained that, "The growth of [the market] for western consumer
726 goods partly depended on the spread of western tastes and life-styles. . . . Some
727 aspects of African culture have reinforced the temptation to emulate and imitate the
728 West. Most of western political and economic culture has been conditioned by the
729 respect given to both political individualism and the profit motive" (Mazrui 1978:
730 295). Within this state of emulation of western patterns of consumption, "western
731 consumer goods started to widen their culturally relevant market" (Mazrui 1978:
732 296). According to Mazrui, "The pace-setters in all this world of status and pres-
733 tige were the more educated and more westernized Africans. Some of these later
734 owned mines and not just jewellery, rode in a Mercedes-Benz and no longer on a
735 bicycle, and drank imported liquor and mineral water from Europe and not merely
736 imported foodstuffs. . . . Those few leaders that are struggling to control the revolu-
737 tion in consumption patterns risk their own survival in so doing unless they combine
738 these efforts with a revolution in education" (Mazrui 1978: 296).

739 In other words, in historical origins of BEE/Indigenisation/Africanisation policy
740 the orientation of such a policy created a class of Africans who became indis-
741 pensable instruments for the ascendancy of western capitalism in post-colonial
742 Africa. Whilst proponents of BEE/Indigenisation/Africanisation have always main-
743 tained that such a policy is aimed at transferring colonial capitalist institutions
744 into African hands so that Africans would have effective control of these insti-
745 tutions, African dependency developmental theorists do argue that such a policy
746 can only lead to strong solidarity between African capitalists and global capitalism.
747 These critics maintain that the economic power of foreign owned companies has
748 managed to successfully contain the momentum of expropriation of their wealth
749 through BEE/Indigenisation/Africanisation policy. It is partly on these grounds
750 that Africa dependency theorists insist that African capitalists were contributors of
751 post-colonial African underdevelopment. To illustrate the validity of this argument,
752 Chinweizu said that,

753
754
755 Nigeria's inability to accumulate and properly invest its enormous oil income was largely
756 due to the origins, ideology and aspirations of its governing class. The dominant section of
757 the elite were mandarins, largely originating from the non-producer sections of the colonial
758 *petite-bourgeoisie*. Even those who originated from the producer sections had been turned
759 into mandarins by their long, academic preparation for bureaucratic careers. As a result,
760 they were, on the whole, inexperienced in production, averse to its rigours and risks, and
761 even superciliously hostile to material production. On the other hand, they had enormous
762 appetites for material consumption. Forgetting that hunting is not the carcass on the plate,
763 they conceived development planning as the making of shopping lists of modern artifacts
764 to be imported and consumed. They craved the best that the industrial world could offer,
765 and were therefore preoccupied with the distribution for consumption of whatever income
766 was available from an economy which remained colonial in character (Chinweizu 1999:
767 789-790).

766 According to Chinweizu, African capitalists will always be outsmarted by west-
 767 ern capitalists especially when it comes to what to do with the wealth which has
 768 been overaccumulated. African capitalists are prone to lavish spending whilst west-
 769 ern capitalists put all their energies mainly on accumulating insatiably on that they
 770 could lay their hands on. For this reason, African capitalists “were ill disposed to
 771 capital accumulation for productive investment”. On the other hand, “In contrast,
 772 the bourgeoisie of the Western core were habitual accumulators of capital, highly
 773 experienced at it, and with highly developed productive organisations as well as
 774 vast sums of already accumulated capital which they could deploy for further accu-
 775 mulation” (Chinweizu 1999: 790). In this comparative study of western capitalists
 776 and African capitalists Chinweizu is arguing that African capitalists cannot be seen
 777 as agents of development because of their consumption habits. The same argument
 778 was also made by Mazrui when he said that, “When Westerners call upon African
 779 countries to privatize, they are expecting the profit motive to be given free play.
 780 But in fact, the problem in most of Africa is not simply how to liberate and acti-
 781 vate the *profit motive*, but also how to control and restrain the *prestige motive*.
 782 Arguably the latter crusade is even more urgent than the former. Indeed, the ulti-
 783 mate crusade may well turn out to be how to tap the prestige motive in such a
 784 way that it serves the goals of production and not merely the appetites of consump-
 785 tion” (Mazrui 1999: 493). The behaviour of African capitalists in relationship to
 786 profit and prestige motives that go hand in glove with capitalism is always seen as
 787 something that is predetermined by African culture and values. In African culture,
 788 someone who eats alone or who accumulates wealth without sharing that wealth
 789 with others in community is mainly regarded as anti-social and such wealth is usu-
 790 ally seen as some products of wicked machinations on the part of the business
 791 person concerned. Whatever is to be eaten by the individual should be made acces-
 792 sible to everybody. In this regard, to what extent can African capitalists through
 793 BEE/Indigenisation/Africanisation policy find their way in global capitalism? To
 794 what extent can African capitalists lead to the evolution of a globally competitive
 795 African capitalism?

796 797 798 **4.6 BEE/Indigenisation/Africanisation and Global Capitalism** 799

800 However, with the globalisation of neo-liberal capitalism there is no way where one
 801 can expect a unique capitalism that is distinctively African without some influence
 802 of the processes of global capitalism. Chinweizu argued that from the word go, poli-
 803 cies and programmes of indigenisation or Africanisation were met with economic
 804 resistance from the western world. The western world suspected that such policies
 805 were only another way whereby Africans try to expropriate the western wealth.
 806 According to Chinweizu,

807
808 Expropriation, whether by nationalisation or indigenisation, did not go without responses
 809 from the West. Western governments in the 1960s threatened crippling reprisals against
 810 those who nationalised their assets. . . . There was also a shift from parent-company direct
 control of African subsidiaries to management participation, technical assistance and

811 training arrangements, production sharing and supply contracts. French investors began to
812 rely on investment guarantee and insurance schemes provided by their home governments
813 to cover non-commercial risks like war, revolution and expropriation. Other European pow-
814 ers followed suit. Such schemes were applicable for investments in countries with whom
815 their home governments had Investment Protection Agreements (IPAs) which provided for
816 fair and prompt compensation in cases of expropriation. . . .By such devices, the West often
817 under both French and American leadership contained the momentum of expropriation, and
818 made it safe for Western companies to keep investing in Africa (Chinweizu 1999: 779).

818 As stated above, Chinweizu's argument was that the economic power of west-
819 ern owned companies successfully contained the momentum of Indigenisation
820 or Africanisation through protective schemes such as Investment Protection
821 Agreements (IPAs). Another way in which western governments managed to avert
822 the momentum of expropriation of their companies in post-colonial Africa was
823 through international trade. Within international trade, Chinweizu writes, "Neither
824 partial nor total African ownership of companies operating in Africa improved the
825 prices Africans got for their exports, the quantities they could sell, or the prices
826 they had to pay for imports. They discovered that the power over these lay with the
827 handful of Western companies which dominated world trade in each commodity"
828 (Chinweizu 1999: 779). Chinweizu's argument is also that it is the reality of unfair
829 trade conditions within the international market that rendered indigenization or
830 Africanisation a mere exercise in economic futility. Within South Africa, the govern-
831 ment has been very cautious in its application of BEE requirement for multinational
832 companies. In the BEE Codes, a multinational is defined as "a measured entity
833 with a business in the Republic of South Africa and elsewhere, which maintains
834 its international headquarters outside the Republic" (see Jack & Harris & Harris
835 2007: 221). Within such a definition a multinational with its headquarters outside
836 South Africa can hardly be expected to comply with BEE. The problem here is
837 that a multinational is mainly concerned with a standardized form of business oper-
838 ation and is mostly interested in its profits and the protection of its investments.
839 In cases where economic policies of particular countries become unbearable the
840 multinational company can easily relocate somewhere.

842 4.7 Conclusion

843
844
845 In this chapter I started by giving an ordinary people's conversation about BEE. I
846 have shown through this story that BEE does create some ethical questions with
847 regards to whom this economic programme is benefiting. Through this story, the
848 main ethical problem is that such an economic policy is only benefiting those who
849 are well connected politically. I have also shown that BEE was not an invention
850 of post-apartheid South Africa, rather, such an economic policy has been exper-
851 imented with in many parts of post-colonial Africa with the aim of domesticating
852 capitalism.

853 An analysis of BEE/Indigenisation/Africanisation policy has also revealed that
854 such a policy only leads to the creation of African capitalists who will end up
855 being in solidarity with other capitalists. By applying Thorstein Veblen's theory

of Institutionary Evolutionary Economics, it was argued that African capitalists cannot be seen as different from other capitalists because by belonging to the capitalist class, they are bound to emulate fellow capitalists in terms of accumulation and consumption. Many post-colonial economic dependency theorists have argued that BEE/Indigenisation/Africanisation does not have any developmental contribution to make towards the socio-economic upliftment of the majority of the citizens in post-colonial African society. The gist of their argument here was that there was no empirical evidence that BEE/Indigenisation/Africanisation will lead to the domestication of capitalism or to the development of African economies.

The questions I would like to pose for future research are as follows:

- 1) Why does BEE/Indigenisation/Africanisation enrich a few when the majority of the citizens are living in desperately poor conditions?
- 2) Would it not make sense to have some Economic Empowerment that is directed towards education, infrastructure and health?
- 3) Does not BEE/Indigenisation/Africanisation policy pose a conflict of interest when politicians or former politicians collude with businesses in pursuit of best deals?

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UNCORRECTED PROOF

01 **Chapter 5**

02 **Ethical Sourcing and Moral Responsibility**
03 **in Global Business: Is ‘the Common Good’**
04 **the Missing Factor? The Case of the Cut Flower**
05 **Industry in Kenya**
06
07

08
09
10 **Christine Wanjiru Gichure**
11

12 **5.1 Introduction**
13

14
15 International business today is estimated to constitute a singularly big employment
16 capacity in developing countries (Chang 2003). For the rich countries, global mar-
17 keting has stimulated the search for areas in which to outsource production at low
18 cost, with a view to reducing the prices of a wide variety of goods, while increasing
19 purchasing power and accelerating the availability of consumer goods. This trend
20 prompts competition between countries, as they seek to set up production centres
21 around the globe. In Africa, some studies say that global business has facilitated
22 much economic growth in terms of resources and certain skills (Roosendaal, 1994;
23 Hennock, 2002; Lehmann, 2004). However, that growth is increasingly being ques-
24 tioned when compared to the huge benefits that the North, the developed world,
25 reaps from the labour and environment of the South, the developing world (Ngotho,
26 2005; Esipisu, 2007).

27 This scepticism is justified on various accounts. In the first place, global investors
28 want a ‘favourable fiscal’ regime and regulation of the labour market. This, in many
29 instances, means downsizing of social security systems as the price to be paid for
30 seeking greater competitive advantage in the global market with consequent grave
31 danger for the rights of workers and for fundamental human rights (Kenya Human
32 Rights Commission [KHRC], 2004: 11, Benedict, 2009: 25). On their part, the
33 developing countries, in order to attract investment, strive not only to compete with
34 each other, but also to provide a favourable, conducive or enabling environment for
35 the investors (Mwakungu, 2003; KHRC, 2004: 16–17).

36 ‘Favourable conditions’, ‘favourable environment’ or ‘deregulation’ generally
37 mean labour processes characterised by casual or informal work, flexible working
38 days or hours in order to meet the needs of employers or the business cycle, and
39 wages that are often pegged on profit margins achieved by the business (Majtenyi,
40 2002; KHRC, 2004: 17–22; Benedict, 2009: 21). In addition, the management in
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many types of global businesses in the developing world tends to opt for a workforce that is expendable. As a result, the opportunity cost of offering these incentives results in a shift of the social cost to the workers in sweatshops or farms and environmental degradation of the natural resources (Gibbon, 1992; Food and Water Watch Canadians [FWW] 2008; Benedict, 2009: 25). This practice is typically exemplified in the Export Processing Zones (EPZ) and in the cut flower industry in Kenya, which is the focus of this chapter.

Within this context, an example of the problematic can be explained as follows. A developing country, A, that wants to attract a cut-flower growing company will offer strong tax incentives. In the meantime, two neighbouring countries, B & C, which are also interested in attracting the same growers, will each try to offer investment deals that undercut the tax incentives offered by the others. From there a race and row arises between the two or three developing countries to see who can offer the most 'favourable condition'. Finally, the government with what the global investor happens to consider 'favourable fiscal' and deregulation conditions hosts the flower growers and is happy with the short-term benefits. These benefits are usually employment opportunities for some of its people and prospects of some gain on taxes and work permits. In the meantime, it may realise that it has sacrificed the ability to provide its own citizens with some basic legal, human and infrastructural support (FWW, 2008). Due in part to these factors, the success of floriculture has been tempered by an extremely politicized backlash centred on allegations that flower farms generate profits at the expense of Kenyan environments and workers.

5.2 Kenya Floriculture in Global Business

Floriculture first arose in Kenya in the 1970s, fuelled by development aid aimed at integrating African producers into the global economy (Kenya Flower Council [KFC], 2008; Hennock, 2002). In the last two decades, Kenya has turned into a successful cut flower exporter, thereby becoming a strong competitor on the European cut flower market. However, the country seems to be heavily dependent on ownership, knowledge and technology from the North (Roozendaal & Commander, 1994).

The major destinations for the Kenyan flowers are the Netherlands, United Kingdom, Germany, France, and other European Union (EU) countries. The EU is believed to consume over 50% of the world's flowers and, of these, 25% is exported from Kenya (Roozendaal, 1994). In the UK alone, an ETI media briefing indicated that, on a day like Valentine's Day, one in every four flowers sold in the UK comes from Kenya. That makes Kenya the third-largest exporter of cut flowers, after Colombia and the Netherlands (Roozendaal, 1994; Ethical Trading Initiative [ETI] Briefing, 6th February 2008).¹

¹ The Ethical Trading Initiative [ETI] is an alliance of companies, trade union organisations and non-government organisations (NGOs) committed to working together to achieve that aim. "Our

91 The value of the export of cut flowers from Kenya to the European market is
92 estimated at approximately 43 billion Kenya Shillings (approximately USD 12.9
93 billion) ranking them among the most important agro-export products of the country
94 (Roosendaal, 1994). But the development of the cut flower sector often involves
95 large governmental investments in infrastructure, such as roads and cold storage
96 facilities, to enable the rapid export of the perishable product. That means that, in
97 reality, only a small portion of the investment is recovered through tax income.
98 This makes it an expensive sector to invest in, especially for a government that
99 suffers from declining budgets. Recently, some municipal leaders, such as those
100 from Naivasha, the city bordering the lake which is the hub of the flower farms, are
101 pushing for a law to enable it to tax the farms 1% of their annual output. But with
102 this proposal a high percentage of growers have threatened to move their operations
103 to neighbouring Ethiopia (Interview, Human Flower Project [HFP]² with Naivasha
104 Town Clerk, July 2009).

105 The accredited body to monitor floriculture activities in Kenya is KFC. It is,
106 therefore, the legal body that oversees the audits, gives certification for good practice
107 to the flower growers, and collects standard levy fees on behalf of the Kenya Bureau
108 of Standards (KEBS). Working closely with KFC is the ETI, which regularly reports
109 on what is going on in the horticulture industry. In its briefing report of February
110 2008, the ETI estimated that over 55,000 Kenyan workers and their dependents rely
111 on jobs within the industry (ETI, 2008). These figures vary from report to report,
112 however, with the KFC putting it at 100,000 direct workers, but claiming that all in
113 all approximately 1.2 million people rely on it, if one adds other people indirectly
114 employed in transport and packaging roles (KFC, 2008).

115 These large numbers of employees in the cut flower industry, coupled with the
116 apparently huge earnings for Kenya, show the industry to be capable of improv-
117 ing the economy and the lives of Kenyan people. However, this perception has
118 been disputed by other reports. The Town Clerk of Naivasha laments that, while
119 “these farms earn billions of shillings every year, a municipal council like the one
120 of Naivasha only benefits from the industry through the meagre levies it charges
121 for business permits and the land it owns – not sales. That means Naivasha takes in
122 only about \$32,835 annually (2.2 million Kenyan shillings) from the flower indus-
123 try. Furthermore, wages at the flower farms amount to only between \$37 and \$104
124 per month” (Interview with Ardery, HFP, 2009).

125 These complaints are corroborated by a Kenya Human Rights Commission
126 (KHRC) survey of 2002–2004, which was carried out in various flower farms and
127 the EPZ sector in the Kenya. Its findings showed that, despite the huge profits, the
128 Kenyan people, including local Kenyan flower growers, gain little foreign exchange
129 from the cut flower business (ETI Survey, 2005). Other researches give similar
130 observations (Smith et al., 2005; Dolan & Opondo, 2005; Black, 2004).

131
132
133 ultimate goal is to ensure that the working conditions of workers in companies that supply goods
134 to consumers in the UK meet or exceed international standards.” See www.ethicaltrade.org.

135 ² The Human Flower Project is an international newsgroup, photo album and discussion of how
people live through flowers.

136 A special report carried in Kenya's *Sunday Standard* of April 17, 2005 (which
137 has not been refuted) highlighted various discrepancies between the apparent huge
138 earnings from the flower industry for Kenya and the reality on the ground in terms
139 of gains for the Kenyan people. Firstly, just like the coffee, tea and tourism industries,
140 the floriculture sector remains largely a foreigners' affair. Specifically, of the
141 approximately 500 flower farms in the country, a total of 76% is concentrated in
142 foreign-owned flowers farms around Lake Naivasha in the Rift Valley. The largest
143 are the Homegrown, Sulmac, Sher, Oserian and Finlay flower companies. Oserian
144 alone employs more than 5,000 workers and has been the subject of many workers'
145 strikes (Smith et al., 2005).

146 Other complaints come from local indigenous flower growers, who lose in the
147 manner that flowers are assessed and sold in Amsterdam. While their flowers are
148 sold as Kenyan flowers and taxed as such, the Dutch companies growing their flowers
149 in Kenya tend to sell theirs as Dutch flowers, because in that way they receive
150 preferential treatment at the auction. This includes exempting those flowers from
151 the EU-imposed export rules (Harper, 2009; Ngotho, 2005). Ultimately, this means
152 that the indigenous Kenyan grower earns less than his expatriate or foreign counterpart
153 who has a flower farm or company in Kenya. In addition, most of the earnings
154 gained at the auctions are banked in the investor's home country.

155 A third and more alarming observation has to do with the working conditions
156 of the employees in the flower farms. Generally, the people who seek work in this
157 industry are poor, which makes them vulnerable to exploitation. Their plight eventually
158 leaks out to the media and the human rights groups. For many years, the cut flower
159 industry in Kenya has been covered by the media, revealing the poor labour
160 practices and treatment of the workers and the adverse effects of some of the
161 growers' practices on the environment, especially on Lake Naivasha. Among the
162 most recent, one can mention Ngotho (2005), Esipisu (2007), FWW (2008), Riungu
163 (2009), Ardrey (2009) and the scientist Harper (2009). All of these reports confirm
164 the ETI Report findings of 2002–2004. That research revealed widespread discrimination
165 against women workers, workers kept on rolling temporary contracts, poor
166 health and safety, low wages, long working hours and low levels of union representation.
167 That report gave some recommendations for the improvement of human rights,
168 but going by later media reports, the improvement cannot be significant.

169 The fourth and most pernicious problem is the ongoing destruction of Lake
170 Naivasha, the centre of most of Kenya's flower business. Nestled in the Rift Valley,
171 the lake is a source of abundant wildlife and a rich variety of bird species. Tens of
172 thousands of people rely on the fragile ecosystem to preserve their livelihoods in an
173 environment that has increasingly come under threat. These threats are of various
174 kinds. In the first place, the fishing communities around the lake complain of the
175 increasing spread of water hyacinth, a weed that thrives due to the continuous supply
176 of phosphates and nitrates used in the water farms, which are later drained into
177 the lake. With the growth and spread of this weed, the sunlight, much needed by
178 species living below for breeding and sustenance of life, is blocked, thereby reducing
179 fishing stocks. In addition, fishermen who depend on the lake for their livelihood
180 claim not only that the pesticides and fertilizers also drained into the lake pollute the

181 water, but also that, in the process of pumping it into the flower farms, many fish
182 eggs and small fish are sucked in and killed.

183 After 25 years of conducting research in the Lake Naivasha area, a leading
184 scientist, Dr. David Harper is reported to have told ScienceNews:

185 Roses that come cheap are grown by companies that have no concern for the environment,
186 who cut corners and avoid legislation, who sell their flowers into the auction in Amsterdam
187 so that all the buyer knows is the flowers 'come from Holland (Harper ScienceDaily, Feb.
188 14, 2009).

189 The shrinking water levels of Lake Naivasha are an evident environmental prob-
190 lem, much publicised, and still largely ignored by the farmers. About a half of the
191 good cut flower companies breed their flowers around this lake. On paper, the coun-
192 try has strong legislation on the use of water for the flowers, which should come
193 from boreholes, but its enforcement is weak. So, companies whose only interest is
194 profit take advantage of that (Harper, 2009; CEO KFC, 2009; Riungu, 2009; Ardery,
195 2009; Food and Water Watch Canadians [FWW], 2008). The lake has immense
196 potential for sustainable, small-scale agriculture and ecotourism that could protect
197 both the lake and the livelihoods of the communities around it. The former would
198 promote food security for Kenyans; the latter would attract even more local and fore-
199 eign visitors, who would help the local economy, while causing little or no damage
200 to the environment.

201 The flower companies, on their part, and with them the KFC, either deny that
202 these things are happening, or consider them solely from an economic point of view.
203 They, too, have complaints: the costs of production are higher in Kenya than in
204 the developed countries, owing to various factors. They cite poor infrastructure,
205 inadequate air cargo capacity and high airfreight rates, high prices of inputs such as
206 fertilizer and chemicals, inability to sustain high quality of the fresh flowers due to
207 transportation problems and lack of sufficient technical knowledge (Roosendaal &
208 Commander, 1994; Author's personal interview with CEO Lankas Ltd, 2008).³

209 Thus far, we have looked at four major types of problems involving the Kenya
210 cut flower industry, problems which are evidently complex and certainly beyond
211 the scope of one chapter. The focus of this chapter is ethics and, therefore, it will
212 limit itself to the theoretical question of what appears to be a paradox, whereby
213 Kenya's cut flower industry is one of the most heavily audited sectors for 'ethical
214 sourcing' using multi-stakeholder designed ethical codes but, on the other hand, the
215 same industry continues to be in the spotlight frequently for the ethical malpractices
216 that I have highlighted.

217 Having given this background and stated the problem and objectives of this chap-
218 ter, I now turn to the notion of 'ethical sourcing' as a concept in global business, in
219 order to examine how it is understood within the two major business management
220 models, namely, the shareholder organizational theory and the stakeholder model.
221 That analysis will be followed by an examination of the facts on the ground, guided
222 by the results of the three related researches that explored the trajectory of 'ethical
223

224
225 ³ Not real name of the Farm in question.

sourcing' in Kenya, namely the report by Dolan and Opondo (2005), Smith et al. (2005) and the ETI Report 2002–2004 (2005). Since these reports already question the factors underlying the design and implementation of the Horticultural Ethical Business Initiative (HEBI) codes, purportedly designed through a multi-stakeholder processes (MSP) to audit the farms for 'ethical sourcing', the objective of this chapter is to identify what might be missing from the management philosophy governing the concept of 'ethical sourcing' and social responsibility, and to make some recommendations. Unfortunately it has not been possible to obtain permission to work with what the researchers term 'base code' for purposes of this chapter.⁴

5.3 The Concept of 'Ethical Sourcing' and Social Responsibility in Global Business: The Problematic of Its Application in the Kenya Cut Flower Industry

Ethical sourcing is described as a process whereby a company at one stage of the supply chain takes responsibility for the ethical, social and environmental performance at other stages of the chain, especially for that of primary producers (Blowfield, 2000: 1). However, the way it is understood by the different players within the global business chain, from the production, packaging and distribution stage, depends largely on the kind of perception of ethics a company may have, and the management theory to which it subscribes. That perception is what guides their particular codes of ethics. The implementation of the codes is, in turn, expected to give ethical assurance, especially if there are annual audits, as in the case of Kenya's flower farms. Given the fact that there are divergent theories and models of business management and its moral responsibilities, no one should be surprised that each company or business sector can easily have its [their] own understanding of the kind of issues that constitute 'ethical sourcing', a process that has grown in popularity from the early 1990s, when national and international trade unions and non-governmental organisations (NGOs) started to campaign about social and environmental conditions in the cut flower industry worldwide. These campaigns were geared towards raising awareness among consumers in market countries, about the conditions in the industry in both Latin America and Africa (ETI Report, 2005).

Within the present decade, following various workers strikes, particularly at Oserian Farm, one of the largest flower holdings with 50,000 acres on Lake Naivasha, and media exposés, there have been efforts to alert the consumers of the fact that the goods they buy could possibly have been acquired at the cost of human basic rights (Smith et al., 2005; ScienceDaily, 2009; FWW, 2008; HFP, 2009). But, as we have seen, excessive exploitation of resources, both human and the natural environment, continues to be highlighted with the aim of pressurizing companies to become more ethically responsible. The result has been a proliferation of good

⁴ A special permission is required by the KFC in order to see and use the code. This permission was not given to the author.

271 practice mechanisms, such as codes of ethics, good practice statements, vision and
272 mission statements and agendas for ‘social responsibility’ initiatives, with varying
273 degrees of success, which can be found in nearly every company and organization
274 today.

275
276

277 **5.3.1 Flower Labelling Program (FLP)**

278

279 To ensure the implementation of those initiatives, many markets in the North now
280 require ‘labelling’ as a sign of ethical sourcing (Holtshaussen, 2007). In the cut
281 flower industry, this is done through the Flower Label Program (FLPs). However,
282 while those efforts may have addressed certain aspects of ethical practice, it appears
283 that in Kenya they have not managed to provide significant ethical or social respon-
284 sibility, corporate or otherwise. The indication from studies carried out in those
285 parts of the world (Hughes, 2000, 2001) is that the consumers of goods bearing
286 such labels as the FLP, more often than not, have little clue of what it means for
287 a product to have been ‘ethically sourced’. They are happy to see that the prod-
288 uct they purchase bears the label, because that gives them some kind of comfort.
289 They feel that at least they are acting responsibly towards the promotion of ethical
290 business. An empirical study carried out by graduate students in the UK among 34
291 respondents within the food and agricultural industry showed that no strict definition
292 of ‘ethical sourcing’ was discernible, even among people who are not only active
293 defenders of ‘ethical sourcing’, but would not knowingly use a product sourced
294 otherwise (Holtshaussen, 2007). According to this research, however, when asked
295 what they meant by ‘ethical’, for example, most of them spoke of fair trade. But,
296 as to what makes such trade fair or unfair, they had absolutely no notion. This, they
297 believed, depends on the interpretation of each person. Hence, to different respon-
298 dents it meant different things. In some instances, according to the report, companies
299 were found to adopt a holistic interpretation of the concept of ‘ethically sourced’
300 product, where it could mean anything from the manner of producing and packag-
301 ing a product to the treatment of the workers, fair remuneration for work, and their
302 rights to certain social benefits which everyone seemed to admit must all be part of
303 ‘ethical sourcing’. Very few individuals focussed on social benefits for their work-
304 ers, the protection of children, equal opportunity and occupational health and safety
305 (Holtshaussen, 2007: 2).

306 One other factor, as noted by the Canadian human rights body, Food and Water
307 Watch, that the consumer at the other end of the market may not be aware of,
308 is that one can easily be fooled by the market chain: for example, through false
309 labelling. This is what Harper is cautioning the flower buyer about in relation to
310 Lake Naivasha. The flowers may continue to bear the labels, despite the fact that
311 the lake is literally being drained dry by flower growers. But, since these flower
312 growers know about the bad publicity that Kenyan-grown flowers have been receiv-
313 ing for lack of environmental responsibility and other malpractices, they sell their
314 flowers at the flower auctions in Amsterdam as being Dutch- or German-grown,
315 so that when people buy their flowers, they think they are buying them from the

316 Netherlands instead of Lake Naivasha (2008). The surprising thing is that nobody
 317 talks about corruption in these cases.

318
 319

320 **5.3.2 The Ethical Sourcing Audits**

321

322 The usual instrument used to measure ‘ethical sourcing’ is the code of ethics. A code
 323 of ethics is commonly defined as “a written, distinct, and formal document which
 324 consists of moral standards used to guide employee or corporate behaviour, but it is
 325 recognized that such documents can take a variety of forms” (Moore, 2006: 411).
 326 Codes take a variety of forms, depending on the kind of ethical issues they want to
 327 address. Moore identifies three clusters of codes, namely “those dealing with issues
 328 impacting primarily on employees, on companies or on wider society” (*ibid.*).

329 Most companies like codes of ethics, because, once drafted and launched, that
 330 fact alone gives the impression that the company is taking ethics seriously. However,
 331 since companies are presumed to be voluntary entities, the content of the codes and
 332 their implementation is largely dependent on the management model governing the
 333 business (Samet, 2003; Gichure, 2008: 202–206). This can explain, in part, why so
 334 far it has not been proved anywhere that codes of ethics significantly influence the
 335 practice of ethics in business and, secondly, there remains the delicate side to their
 336 use. “This may be the core to the problem in ‘ethical sourcing’. For a code to be
 337 comprehensively effective depends largely on various factors, such as how it was
 338 designed, who designed it, what interests it was primarily designed to serve, how it
 339 was supposed to be implemented, how often, and who would audit the company for
 340 good practice” (Gichure, 2008).

341 The motivation for producing and implementing a code of ethics is an important
 342 factor in ethical sourcing, for it determines the effectiveness of the audit document.
 343 This motivation, according to Moore (2006), focuses more often than not on internal
 344 issues and on issues relating to the company itself, rather than on issues relating to
 345 external stakeholders, such as consumers and the wider public. “This suggests that
 346 the motivation for introducing a code relates more to firm protection and compliance
 347 issues (preventing harm, particularly to the company) than to a more positive and
 348 outward-looking motivation” (Moore, 2006: 411). Applied to ethical sourcing, this
 349 means that there are varying degrees of its implementation, with equal possibility
 350 for some important stakeholders to be omitted, even legally, from the improvement
 351 process (Moore, 2006).

352 This assumption is affirmed by the findings of Dolan and Opondo (2005) in the
 353 case of the cut flower industry in Kenya. Their findings showed that, despite being
 354 one of the most codified industries, ethical violations of basic rights of the workers
 355 and the natural environment continue to be rife. A further investigation revealed that
 356 the codes used to audit the farms had originally been imported from the Dutch flower
 357 industry, where the workers’ conditions and the environment are very different from
 358 those of Kenya. Wood (1995) points to another reason why such codes may not serve
 359 to provide ethical sourcing in a situation like that of Kenya. Generally, corporations
 360 in the North assume that, because developing countries ‘appear’ to operate at lower

361 ethical standards (often due to lack of education and means), it is not ethically wrong
362 to operate with values and norms that would otherwise be questionable in their own
363 countries. As a result, with only superficial changes in supplier practices, products
364 sourced under questionable ethical standards reach the developed countries where
365 the markets are bearing FLP tags as guarantee of having been sourced ethically.
366

367 ***5.3.3 Business Management Models, Ethical Sourcing*** 368 ***and Social Responsibility*** 369

370
371 It would not be justified to attribute blame to any party along the production,
372 supply and distribution chain without having first examined ethical sourcing as
373 a concept within the business organizational models in vogue in global busi-
374 ness. The two most commonly used models of business organization are the
375 agency/shareholder/stockholder model and the stakeholder model, to which we shall
376 now turn.

377 According to the proponents of the shareholder model, the purpose of the firm
378 is to maximize shareholder value, since all corporate profits belong by right to the
379 stockholders as the owners of the firm. Hence company managers are simply agents
380 of the stockholders and, in that capacity they have a moral obligation to manage the
381 firm solely in the interest in the owners. That interest is to maximize shareholder
382 wealth (Friedman, 1970; Boatright, 2001). This is the rationale behind Friedman's
383 famous statement: "The social responsibility of business is to increase its profits".

384 Freeman (1984) speaks of a narrow and a broad way of understanding the stake-
385 holder model of the purpose of business, and how it should be managed. In the
386 narrow sense, the stakeholders of a business are those groups who are vital to the
387 survival and success of the corporate firm, such as owners, employees, customers,
388 suppliers, and local community (Freeman, 1984: 31). In the broad or wider sense,
389 the concept of stakeholder includes any group or individual who can affect or be
390 affected by the corporation. Furthering this notion, other scholars have affirmed that
391 the stakeholders not only have interests in the affairs of the corporation, but that the
392 interests of all stakeholders have intrinsic value (Donaldson & Preston, 1995: 81).

393 Schaefer (2008), Phillips (2003) and Melé (2008) have attempted to show the
394 complexities underlying the relationship between these two theories from a moral
395 point of view. In the following section of this chapter, I attempt to characterize those
396 complexities within the paradigm of 'ethical sourcing' in the cut flower industry in
397 Kenya. The points of departure are the testimonies of workers within this indus-
398 try, unearthed by the two researches already cited: the exploiting of the unfortunate
399 plight of workers, pollution of the lake, unfair competition with local flowers at
400 the market end of the chain, downsizing without warning. All of these practices
401 should have been detected by the ethics audits, but never were. They should have
402 been within the demands of the code of good practice, but for some reason they do
403 not appear to have been violated at the time of the audits. Faced with such accu-
404 sations, what do the traditional management models say with regard to, say, moral
405 responsibility?

5.3.4 *'Ethical Sourcing' Under the Agency Model of Business Management*

This model assumes that the purpose of the firm is to maximize shareholder wealth. Therefore, the managers are agents of the shareholders, who are the business owners or its principals. As such, the managers have fiduciary duties to do their best to serve their principals' interests. From an ethical perspective, fiduciary duties of managers are moral duties and, in most countries, legal duties as well (Melé, 2008), because managers are fiduciaries or trustees of the shareholders. Hence, the fulfilment of the duties corresponding to that relationship entails an ethical obligation, because a fiduciary relationship is based on good faith, loyalty and trust.

The question then arises: is it ethical to serve the principal's interests at the cost of unethical behaviour toward others? In other words, can fiduciary duties be ever overridden by moral duties towards other constituencies affected by the business activity? This, according to an analysis of this model by Schaefer (2008), does not appear to be the case, because "from a shareholder management perspective, the purpose of the corporation is to realize the specified ends of the share holders, with the caveat that those ends are legal and basically non-deceptive" (Schaefer, 2008: 297). Those ends are nearly always to maximize the corporation's profits – so much so that to characterize shareholder theory by reference to maximization of corporate profits has been accurate for all practical purposes. Friedman, the best known proponent of this theory explains that,

In an ideal free market resting on private property, no individuals can coerce any other, all cooperation is voluntary, all parties to such cooperation benefit or they need not participate. There are no values, no 'social' responsibilities in any sense other than the shared values and responsibilities of individuals (Friedman, 1970, in Boatright, 2001).

The next question is: what is the content of the morality that holds in an ideal free-market capital society? Schaefer's analysis of the above statement suggests that it is one in which individual freedom and private property take on the highest priority, that is to say, "property, where the freedom of the capitalist [read principal] takes priority over all other considerations" (Schaefer, 2008: 298 footnote 56). He further observes that, whereas this model frequently emphasises non-interference, or 'negative duties', towards one another as strong moral duties of the manager, there is a loud silence on the presumably 'positive duties' that one would expect to be also highlighted. By 'negative duties' is meant "to respect one another's individual freedom and private property, while 'positive duties' are said to be, by their very nature, coercive in a way that disrespects the values associated with those [former] goods" (Schaefer, 2008: 300).

There is a discrepancy here between the emphasis of 'negative duties', on one hand, and on the other hand, the understatement of what are the 'positive duties'. This discrepancy, in my view, renders this approach to criticism on various grounds. Firstly, by getting overly concerned to protect the rightful interests of the shareholders, the model ends up out-rightly rejecting moral responsibilities for all other constituencies outright. Secondly, its proponents equate legality with morality.

451 When drafting and implementing a code of ethics, the management cannot help but
452 address only those issues which the law recognizes, with the argument that legal-
453 ity means that the behaviour of a corporation is right when its activities seek to
454 maximize profits and wrong when they do not.

455 Secondly, the model appears to overlook the fact that the law, especially in the
456 developing countries, may not be able – for any number of reasons, some of which
457 were highlighted in the introduction to this chapter – to guarantee adequately that
458 the rights and interests of all current and future generations of local stakeholders
459 will be represented satisfactorily by the law. In such cases, under this model, those
460 concerns, or ‘positive duties’, fall beyond its immediate concerns, for it is not the
461 business of companies to take responsibilities that should be catered for by gov-
462 ernment.⁵ To this objection should be added Melé’s observation that “laws are not
463 themselves a moral justification and, unfortunately, they do not always respond to
464 ethical principles, but to ideology; and the law in favor of maximizing shareholder
465 value as the purpose of business is not an exception. In addition, laws do change
466 over time, and no country has identical laws” to another (Melé, 2008: 14).

467 Thirdly, this model suggests, though implicitly, that people are mere human
468 resources; hence, their relationship to the firm is simply a matter of ownership, in
469 which certain services are bought and sold, in some cases forgoing the fact that the
470 corporation is basically formed of persons. Some scholars have tackled this problem,
471 which they considered to be “an affront to natural justice, in that it gives inadequate
472 recognition to the people who work in the corporation and who are, increasingly, its
473 principal assets” (Handy, 2002, in Melé, 2008: 14).

474 Finally, in our democratic era, in which the tendency is to be more tolerant in
475 considering the interests and rights of other people or stakeholders, the principles
476 of maximization of shareholder value are rather anachronistic. Yet, this business
477 management model continues to be predominant in many companies and demo-
478 cratic countries, even those which presumably have taken on stakeholder interests,
479 as we shall now see. In doing so, they make the model increasingly controversial
480 (Melé, 2008).

481 The crucial question and the basis from which we can judge this model, from an
482 ethical point of view, is the market logic, from both the shareholder and stakeholder
483 points of rationality, especially in those cases when a situation arises where the law
484 does not provide the proper regulation to protect possible violation of basic human
485 rights. Without such considerations, it becomes difficult for the model to make any
486 honest claim of ‘sourcing ethically’.

487 This is the problem highlighted by Benedict XVI:

488 One of the greatest risks for businesses is that they are almost exclusively answerable to
489 their investors, thereby limiting their social value. Owing to their growth in scale and the
490 need for more and more capital, it is becoming increasingly rare for business enterprises
491 to be in the hands of a stable director who feels responsible in the long term, not just the
492 short term, for the life and the results of his company, and it is becoming increasingly

494 ⁵ An interview of the author with the CEO of an important cut flower farm in Naivasha and member
495 of the KFC, confirmed that this is indeed the stance taken by the shareholders in this sector.

496 rare for businesses to depend on a single territory. Moreover, the so-called outsourcing of
 497 production can weaken the company's sense of responsibility towards the stakeholders —
 498 namely the workers, the suppliers, the consumers, the natural environment and broader
 499 society — in favour of the shareholders, who are not tied to a specific geographical area and
 500 who therefore enjoy extraordinary mobility (Benedict, 2009: no. 40).

501 Today, the growing conviction is that business management cannot concern itself
 502 only with the interests of the proprietors, but must also assume responsibility for
 503 all the other stakeholders who contribute to the life of the business (Melé, 2008)
 504 and take proactive responsibility to avoid any negative effects that their business
 505 may have on all stakeholders including the environment. This portrays the logic of
 506 the shareholder model as being less consistent with 'ethical sourcing' and moral
 507 responsibility in global business.
 508

5.3.5 *'Ethical Sourcing' Under the Stakeholder Model of Business Management*

513 This model borrows from the rights theory, and particularly the Universal
 514 Declaration of Human Rights (1948), which provides that all men and women every-
 515 where in the world have the right to life, liberty and security of person, freedom from
 516 slavery and servitude and to proper legal process. Thus, any employee, shareholder,
 517 creditor, consumer or member of a similarly interested group is regarded as a rights
 518 bearer, whose diverse claims must be respected by the organization's management.
 519 Because the Universal Declaration of Human Rights casts its net so wide, it is not
 520 easy to pin down firms on violations of their duties using the model.
 521

522 In essence, however, the stakeholder model contends that firms have obligations
 523 to parties beyond shareholders. In recent years, it has gained strength in international
 524 development circles in forging coalitions between business, government and the
 525 civil society, a fact noted by Dolan & Opondo (2005) in their survey report of the
 526 cut flower industry and confirmed by, among others, the works of Freeman (1984),
 527 Phillips (2003) and Schaefer (2008).

528 A stakeholder theory of the firm holds "that the corporation should be run for the
 529 benefit of all stakeholders regardless of whether doing so maximizes the corpora-
 530 tion's profits" (Schaefer, 2008: 297). Although it is generally agreed in this model
 531 that the relation of each stakeholder to the firm may be different, there is within
 532 that common understanding a disagreement amongst scholars regarding the degree
 533 of stakeholder status. Donaldson and Preston (1995) tried to solve this difficulty by
 534 introducing the notion of legitimacy and illegitimacy of stakeholders, but, as Phillips
 535 notes (2003: 27), this concept remains imprecise within the stakeholder literature.

536 In Phillips' view, stakeholder obligations and, therefore, stakeholder status are
 537 created when the organization voluntarily accepts the contributions of some group
 538 or individual. This voluntary acceptance is likened to consent, contract, or promise
 539 in its capacity for generating obligations. Such obligations are not imposed or stip-
 540 ulated from outside the relationship, such as those duties and rights that are one's

541 simply on account of being a human being (Phillips, 2003: 27). From this reasoning,
542 the employment of a person does *ipso facto* create moral duty for the employing
543 body on at least two counts: the duty to respect the unwritten basic human rights
544 arising from the fact of being a human, or human dignity, and the moral obligation
545 of stakeholder fairness. Phillips puts it this way:

546 Obligations of stakeholder fairness are additional moral obligations that are created based
547 on the actions (in this case the voluntary receipt of benefits) of the parties. They are the
548 obligations that are created among persons and organizations within the sphere of 'private
549 associations' rather than at the level of the 'basic structure of society' and are therefore
550 better adapted for use as an ethics of organizations (Phillips, 2003: 27–28).

551 To sort out the distinction between various kinds of stakeholder rights and duties,
552 some scholars take recourse to the notions of normative and derivative stakeholder
553 legitimacy, with the aim of creating a middle ground in the broad and narrow notions
554 of stakeholder given by Donaldson and Preston (1995). Phillips describes normative
555 stakeholders as “those stakeholders to whom the organization has a moral obligation,
556 an obligation of stakeholder fairness, over and above that due other social
557 actors simply by virtue of their being human beings. These”, he continues “are those
558 who would fit in the stakeholder question: ‘for whose benefit. . .should the firm be
559 managed?’” (Phillips, 2003: 30). But he still cares for the apparently non-normative
560 stakeholders who, he reckons, should “still be morally considered and their human
561 rights respected and protected. However, *no additional moral consideration is due to*
562 *them in managerial decision making, and the organization has no special obligation*
563 *to attend to their well-being*” (Phillips, 2003: 30).⁶

564 By limiting the radius of its moral responsibility to only those groups to whom
565 a moral obligation is owed, this model, in a manner analogous to that used by the
566 shareholder model, leaves out a large group of sensitive constituencies, who are
567 considered to fall under the ‘broad stakeholder’ category. This point has important
568 significance in the ‘ethical sourcing’ concept and the kind of draft code used to
569 do the audits. It is possible for some constituents such as casual workers, to be
570 locked out from the status of legitimate stakeholders for which the organization has
571 moral obligation (Phillips, 2003: 29). Other constituents likely to suffer the same
572 fate are the environment and communities that are directly or indirectly affected by
573 a company’s presence and activities. Even from a strategic theory of management
574 view, this renders the model significantly incomplete and ethically questionable. The
575 notion of legitimate and illegitimate appears to run “contrary to much of stakeholder
576 scholarship and literature on stakeholder legitimacy in other fields, such as law,
577 politics, moral theory and in organizational studies” (Phillips, 2003: 29). It was from
578 within this complexity of the many nuances of stakeholder and moral obligation that
579 a multi-stakeholder process (MSP) came into existence (Dolan & Opondo, 2005).

580 The proponents of the MSP base code envisaged the formation of an alliance
581 of normative and derivative stakeholders through dialogue, from which solutions
582 to problems such as those concerning ‘ethical sourcing’ in developing countries
583

584
585 ⁶ Emphasis in the original.

could be adequately addressed. It was hoped that the alliance would also prepare codes of ethics to foster greater accountability in the business practices of global corporations. Once a multi-stakeholder framework for each sector of business was in place, a code and its implementation were presumed to become the panacea for ethical malpractices in local and international business (*ibid.*).

5.3.6 *The Betrayal of MSP-Generated Base Codes in Kenya Cut Flower ‘Ethical Sourcing’ Audits*

When the Kenyan cut flower producers started to embrace codes,⁷ they borrowed codes already generated in similar establishments overseas, with the idea that with time they would design their own. It was with this spirit that the Horticultural Ethical Business Initiative (HEBI), a Kenya flower stakeholder group, was formed to guide and monitor social accountability in the cut flower industry by identifying the points of consensus and conflict as articulated by all member flower growers. The HEBI framework was based on that of the ETI, the international organization based in the UK that monitors ethical trading worldwide. HEBI’s base code was launched in 2002, and thereafter became the basic ethical code in Kenya’s floriculture. The issues involved in it are, however, determined by the KFC. On its part, the KFC’s membership comprises the major flower growers (principals), with representations of some non-governmental organizations, a few members of the departments of foreign governments such as DfiD and the Royal Netherlands Embassy (RNE), plus three representatives from the Ministries of Agriculture, Trade and Labour. At the end of the day, it is not clear that the workers from the grassroots are in truth represented.

The ETI code, the model through which the Horticulture industry created the HEBI base codes is a MSP-generated base code that had been in use for some years in Britain. A number of factors, however, seem to limit the extent to which this kind of code could address the needs of workers or assure social responsibility for the communities surrounding the places where the flowers are grown. The first factor is the nature of the codes itself. As noted above the motivation for introducing a code is important and, more often than not, this relates more to firm protection and compliance issues (preventing harm, particularly to the company) than to the more positive and outward-looking motivation, such as the welfare of the workers. For this reason, the question, “who writes the code is itself an important issue, with wide involvement generally recommended if employee acceptance is to be high” (Gichure, 2008).

Both Moore (2006: 411) and Dolan and Opondo (2005) seem to agree that MSP base codes can be effective when and where there is flexible application, and local

⁷ Multi-stakeholder codes: ETI Base Code developed by company, trade union and NGO members of the UK’s Ethical Trading Initiative; International Code of Conduct for Cut Flowers, developed by NGOs and trade unions in Europe, and used by the German-based ‘Flower Label Programme’ (FLP).

631 ownership in the process of code implementation and verification. This is not the
632 case in the Kenyan cut flower industry, because, as we have seen, the ownership
633 of the cut flower industry in the South is mostly foreign. Consequently, while it is
634 possible that some MSP codes may have emerged in the South, those currently in use
635 are mostly replicates of codes from the North, where the process of implementation,
636 the agenda of implementation, and the standards of implementation are different.
637 This is largely the case with HEBI and EUREPGAP⁸ base codes, which give the
638 standard criteria for 'ethical sourcing' in the horticultural sector. One could safely
639 say that the effectiveness of the MSP, at least in Kenya's cut flower sector, has not
640 been encouraging.

641 The experience of the Kenyan cut flower industry seems to indicate that, despite
642 their noble aim, the multi-stakeholder base codes may have served to fulfil some
643 'negative duties' but, in the process, they have neglected those of other very crucial
644 stakeholders and the environment. Hughes' (2001) explanation of this discrepancy
645 is that the presence of codes does not, by itself, guarantee greater social or envi-
646 ronmental justice. This view is corroborated Moore (2006: 412) in regard to the
647 influence of codes in general and attested to by Dolan and Opondo (2005) in
648 their evaluation of the Kenya cut flower industry, using the MSP HEBI base code.
649 What they considered to be the major setback for effective application of the code
650 was the fact that, instead of addressing important local considerations, as replicas
651 from another country, these codes represented the interests of the UK and Dutch
652 companies (Holtshaussen, 2007: 5).

653 There are two other reasons why the MSP-generated base codes may not have
654 provided genuine 'ethical sourcing' results. The first one has to do with the nature
655 of regulation. As we saw earlier, part of the package in global business is relax-
656 ation of laws to attract investors and to ensure that they do not relocate. The second
657 and most basic reason is the fact that these, just like most other codes, generally
658 address the minimum requirements, remaining mute on issues that could make a
659 significant impact on the societies of the countries in which the businesses oper-
660 ate. Consequently, the North ends up having an economic advantage over the South
661 which can be termed 'exploitative'. This advantage is what we earlier saw enshrined
662 in the notion of 'favourable conditions'. That is to say, the North can lay certain
663 conditions on the host country, such that, if a country through its representatives
664 in a body like the KFC demands the flower growers to meet certain regulations, if
665 those regulations are not favourable to them, they threaten to relocate. This is some-
666 thing which governments in the South do not like very much, among other reasons,
667 because that creates massive unemployment. And so the 'arm twisting' continues.

668 So long as companies operating in the cut flower and other similar businesses
669 continue to limit their concerns to the 'deregulated' system and follow the law as
670 stipulated in their base codes, certain basic human goods will necessarily be vio-
671 lated. And, so long as those human goods are overlooked, the sourcing of products
672 cannot be considered genuinely ethical. Unfortunately, the flower auctions in the
673

674

675 ⁸ Euro-retailer Produce Working Group on Good Agricultural Practice.

676 European markets either do not know about these background problems or prefer
 677 not to know about them so long as the flowers bear the hallmark that they have
 678 been sourced ethically. At best, businesses, both foreign and local, may claim that
 679 the workers offer their services ‘freely’ or that they are better off working for low
 680 wages than not working at all, but not that ethics has been observed in the sourcing
 681 of the product at the different levels of the chain.

682 683 684 **5.3.7 Exploitation: A ‘Grassroots’ Experience in the Cut Flower** 685 **Industry in Kenya** 686

687 Exploitation as a concept is tied to that of unfairness, and unfairness to that
 688 of injustice. Morally, fairness is an important property of institutions, organi-
 689 zations, schemes, games and activities at all levels of human interaction. It is
 690 usually associated with ideas like justice, equality, proportionality, reciprocity, and
 691 impartiality.

692 To exploit something means to take an unfair advantage of it or to make the most
 693 of it irresponsibly. We can speak of exploiting people or a natural resource. In both
 694 cases, the implication is that an unfair use is made of, or taken advantage of, by one
 695 party over another, which is presumed to be unable to protect itself or its citizens.
 696 Exploitation as a concept does not usually apply to actions that can be described
 697 using other terms, such as corruption, robbing, stealing, murdering, etc. Rather, it
 698 specifically signifies taking advantage of someone else’s unfortunate situation, for
 699 example, taking advantage of someone’s indigence, ignorance, physical weakness,
 700 or utter need, where there are no alternatives. From the exploiter’s point of view, the
 701 aim is to secure an advantage or profit for oneself.

702 The *Encyclopaedia of Ethics* (1992) makes four distinctions of exploitation. One
 703 form is where an exploiter may or may not coerce or defraud the person whom he
 704 is exploiting. In this case, the person being exploited may or may not voluntarily
 705 consent to the transaction. A second form, typical in all cases of exploitation, is
 706 where, in the act of exploitation, the exploited person is made worse off than he was
 707 before the exploitation. A third form is where the exploited person neither benefits
 708 nor becomes worse off than he was before. The fourth is where the exploited person
 709 may profit from the transaction but disproportionately less than the benefits that the
 710 exploiter gains. It is worthy of note that, in all the four of the forms of exploitation,
 711 the exploited party is treated unfairly because an agent (the exploiter) systematically
 712 uses another person to his or her own advantage, and in so doing acts unfairly.
 713 Looking at the workers in the cut flower industry, and the country itself, it is clear
 714 that both suffer from one or another of these four forms of exploitation.

715 Developing countries are aware of this fact. For some time now, they have been
 716 pointing fingers at the industrialized North on grounds of exploitation. Their argu-
 717 ment is invariably that the North is creating wealth at the material expense of the
 718 South in terms of natural resources and labour, but the South, and especially the
 719 labourer, is left out of stakeholder benefits. Specifically, it is pointed out that it must
 720 be morally wrong for global investors to create so much wealth from the resources

721 and hard labour of poor countries, only to repatriate it in one way or another, leaving
722 the land and the people who made those profits possible bereft of their resources,
723 energies, and even their self-esteem. If, by way of example, a company repatriated
724 99 to 100%⁹ of its gross earnings, could it still claim to have upheld moral respon-
725 sibility towards its stakeholders, when some of them earn and live and work under
726 substandard conditions? One typical excuse is to claim that the investor has com-
727 plied with the law. Often, however, that is not the whole truth, as we shall soon see.
728 Even where this may be the case, the question of ‘ethical sourcing’ remains dubious.
729 The problem here consists in the excision of the notion of *moral responsibility* from
730 that of *ethical sourcing*.

731 The problem of exploitation and abuse of human rights in the cut flower indus-
732 try was first highlighted in the early 1990s through the activities of some national
733 and international trade unions and NGOs. The major aim of those activities was
734 to raise awareness among consumers in market countries regarding the workers’
735 conditions in the industry in Southern countries. The outcome was a variety of net-
736 works of interested organizations, created to work together in order to address those
737 problems. Subsequently, several conferences were held, including two in Nairobi in
738 2002, on ‘Corporate Responsibility and Workers Rights’ and ‘Human Rights and
739 Development of International Obligations for Corporations’, respectively. These
740 conferences were held under the auspices of the Workers Rights Alert (WRA), a
741 coalition of non-governmental organizations that monitors workers rights in various
742 industries in Kenya. It was in the course of these two conferences that the possibil-
743 ity of gross ethics violations in Kenya’s flower industry first emerged. Following on
744 that cue, some researchers soon got involved in the field, whose findings we shall
745 now explore briefly.

746 One of their findings was that workers on flower farms tend to be predomi-
747 nantly women. This was what triggered the interest of the representatives of Women
748 Working Worldwide (WWW) a UK-based NGO, which participated in the two
749 Nairobi conferences and heard what was unfolding in some of the local presen-
750 tations. Thereafter, WWW urged and sponsored a Kenyan NGO, Kenya Women
751 Workers Organization (KEWWO), to conduct a survey of labour rights violations on
752 flower farms in Kenya. That survey conducted 120 random interviews with work-
753 ers, and compiled its findings as part of the ETI Report (2005). The issues raised by
754 workers representing their experience in face-to-face meetings were:

- 756 ● Low pay, as low as Ksh 64 a day, which is less than US\$ 1
- 757 ● Lack of adequate housing
- 758 ● Excessive overtime
- 759 ● Unfair dismissal
- 760 ● Health and safety issues, in particular with regard to pesticide spraying

762 ⁹ The CEO of Lankas Ltd., farm known for its Best Practice in Ethics Audits, disclosed in an
763 exclusive interview with the author that the company leaves behind around 5% of the gross earnings
764 which includes wages, purchases and other services. This is much more than what many of the
765 other flower companies leave behind.

- 766 ● Deductions from pay
- 767 ● Denial of severance pay
- 768 ● Sexual harassment, in particular by supervisors
- 769 ● Lack of contracts
- 770 ● Short-term contracts
- 771 ● Social security payments not met
- 772 ● Lack of freedom of association
- 773 ● Denial of maternity leave and day care

774

775 The ETI survey (2005) highlights two basic concerns;

776

- 777 1. The evidence was gross abuse of a variety of labour rights in the management of
- 778 the industry.
- 779 2. That the Ethics Audits somehow could not detect those abuses.

780

781 Smith et al. in their survey report the following as being a typical example of the

782 interview with the workers:

783

784 When asked if their wage covered their basic needs, a woman in Kenya replied, 'It is not

785 enough at all. For housing I pay Kenya Shilling (Ksh) 400,¹⁰ school fees are about Ksh

786 500 per month, food about Ksh 1,500,¹¹ water about Ksh 200, clothing about Ksh 600, and

787 sickness which varies. . . since the salary is about Ksh 3,000 per month, then I strain (to

788 make ends meet) (Smith et al., 2005).¹²

788

789 What the researchers found most puzzling was that these problems had not come

790 out into the light earlier. Even more surprising was the fact that many farms named

791 by the workers, either because they worked or had worked there sometime, included

792 large holdings with direct supply relationships with the UK and Amsterdam, with

793 smaller farms selling to those larger farms at peak season. Some of these had

794 excellent or 'Best Practice' reputations. From the foregoing, only two possible

795 explanations can be found: either that the ethical/social auditing methods being

796 employed by retailers abroad, the flower farms owners, and other industry play-

797 ers in Kenya were all defective, or that the concept of 'ethical sourcing' in vogue

798 was a camouflage one (Smith et al., 2005), or both.

798

799 This takes us back to the concept of stakeholder and its different nuances. Into

800 what category does the ordinary worker, permanent or casual fall in, in global busi-

801 ness, and what are his or her rights? From the delineation of stakeholder categories

802 and the moral obligation appertaining to each category (Freeman, 1984; Phillips,

802

803

804 ¹⁰ Housing in a slum area is the only one which can cost this amount of money (author's

805 interpretation).

805

806 ¹¹ *Ugali* with or without *Sukuma Wiki* and *Githeri* are the only foodstuffs which can cost this

807 amount of money. *Ugali* is a stiff porridge made solely of maize flour and water; *Sukuma Wiki* is

808 kale while *Githeri* is meal of boiled maize with beans.

808

809 ¹² Between 1 May 2002 and 31 April 2003, the statutory minimum wage for unskilled employees

810 in Kenya agriculture was Ksh 1,642 per month, or Ksh 68.90 a day, i.e. equivalent to 1 US\$. Today

this is slightly higher.

811 2003) it appears that such workers are normative stakeholders. If that be the case,
812 then, in this industry, these stakeholders are being exploited on at least two different
813 accounts:

- 814 a) “As social actors and simply by virtue of their being human” (Phillips, 2003:
815 30), the workers do not get their rightful due from the organizations. In addition,
816 as members of communities living in the lake areas, these people are exploited
817 in various indirect ways, such as the egregious pollution of the water deprives them
818 of much needed fishing and a good ecosystem. Phillips contends that: “Simply
819 because a person or group does not merit the additional moral consideration
820 conferred upon normative stakeholders does not mean that they may be morally
821 disregarded. One still may not break promises without sufficient cause, kill com-
822 petitors for market share, and violate the rights of or otherwise act immorally
823 towards these groups” (*ibid.*).
- 824 b) As normative stakeholder of the organization, the latter can be said to exploit the
825 workers from the point of view of *stakeholder* fairness, over and above that due
826 to them by virtue of their being human. Under this proviso, Phillips includes
827 the violation of human rights by an organization, the use of forced labour,
828 racial/ethnic/sexual discrimination, lying and breaking contracts, are some of the
829 “likely examples of activities that would be wrong irrespective of the stakeholder
830 status of the victims. These violations may occur against a group or individual
831 who is also a normative stakeholder, but it is not due only, or even primarily,
832 to this stakeholder status that these actions are morally prohibited. They are
833 wrong for reasons prior to any stakeholder obligation that may obtain” (Phillips,
834 2003: 30).

836 It should be evident from the foregoing that the use of MSP ‘base codes’ alone
837 cannot suffice to adequately address the real needs of this class of stakeholders.
838 There is a default in the ethical or moral and the non-ethical, similar to that which
839 governs, and also limits the shareholder model with regard to moral responsibility.
840 That is to say, despite the efforts to delineate, categorize and demarcate stakeholder
841 categories and the kind of moral responsibility a firm should have towards each of
842 these categories, there is still a missing factor for moral responsibility to effectively
843 cut through all the categories. This is the topic to which we shall now turn.

846 **5.4 Common Good: The Missing Factor in ‘Ethical Sourcing’** 847 **and Social Responsibility in Global Business**

849 **5.4.1 Globalization and Ethics**

851 Sometimes *globalization* is viewed in fatalistic terms, as if the dynamics involved were the
852 product of anonymous impersonal forces or structures independent of the human will. In this
853 regard it is useful to remember that while globalization should certainly be understood as a
854 socio-economic process, this is not its only dimension. Underneath the more visible process,
855 humanity itself is becoming increasingly interconnected; it is made up of individuals and

856 peoples to whom this process should offer benefits and development as they assume their
857 respective responsibilities, singly and collectively (Benedict, 2009: 42).

858
859 Thus, if globalization is viewed from a deterministic standpoint, the criteria with
860 which to evaluate and direct it can dissipate. But, if we sincerely want to speak of
861 or observe a global ethic, there has to be a common understanding of the tenets of
862 that ethics in global business. The truth of globalization as a process, and its fun-
863 damental ethical criterion, should necessarily emerge from what all human beings
864 share as humans. That is to say, from the unity of the human family and its devel-
865 opment towards what is good. For that project to be sustainable there is need for a
866 commitment on the part of the principal stakeholders and governments “to promote
867 a person-based and community-oriented cultural process of world-wide integration”
868 (Benedict, 2009: 42).

869 This concept has its origins in the classical philosophy of Plato, Aristotle, and
870 the Stoics. Later, it was adopted in Judeo-Christian ethics, but its vestiges are clear
871 in all virtue ethics. For contemporary ethicists, one could say that it is based on
872 the Kantian maxim to always see every human person as an end in himself who
873 should not be used as a means. There have been many nuances to the notion of the
874 common good, but basically it refers to the right social order that permits and, as far
875 as possible, facilitates upright living based on the right of every human being to a
876 minimum of material well-being in order to lead a virtuous life.

877 As a guide to ethical business management the concept of common good can
878 be defined as a broad composite reality embracing the private and public spheres,
879 which does not exclude profit, but instead considers it a means for achieving human
880 and social ends. It grants that the manner in which the individual company dis-
881 tributes its dividends and its juridical structure can vary, but what is constant is
882 the willingness to view profit as a means of achieving the goal of a more humane
883 market and society. Hence, its economic activity pursues not only the commer-
884 cial logic, but it also endeavours to cater for the overall human good of all its
885 stakeholders, especially the most vulnerable, based on the simple fact of their dig-
886 nity as human beings. The common good model seeks to create a convergence
887 between economic science and moral evaluation, based on the financial ability of
888 each organization. In the long run this model should also benefit the company
889 because of the well known economic fact that “structural insecurity generates anti-
890 productive attitudes wasteful of human resources, inasmuch as workers tend to adapt
891 passively to automatic mechanisms, rather than to release creativity” (Benedict,
892 2009: 46).

893 There are increasingly more contemporary business ethicists who see the viabil-
894 ity of this concept as a management guide if we are to have a more comprehensive
895 understanding of the moral management of business beyond the two traditional
896 ones. One can mention, among others, Argandona (1998), Velasquez et al. (1992)
897 Alford & Naughton (2001), and Melé (2008). All of these scholars argue that the
898 classical understanding of the ‘common good’, based on the intrinsic worth of every
899 human being, is a defensible “model of market economy capable of including within
900 its range all peoples and not just the better off” (Benedict, 2009: 39).

901 Appeals for the consideration of the common good concept as a management
902 model are surfacing in different discussions of ethical and social responsibilities,
903 from environmental pollution to problems related to crime and poverty. Different
904 authors may give it different names, but irrespective of the name used, the bottom
905 line is always that of a 'Balanced Concept of the Firm' (Enderle, 2006; Franceschi,
906 2004) and the underlying concern is always the same. This is not to say that every-
907 body agrees on the significance of this concept, because, as Koslowski (2008) notes,
908 history is replete with examples in which the notion of common good was distorted
909 for the manipulation of the masses, or to serve non-ethical practices, even within the
910 agency and stakeholder management models.

911 The term 'common good' has been criticized on another score: its ethical basis
912 in morally pluralistic societies, as we find in contemporary ethics. Already in 1987
913 MacIntyre showed how difficult it is for the followers or heirs of the different
914 moral theories such as, say, Hume, Kant or Mill, to engage in moral decision mak-
915 ing. According to him, the different factions get into "a battle in which no one is
916 finally defeated, only because no one is ever a victor". And, adds, "One interesting
917 response to the recognition of the situation is the recent redefinition of the task
918 of moral philosophy (ethics) as that of rendering coherent and systematic 'our'
919 intuitions about what is right, just, and good where 'we' are the inhabitants of
920 a particular social, moral-political tradition of liberal individualism" (MacIntyre,
921 1987: 176). This could not be truer in global business. Viewed from this perspec-
922 tive, the common good could easily be misunderstood to mean a widespread pursuit
923 of individual interests; interests that are defensible through a notion of moral plu-
924 ralism in which nearly every stance, including ethical egoism, can find a theoretical
925 grounding. This is contrary to the notion of the common good that this chapter
926 proposes.

927 The concept of the common good that is envisaged here is one that rests on truth
928 regarding the dignity of man and woman and that asks three basic questions: one,
929 why should we never treat humanity, whether in oneself or in another, never as a
930 means but always as an end (Kant)? The second one derives from the first, based
931 on Socratic wisdom, and asks: 'how should we live', and how should we treat one
932 another if all human beings have intrinsic worth? And, finally, what is the basis of
933 that intrinsic worth? In the tradition that upholds the concept of the common good,
934 the intrinsic worth of every human being is human dignity based on the fact of
935 having a rational nature. In other words, a spiritual nature; this factor sets humans
936 apart from the rest of Nature and gives their actions moral value. Hence, "when
937 business ethics overlooks this reality of man, it inevitably falls prey to forms of
938 exploitation. More specifically, it risks becoming subservient to theorisations which,
939 rather than correcting the dysfunctional aspects of management, try to justify their
940 unethical actions as being ethical. The word 'ethical' then becomes the instrument
941 to justify ideological distinctions in such a way as if to suggest that initiatives not
942 formally so designated would not be ethical" (Benedict, 2009: 45).

943 Under this light, it appears that the glaring scandals of exploitation and the vio-
944 lation of basic human rights are consequences of the consideration of ethical action
945 in dealing with other human beings only from a purely legal and obligatory point

946 of view. And this is what justifies looking for an overarching attitude and model
947 for business management that always seeks human good. The common good model
948 calls for virtue on the part of the acting agent, rather than on the legal obligation
949 which may or may not apply in a given situation.
950

951
952 **5.4.2 Ethical Sourcing and Social Responsibility**
953 **from a Common Good Perspective**
954

955
956 The difficulty arises when we come to the effective participation in the common
957 good management of the firm. This is not something automatic. It requires the inter-
958 nalization of certain attitudes and convictions, among them a sense of justice and
959 goodwill, especially at the management level. Hence, the grounding factor for the
960 exercise of the model is a notion of justice, rooted in virtue ethics tradition, with an
961 emphasis on its distributive and legal forms.

962 The market is subject to the principles of so-called *commutative justice*, which
963 regulates the relations of giving and receiving between parties to a transaction.
964 “Distributive justice refers to the duties and obligations of the whole – in this
965 case, the firm – to its parts, while legal justice spells out the duties and obliga-
966 tions of the parts – primarily, workers and other stakeholders – to the whole” (Sison
967 & Fontrodona, 2008: 24). In business practice, it demands of the firm to pay a
968 just wage, just in proportion to the profits generally obtained and the needs of its
969 normative stakeholders in the first place. The legal form of justice requires that
970 workers dedicate their best efforts to the firm and take care of its resources (Sison
971 & Fontrodona, 2008).

972 A fundamental consequence of the exercise of distributive and legal justice in
973 regard to any ‘ethical sourcing’ should be responsibility for the integral welfare of
974 the employees. The term ‘responsibility’, according to Enderle (2006), derives from
975 the idea of *re-ponding* or giving valid answers to questions asked by others. In this
976 sense, the notion of responsibility is similar to that of accountability. It would be
977 reductive, therefore, to limit the scope of one’s ethical responsibility to merely ful-
978 filling roles and rules. Under the common good notion of responsibility, one must
979 distinguish between moral responsibility understood from the minimal requirement,
980 such as those defined by regulation and which must be met under all circumstances,
981 to moral responsibility based on the aspirations of an ethical ideal that goes beyond
982 strict regulation. This latter considers that even when one may claim to have acted
983 legally, if those actions violate any aspect of the human standards that regulate dis-
984 tributive justice and gratuitousness, even if these are not legally spelt out, one cannot
985 be said to observe moral responsibility.

986 This is the missing factor in the plethora of codes of ethics in global business.
987 Here, too, we find why the flower farms in Kenya have failed to deliver the promise
988 of better lives for the poor. ‘Ethical sourcing’ on a common good understanding
989 demands practising moral responsibility in a manner that respects, provides and pro-
990 tects both the material and the non-material needs of integral human development

991 and association. Even in economics, this has important and beneficial repercussions.
992 The economy needs ethics in order to function correctly; not any ethics, but an
993 ethics which is people, and environment centred. This is the common good content
994 of management.

995 ‘Ethical sourcing’ of products starts with the observance of the basic human
996 rights among ones’ own immediate stakeholders, such as the employees and the
997 environment that supports neighbouring communities. People may have wants that
998 fall outside what a company can provide, but at the outset, the scale of their remuneration
999 ought to be commensurate to their cost of living. From a distributive justice
1000 point of view, this means that for a company that can afford to pay a living wage
1001 proportionate to the qualifications and skills of the employees, failing to do so does
1002 not look ethical. Similarly, failing to grant permanent employment in order to avoid
1003 responsibility for workers and instead hiring them as intermittent casual labourers
1004 must be understood as exploitation of their indigent condition.
1005
1006

1007 **5.5 Conclusion and Recommendations**

1008

1009 The aim of this chapter is to give an overview of the ethical challenges of global
1010 business in poor countries. To this purpose, I have used the cut flower industry as
1011 the model. We have seen how, at times, the political, social and economic conditions
1012 can make a country vulnerable to the interests and, often, inconsideration of richer
1013 countries. We have seen how an entire sector of the Kenyan population is succumb-
1014 ing to poverty, even as they pour their whole energies into serving an industry that
1015 drains them but has nothing to give back in return. It would not be false, then, to
1016 argue that a new form of poverty is emerging, occasioned by the notion of global
1017 business.
1018

1019 Benedict XVI observes: “Among those who sometimes fail to respect the human
1020 rights of workers are large multinational companies as well as local producers.
1021 For the ‘super-developed’ countries the craving to provide their consumers creates
1022 an unacceptable contrast with the ongoing situations of dehumanizing deprivation”
1023 (Benedict, 2009: 32). To turn this trend round, the proposed common good
1024 notion of the purpose of the firm needs to be taken serious by the different
1025 acts in global business: the business owners, governments and the international
1026 organizations.
1027

1028 **5.5.1 The Role of Global Business**

1029

1030
1031 In all business, global or local, it is clear that the “simple application of *commercial*
1032 *logic* cannot solve all social problems” (Benedict, 2009). As alternative, it is nec-
1033 essary to consider the company as a multi-purpose organization that encompasses
1034 economic, social and environmental purposes, all of which have their intrinsic value
1035 and are related to each other in a circular rather than hierarchical manner. To act in

1036 an adequate social and morally responsible manner, there are other values beyond
 1037 profits that need attention. These values form the fabric on which the moral respon-
 1038 sibilities are built and which we have termed the common good concept of the
 1039 firm.

1040 The practice of this model can benefit from the guidance of the three basic prin-
 1041 ciples of moral responsibility, namely, *the principle of human dignity*, the principles
 1042 of *non-maleficence and beneficence*, and the principle of *justice* (fairness). We shall
 1043 now summarise the significance of each of these in the common good approach of
 1044 ethical management.

1045

1046 **5.5.1.1 The Principle of Human Dignity**

1047

1048 Dignity is something people are born with. It denotes an intangible value or worth.
 1049 The good of dignity, therefore, sets a limit to what can be done to a person. As
 1050 a guiding principle of management wisdom, it enjoins the principals and manage-
 1051 ment to see that economic choices do not cause excessive disparities in wealth in
 1052 a morally unacceptable manner. Under the common good model, ‘ethical sourcing’
 1053 the fulfilment of such responsibilities is not simply ‘helping’ people, rather, it is car-
 1054 rying out one’s *moral obligations* to one’s stakeholders in a balanced manner. For
 1055 that reason, codes of ethics, even comprehensively generated ones, may serve as a
 1056 guide for ethical sourcing, but can never sufficiently cover moral responsibility for
 1057 all one’s stakeholders.

1058 That demands the good-will of all actors. Specifically, it enjoins the manage-
 1059 ment to look beyond rhetoric, beyond the mandatory vision and mission statements,
 1060 which are also needed, and to address the real needs of society. Such corporate com-
 1061 munity engagement (CCE) should not be limited to merely what the law demands,
 1062 which is always a minimum, but rather should be a morality guided by respect for
 1063 the basic human goods, respect for human rights, societal values and the environ-
 1064 mental context within which an organisation works. This is an essential part of the
 1065 understanding of ‘ethical practice’ and moral management. It is hoped that this will
 1066 be the interpretation that ISO 26000 makes of its ethics provision.¹³

1067

1068 **5.5.1.2 The Principles of Beneficence and Non-maleficence**

1069

1070 These are two related principles that derive from the classical First Principle of
 1071 Morality that ‘Good must be done and evil must be avoided’ (Gómez-Lobo, 2002).
 1072 In contemporary ethics, this translates to the ‘Golden Rule’. Hence, the principle
 1073 of *beneficence* entails concern for people’s safety, protection from harmful products
 1074

1075

1075 ¹³ ISO, the International Organization for Standardization, has decided to launch the development
 1076 of an International Standard providing guidelines for social responsibility (SR). The guidance
 1077 standard will be published in 2010 as ISO 26000 and be voluntary to use. It will not include
 1078 requirements and will thus not be a certification standard.

1079

1080

1081 or work environments, provision of means for medical attention when they suffer
1082 illness, hunger or exhaustion, and care for the environment. This focus is often broken
1083 further into other logically related norms such as: *Not to do harm* or the duty
1084 of *non-maleficence*. All rational beings know this within themselves. In a proactive
1085 sense, it means *to do good* by providing benefit wherever possible.
1086

1087 **5.5.1.3 The Principle of Justice**

1088 We have already considered justice. Under this principle of justice we are urged to
1089 observe the requirements of fair dealing. Newton (2005) and Sison & Fontrodona
1090 (2008) focus on certain general tenets of justice that are basic for the existence of
1091 even the minimum of respect and consideration of human dignity in the treatment
1092 of other people:
1093

- 1094 • The obligation to acknowledge our membership and dependence on human
- 1095 community in which we live and operate;
- 1096 • The need to contribute to its life, obey its laws and policies;
- 1097 • The need to be honest in all our dealings with them and, above all, the need to
- 1098 hold ourselves accountable to them for our actions.
1099

1100 Benedict XVI explains this principle as follows: “Economic life undoubtedly
1101 requires contracts, in order to regulate relations of exchange between goods of
1102 equivalent value. But it also needs just laws and forms of redistribution governed by
1103 politics, and what is more, it needs works redolent of the spirit of gift” (Benedict,
1104 2009: 37).
1105

1106 **5.5.2 The Role of International Bodies**

1107 International business ethics would be next to impossible without the good-will of
1108 other players to whom the international community has entrusted certain tasks, such
1109 as International Labour Organization (ILO), the World Trade Organization (WTO)
1110 and environmental programmes such as the United Nations Environmental Program
1111 (UNEP). Through their firm intervention, presence, and supervision, these organi-
1112 zations can require global business to entrench more responsible ethical practice in
1113 the manner products are sourced and in the treatment of the environment. “Human
1114 beings legitimately exercise a responsible stewardship over nature, in order to pro-
1115 tect it, to enjoy its fruits and to cultivate it in new ways, with the assistance of
1116 advanced technologies, so that it can worthily accommodate and feed the world’s
1117 population” (Benedict, 2009: 48).
1118

1119 To date, the actual effectiveness of some of the international organizations, such
1120 as the UNEP, whose headquarters in Nairobi are less than seventy kilometres from
1121 Naivasha, the hub of much of the floriculture in Kenya, is inconspicuous.
1122
1123
1124
1125

1126 **5.5.3 The Role of Political Authorities**

1127
 1128 The temptation to solve immediate economic problems through global business is
 1129 understandable. However, through inter-continental of states and the collaboration
 1130 of international organizations of such bodies as the United Nations, it is possible to
 1131 protect the long-term interest of the developing countries rather than make deals that
 1132 have no long-term sustainability because they do not cater for the overall develop-
 1133 ment of the citizens. The relaxation of regulation to create a favourable atmosphere
 1134 for global business has proved to be open ground for the exploitation of humans and
 1135 nature, without making any significant contribution to the welfare of the local soci-
 1136 ety. In this sense, the criterion to guide the political authorities with regard to global
 1137 or local business is the fact that “the primary capital to be safeguarded and valued
 1138 in any nation is the human person in his or her integrity” (Benedict, 2009: 32).

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Part II
Fairness in International Trade—A Global
Perspective

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01 **Chapter 6**

02 **Fair Global Trade: A Perspective from Africa**

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04
05 **Piet J. Naudé**
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13 **6.1 Introduction**

14
15 I consider it a great honour to be part of the global panel on fair trade, and thank
16 my colleagues for their constructive comments and co-operation. I am proud to be
17 an African and wish to present the view of my continent in an open and objective
18 manner.
19
20

21 **6.1.1 Personal and Hermeneutical Limitation**

22
23 My academic background has been shaped by philosophy and Christian theol-
24 ogy and I have only recently ventured into the relationship between ethics on
25 the one hand and economics and business on the other. My knowledge of eco-
26 nomics and the financial world is therefore extremely limited and it restricts my
27 ability to make informed judgments on technical data, or intra-disciplinary argu-
28 ments and counter-arguments. However, issues related to fair global trade, require
29 an open inter-disciplinary approach like the one attempted in this chapter. A possible
30 weakness in this chapter is a lack of depth and specific detail in certain instances.
31 However, the strengths are – hopefully – the breadth of scope and the presentation
32 of new questions that extend beyond the boundaries of the traditional disciplines
33 that usually engage in global economics.

34 Debates concerning fair global trade and analyses of globalization are notori-
35 ously emotive.¹ There are ideological positions over a wide spectrum and data
36 (both historical and current) are interpreted differently according to the economic
37

38
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43 ¹ No wonder books by Joseph Stiglitz (2002, 2006) and Jagdish Bhagwati (2004) on global-
44 ization have become international bestsellers! There is a growing mountain of literature on the
45 subject from all different perspectives. See the excellent overview of contrasting views by Held
and colleagues (1999).

or social development assumptions of the proponent of a particular view, for example, the neo-liberal, structuralist, “left”, “right” or Marxist viewpoints. Perhaps a debate about assumptions and presuppositions would aid the hermeneutics of dialogue. Unfortunately, this chapter does not have room for an extensive debate on historiography, the benefits or not of the free market and the contradictory impact of globalization. At certain points in the chapter, convictions will merely be stated without the requisite ground-argumentation.

6.1.2 *The Complex Notion of “Africa” and Its Dire Socio-economic Development Needs*

If one wishes to bring historical and contemporary perspectives into the debate on fair global trade, one is struck by the complexities of what we call “Africa”. There is no single history for Africa, only a multitude of regional histories. “Sub-Saharan Africa” is mostly used as a geographical demarcation² of the “southern” half of the continent, but even in this region slavery, colonialism, post-colonial politics, and current socio-economic developments are widely divergent, defying in most cases any unifying terms. Therefore, for the purposes of an overview such as this, we have to accept generalizations beyond what would make serious historians, economists or political scientists feel comfortable. There are always exceptions to whatever is claimed in the name of “Africa”.

This chapter is not an attempt to speak “on behalf of” Africa. This I cannot do, as I neither have the necessary knowledge nor the mandate to do so. What is presented here, though, is a perspective on fair trade and related issues from Africa, based on the work of the African Union, developed through my own views and auxiliary literature.

The African Union (AU) was established as an inter-governmental organization in July 2001, as an amalgamation of the former African Economic Community (AEC) and the Organization of African Unity (OAU). Its headquarters are in Addis Ababa, Ethiopia, where the African Union Commission (AUC) co-ordinates the work on behalf of the 53 member states. The AU has ambitious goals to achieve greater unity among African countries via the creation of a free trade area, a central African bank, a common currency and the creation of a single customs union. The AU aims “to promote and defend common African positions on issues of interest to the continent and its peoples” (www.african-union.org). The main sources for this chapter are the *Strategic Plan of the African Union Commission* (3 volumes, 2004 quoted as AUC 1, 2 and 3) and the *Economic Report on Africa 2007: Accelerating Africa’s Development through Diversification (ERA)* drafted by Economic Commission for Africa.

Africa is in serious need of socio-economic development, but is currently under threat due to marginalization, in an increasingly globalized economy. Unlike Asia

²The African Union insists that one of Africa’s greatest challenges is exactly to overcome divisions based on so many differences, for example, culture, language, religion, economic status and political systems (AUC 3, pp. 4–22).

and Latin America that have succeeded in taking advantage of the global economy, Africa has failed to become an important member of the international economic community. The results are a deep cause for concern and the source for a general Afro-pessimism inside and outside of Africa itself. Here is some basic information³:

- Africa's population of 832 million represents 13% of the world population, but Africa accounts for only 1% of Foreign Direct Investment, 1% of gross domestic product and about 2% of world trade⁴
- Of the 48 least developed countries in the world, 35 are in Africa and African countries are mainly in the lowest 20% of the UN Human Development Index
- Over 40% of the sub-Saharan population live below the international threshold of \$1 a day
- Nearly 80% of the continent's labour force "remains mired in manual and archaic agricultural practices" (AUC 1, p. 6) compounded by hostile climatic conditions and persistent animal diseases that threaten food security. Per capita food production fell in 31 of the 53 African countries in the period 2000–2005
- Diseases like malaria and AIDS (a deadly combination in many cases) are taking its daily toll on life-expectancies (2 million AIDS deaths in 2005) and the economy: 60% of HIV-positive people world-wide live in Africa and on average adult HIV prevalence is 6.1% of the population (UNAIDS, 2006 *Report on the global AIDS epidemic*)
- Africa's isolation, marginalization and even exclusion (Hoogvelt 2002) is increasing due to the continued widening of the digital divide (AUC 1, p. 13) with huge backlogs regarding intra-African communication and the inability to "log-in" into the digital global economy

This list can be extended, but is adequate to highlight the dire socio-economic development needs of Africa and the danger of remaining a marginalized continent. From an African perspective, a fair global trade regime must contribute to the continent's development and enhance Africa's ability to participate in the processes of global decision-making, overcoming its marginalized position and weak negotiating power, and ensuring that benefits accruing from global economic interaction are sustainable.

6.2 Historical Background to the Current Debates About Fair Global Trade

As Africans we argue that our current marginal position must be viewed from an historical perspective. According to paleo-anthropological studies, Africa is the

³This information is mostly available in AUC 1, p. 9 ff.

⁴If one accepts that a very high percentage of international trade is "virtual" (shares, futures), Africa's share of real commodity trading – minerals, and increasingly oil – would be considerably higher. The lack of participation in all forms of trade is a sign of Africa's marginalization as it points to weak financial institutions and a lack of connectivity in a widening digital divide.

136 motherland of *Homo sapiens*. It was a major force in world affairs over the cen-
137 turies with its various empires and kingdoms from long before the Christian era
138 up to the fifteenth century (AUC 1, pp. 4–5). An understanding of the marginal-
139 ization and exploitation of Africa and Africans, between the fifteenth century and
140 the present time, illustrates the reason for the asymmetrical trade situation in which
141 Africa finds itself today. This disproportionate economic and technological situation
142 arose over many centuries and is the cumulative result of at least three factors: (1)
143 the Atlantic slave trade (1440–1870); (2) the colonization of Africa (1884–1961)
144 and post-colonial misrule in Africa (1950–present day); and (3) the creation of a
145 global monetary system (1878–1990).

146 Hundreds of books have been written on each of these topics. For the purpose
147 of this chapter, I will spend more time on the emerging monetary system (as this is
148 the current context in which the fair trade debates occur), and make only very brief
149 comments on the other two factors.

150 An important pre-observation is required: This chapter does not attempt to appor-
151 tion “blame” for Africa’s current weak position in international trade. The aim of
152 the historical material is to provide a context in which the current situation may be
153 interpreted. Such context can then provide credence to the moral and material claims
154 made by Africa and other developing regions, in order to support such concepts as
155 “special and differential treatment” (see below) with a view to establishing a new
156 trade order for the global economy. History, in this case, is not to be used as a cheap
157 moral propaganda tool. However, there is mounting empirical evidence to support
158 the argument that there is an implicit causal link between history and the current
159 economic performance of Africa, and indeed this should be credibly demonstrated.⁵

162 **6.2.1 The Slave Trade**⁶

164 The Atlantic slave trade developed over a period of just over 400 years (1440–1870).
165 There is no scholarly consensus as to the origin, extent and effects of the slave trade
166 on Africa and slave importing nations. A middle position would probably agree on
167 the following encapsulation of the African slave trade.

168 Slave trading was an integral part of African societies, long before the actual
169 Atlantic slave trade started. In the absence of clear rights to property, slaves (cheap
170 labour) were an important means of production and slaves were taken from African
171 tribes themselves, in the normal course of inter-tribal conflicts.⁷ However, it must be

173
174 ⁵For an empirical argument, see Nathan Nunn (2007) and his many references to literature
175 from development economists defending the link between Africa’s current underdevelopment and
176 historical legacies.

177 ⁶For this section I rely on: Hugh Thomas (1997). *The slave trade. The history of the Atlantic slave*
178 *trade 1440–1870* and John Thornton (1998) *Africa and Africans in the making of the Atlantic*
179 *world, 1400–1800*.

180 ⁷See Thornton’s persuasive argument of the link between slavery and African social structure
(1998, pp. 72–97).

181 stated, that the rising demand for slave labour in the Americas led to an enormous
 182 expansion of intra-African trade in human capital, with competitive co-operation
 183 amongst European slave merchants and the African elite. Only in rare cases were
 184 slave raids undertaken by Europeans, normally occurring through the course of war
 185 on the African continent.⁸ However, this does not imply a passive role by Europeans,
 186 who entered into agreements with their African counterparts to ravage the lives and
 187 social structures of ordinary Africans.

188 The outcomes for Africa were mixed: On the one hand the barter trade in
 189 goods like iron, textiles and liquor, and the opportunity to access more advanced
 190 arms brought about many positive economic effects, including a diversification
 191 of the local economies. On the other hand, there were devastating demographic⁹
 192 and social effects on African societies that were built primarily on kinship and
 193 patriarchy. The increasing power of African rulers, as a result of the slave trade,
 194 led to them selling even more people into slavery, thus perpetuating the social
 195 crisis.

196 The effect on the Americas and Europe were more uniformly positive. Africa
 197 provided a market for produced goods and was a source for labour that made possible
 198 the agricultural revolution in what is now known as Latin America and parts
 199 of North America (then under European colonial rule). Contrary to Eric Williams' argument,¹⁰
 200 no linear causal relationship between the slave trade and the subsequent
 201 emergence of industrialization is feasible. However, there is no doubt that industries
 202 like ship-building, marine insurance and rope-making were stimulated by the slave
 203 trade and that the capital gained from trading humans and agricultural production by
 204 slaves (virtually free labour!) made a variety of industrial projects possible (Thomas
 205 1997, p. 795).

206 The thesis by Walter Rodney that the Atlantic slave trade was a first step in the
 207 under-development of Africa, is no longer supported by main-stream academics.
 208 However, one has to state clearly that between 10 and 13 million slaves were
 209 exported from Africa¹¹ and this played an indispensable role in the economic and
 210 cultural¹² development of Europe and the Americas. In fact, the rapid progress in
 211 agriculture in these regions would have been very difficult – if not impossible –
 212 without enslaved African human capital.

213
 214

215 ⁸See Thornton's discussion of early slave raids in Angola by the Portuguese army (1998, p. 115),
 216 but also his sober conclusions regarding the link between European war-abilities and enslavement
 217 (1998, p. 116ff).

218 ⁹The AUC refers to this as a "demographic haemorrhage occasioned by the paroxysm of the slave
 219 trade" (AUC 1, p. 5).

220 ¹⁰Williams was the prime minister of Trinidad and wrote the controversial book *Capitalism and
 221 slavery* in which he argues for a link between slavery and industrialization.

222 ¹¹See the estimated statistics of the slave trade as cited by Thomas (1997, pp. 805–806) in
 223 terms of carrier countries (Portugal 4.6m and Britain 2.6m); destinations (Brazil 4m); origins
 224 (Congo/Angola 3m) and type of labour (sugar plantations 5m).

225 ¹²See Thornton's very interesting chapters (5–9) on the effect of slaves on the cultures of the
 so-called New World and how reciprocal transformations occurred.

6.2.2 Colonialism¹³ and Post-colonial Africa

The abolition of the slave trade eventually led to a markedly different economic and political relationship between Africa and Europe. What slowly emerged was that Europe no longer needed to control human capital, but rather it needed economic and political control over actual African territories. This was necessary to secure trade in goods like gold, ivory, timber and palm oil, and the drive for such control was also influenced by the competitive intra-European rivalries over the period 1870–1945.

Trade in pre-colonial times was essentially co-determined by Africans and their European counterparts, where Africans (although mostly rulers and the trading elite) had a direct influence on events. However, we now enter a phase where asymmetrical power relations play themselves out on the African continent. Commenting on the nineteenth century, Fage observed: “In any clash between European and African interests or beliefs, Europe now possessed both the material means – steam power, firepower, medical power – to impose its will upon Africa, and the moral strength – the certainty that European civilization would prevail, and also that it was in the interest of the African peoples to do so” (Fage 1988, p. 333, see also p. 352).

Starting in West Africa and spreading over into South, East and North Africa, the major European countries increased their administrative, economic and eventually military-political control over Africa. By 1914, Africa – with rare exceptions in cases such as Liberia – were under foreign control¹⁴ (see map in Fage 1988, p. 402), and lost the ability to compete equally in the commercial exploitation of its own natural resources.

Both the process toward and the “reasons” for colonization are too complex when examined over various regions, to summarize in one sentence.¹⁵ Colonization occurred in phases and whereas the initial phases of partial control were motivated by factors as diverse as securing the abolishment of the slave trade and expanding commercial trade in products such as palm oil, the later phases were more directly linked to European political events (the two World Wars and the depression of the 1930s). As Europe’s industrialization reached its fulfilment, greater emphasis was

¹³For this section I rely heavily on J.D. Fage (1988). *A history of Africa*. He commences his study with early African societies (part 1), the impact of Islam (part 2) and more importantly, for this chapter, he discusses European expansion and colonial power in parts 3 and 4. The well-known book by Thomas Packenham (1991). *The scramble for Africa*, reads like a novel and focuses more closely on the colonial period and actual territorial invasion of Africa between 1870 and 1906. Each region is discussed in detail, and makes clear how complex the process of colonization was. A more journalistic book with a fairly critical view of Africa is Robert Guest’s (2004). *The Shackled Continent*. He starts off by arguing that Africa’s basic problem is not its past, but its lack of leadership in the post-colonial period (see pp. 12, 23).

¹⁴Fage remarked that: “Europe and the world had accepted by 1902 that the whole of Africa was the property of one or other of the European colonial powers” (1988, p. 391).

¹⁵See Packenham’s (1991) fairly detailed accounts of the various regions, starting with King Leopold II of Belgium’s dealings with the Congo.

271 placed on the direct economic benefits that the colonies could provide in the form
 272 of raw material (rubber, iron ore) and precious goods like oil, gold and diamonds.

273 Not all the colonies brought immediate profit and wealth to the colonizers and
 274 the idea that colonies ought to be invested in only emerged much later in the
 275 colonization process. The colonies were considered to be indispensable political
 276 building blocks in the intra-European conflicts among countries like Britain, France,
 277 Belgium, Italy, Germany and Spain (see Packenham 1991, p. xxii). The proverbial
 278 “scramble for Africa”¹⁶ was driven by a powerful combination of economic and
 279 political forces, and was based on the emerging assumption that European civiliza-
 280 tion was superior to Africa’s and that the latter needed developing towards a societal
 281 model based upon European religion and values.¹⁷ The first comprehensive devel-
 282 opment plans for the socio-economic upliftment of Africa occurred only after the
 283 Second World War (Fage 1988, pp. 422–423).

284 The rapid de-colonization of Africa started in the late 1940s and occurred *inter*
 285 *alia* due to the rising tide of nationalist liberation movements, political instabil-
 286 ity, and the acceptance of the Universal Declaration of Human Rights by the
 287 newly established United Nations. Post-colonial Africa was ill prepared by its colo-
 288 nial and cultural histories to accept responsibilities for its own affairs. A number
 289 of factors contributed to a somewhat sombre picture of Africa after indepen-
 290 dence. Colonial powers neglected to invest in general education, and training in
 291 political-administrative rule. Power transitions were poorly managed and new rulers
 292 compiled economic policies that could not be sustained and which lead to indebt-
 293 edness. Dictatorships emerged due to weak civil societal structures, and corruption
 294 and misrule became widespread. Tribal wars escalated, and multi-party democracies
 295 were not sustainable due to inadequate levels of preparation for governments of this
 296 nature.

297 There is just no way in which we as Africans can escape the failures of leadership
 298 in many parts of post-colonial Africa and which have contributed to a general Afro-
 299 pessimism. The AUC mentions slavery and imperialism only in passing. It notes
 300 that we should not forget, but “we must learn to put things behind us” and focus on
 301 Africa’s own responsibilities (AUC 1, p. 7). The self-judgment is fierce and candid:
 302 “Distrust for constituted authority, corruption and impunity, coupled with human
 303 rights abuses have kept Africa in a situation of conflict, thereby undermining all
 304 initiatives towards sustainable development” (AUC 1, p. 14). Coupled to this, is
 305 the deep and enduring socio-psychological impact of a colonized self-perception
 306 and a mind-set that leads to cultural diffidence and a notion that “foreign” must be
 307 “better”.

309
 310 ¹⁶The *scramble for Africa* is – as indicated above – the title of the magnificent account of colo-
 311 nization by Thomas Packenham (1991), but the use of this expression probably originated as early
 312 as 1884.

313 ¹⁷The link between Christian mission and colonial power is an ambiguous one. Packenham states
 314 unequivocally that the scramble for Africa was led by “the empire-building alliance of God and
 315 Mammon” (1991, p. 673), introduced as “Christianity, commerce and civilization” by British
 explorer, David Livingstone. For us in Africa, a fourth “c” is added: conquest.

316 Although Africa eventually regained her political independence, an important
 317 factor – crucial to the overall argument of this chapter – must be kept in mind.
 318 Between 1935 and 1950 there were dramatic increases in foreign trade in areas like
 319 the Belgian Congo, French West Africa, Uganda and Northern Rhodesia (see table
 320 5 in Fage 1988, p. 423), and by the mid 1950s “African colonies were participat-
 321 ing in the world economy as never before” (Fage 1988, p. 423). The question then
 322 arises: How was this world economy in which Africa was participating, structured?
 323 The answer to this important question lies in the emerging monetary system from
 324 approximately 1870 to the present day.

327 **6.2.3 The Evolution of the Contemporary Monetary** 328 **and Trade Regime**

330 The growing economic integration of the world¹⁸ implies that decisions taken
 331 by one actor in the economic sphere affect other actors much more directly and
 332 intensely than ever before in history. It necessitates forms of co-operation to ensure
 333 orderly trade, generally accepted rules and regulations regarding the stabilization
 334 of the various monetary systems *inter alia* through the “standardizing” of exchange
 335 rates.

336 Economic historians¹⁹ generally agree that three such attempts at “standardized
 337 monetarization” (SM) developed between 1870 and our present time: The Gold
 338 Standard, the Bretton Woods system and the current emerging system of free capital
 339 flow that is subject to negotiated trade rules.

340 The Gold Standard (GS), formalized in 1878, remained in force until the advent
 341 of the First World War.²⁰ In simple terms, the monetarization at work here was
 342 to link the value of major currencies to a fixed price of gold, setting up a system
 343 of regulated exchange rates. The initial key-currency areas committed themselves
 344 to a free flow of gold and to convert national currencies at a fixed rate into gold,
 345 when requested to do so.²¹ This created a system of standardized monetarization,
 346 facilitating international transactions and protecting participants against currency
 347 volatility.²²

350 ¹⁸Madison (2001) shows how this integration has grown by indicating that for the world as a whole,
 351 the ratio of merchandise exports to GDP rose from 5.5% in 1950 to 17.2% in 1995.

352 ¹⁹I am not an expert in economics or monetary policy and for this section rely heavily on the
 353 exposition by Peter Isard (2005), who was for many years a senior adviser at the IMF, and writer
 354 of *Exchange rate economics* (1995).

355 ²⁰There was fractional support for the GS up until 1933 – see Isard (2005, p. 15), footnote 5.

356 ²¹For a simple explanation of the orthodox account of the Gold Standard, see Held et al.
 (1999, p. 196).

357 ²²In theory at least, this is the first example of a system embodying globally integrated financial
 358 markets, where domestic or national economies were subject to international financial discipline, to
 359 which they were required to adjust. One might refer to the Gold Standard as the origin of what has
 360

361 However, the collapse of the GS did not remove the need for international
362 monetary cooperation. Already, during the Second World War, negotiations com-
363 menced that eventually led to a monetary agreement amongst the forty-four nations
364 at a conference in Bretton Woods, New Hampshire, July 1944. This became
365 known as the Bretton Woods System (BWS) and entailed the declaration of fixed
366 exchange rate parities by a substantial group of countries (Held et al. 1999,
367 pp. 199–201).

368 In contrast to the GS, the BWS was a managed multilateral system that left indi-
369 vidual countries with considerable autonomy to pursue national economic goals,
370 whilst they subjected their exchange rate and international trade practices to interna-
371 tional agreements. Two important institutions embodied the BWS: The IMF focused
372 on monetary cooperation and an orderly exchange rate system, whereas the World
373 Bank financed economic reconstruction and development (Isard 2005, pp. 27–29;
374 69–118).

375 Gold still played a role, although a considerably different international gold stan-
376 dard was established in this new exchange rate system. The US was the only country
377 that actually pegged its currency to gold (at a par value of \$35 per ounce), but other
378 countries in turn pegged their currencies to the dollar. The BWS was thus a monetary
379 system based on the dollar. In this system, private financial flows were restricted, and
380 to diminish market volatility, the US undertook to sell gold only to foreign central
381 banks and governments, and to licensed private users (Isard 2005, p. 29).

382 According to Held et al. (1999, pp. 201–202), the BWS that formally operated
383 between 1946 and 1971, broke down under exactly the three forces that shaped the
384 current situation of financial globalisation. Firstly, the dramatic increase in highly
385 mobile private capital put the control systems of the BWS under severe stress.
386 Secondly, the emerging Eurocurrency markets (dollar deposits in European banks
387 from multinational companies and the Soviet Union) were also not easily subjected
388 to national capital controls. Thirdly, the OPEC crisis of 1973 resulted in huge flow
389 of funds from oil-exporting to oil-importing countries. This increased the liquidity
390 of international banks with an even greater flow of capital across national bound-
391 aries, and higher speculative trading. In short, the intensity and increasing diversity
392 of global financial flows broke the back of the BWS and its intended stable monetary
393 system. In place of the fixed system, where the value of gold, or the dollar acted as
394 a “standardization measure”, there emerged a floating exchange rate system where
395 the only remaining “standard” was the value assigned to a particular currency by the
396 day-to-day trading on foreign exchange markets (Held et al. 1999, p. 209). Needless
397 to say, in such a system volatility is higher and the power to determine market per-
398 ceptions is a crucial factor in who will gain or loose. The “hot money” of private
399 speculators moves with great velocity and intensity. This has a significant impact on
400 financial markets, in some cases leading to currency crises that threatened national

403 become known as economic globalization, i.e. “the increasing flow of goods and services, financial
404 resources, workers, and technologies across national borders” (Isard 2005, p. 4).

406 and regional economies, due to the contagion effect of emerging market economies
407 (Held et al. 1999, pp. 209, 213).²³

408 This third, and still evolving international monetary system, has retained the
409 major institutions of the BWS (the IMF and World Bank), although their roles
410 have been redefined, due to lessons learnt about currency instability and develop-
411 ment economics. To ensure some coherence in the increasing volume and extent of
412 trade, the WTO replaced the failed GATT, and has become the only global organiza-
413 tion dealing with the rules of trade between nations, acting as tribunal in the
414 case of disputes. General trade agreements reached at the WTO are ratified in the
415 parliaments of participating nations, of which there were 146 in 2003 (Bhagwati
416 2004, p. 270).

417 In the first era, the gold standard was fairly tightly controlled with restricted
418 national autonomy. In the BWS, there was more freedom to pursue national econ-
419 omic goals, but the stability was provided by the gold-dollar price and restrictions
420 on private capital flow. In the current era, there is such a high degree of intercon-
421 nectedness, and such a rapid flow of (speculative) capital that national autonomies
422 are severely restricted – especially in weaker nations.

423 Consequently, there has been a structural shift in the balance of power between
424 public and private authority in the global financial system. This is a matter of
425 fierce debate and one may cite examples and counter-examples, but without being
426 a “hyperglobalist”, one must admit that, “there is much compelling evidence to
427 suggest that contemporary financial globalisation is a market-driven rather than a
428 state-driven phenomenon” (Held et al. 1999, p. 234). The nation-state is, according
429 to Stiglitz, squeezed between political demands at local level, and the economic
430 demands of a global system. The problem is that economic globalisation has
431 outpaced political globalisation, resulting in uncoordinated systems of global gov-
432 ernance, which is particularly evident in issues of global health and the environment
433 (Stiglitz 2006, p. 21). The power vacuum has been filled by the most powerful pro-
434 ponents of unlimited trade liberalization, and by staunch believers in only partially
435 successful “trickle-down” economics (Stiglitz 2006, p. 23).

436 For the purposes of this chapter, I wish to point out a common element in all
437 three monetary systems. *From the beginning they created a fundamental differen-*
438 *tiation between “central” and “periphery”*: The gold standard was managed by
439 the Bank of England in London; the BWS was dependent on dollar policies in
440 Washington; the current emerging financial system is determined by the triad of
441 New York, London and Tokyo. Today’s poorer countries were for the most part still
442 colonized when these monetary systems took shape and they played only a marginal
443 role in their origin and current direction. The consequence is that a hierarchical,
444 uneven and asymmetrical system has emerged (Held et al. 1999, pp. 213, 224) with
445 clear democratic deficits in decision-making power, and trade agreements that make
446 the poorest countries worse off (Stiglitz 2006, p. 58). This forms the background to
447

448
449 ²³For a discussion of the different currency crises between 1994 and 1999 in Mexico, the Asian
450 countries and Russia, read Isard (2005, pp. 119-151).

451 the establishment of the WTO, the current trade negotiations, and the expectations
452 that Africa has of the latter.

453
454

455 **6.3 Africa's Expectations of the WTO and Doha Trade** 456 **Negotiations** 457

458 The Doha Development Round of the WTO trade negotiations commenced in 2001
459 and halted in July 2006, continuing on an informal and bi-lateral level. As the
460 promise of multilateral trade negotiations continues to disappoint, Africa is clearly
461 seeking to develop closer ties with the rising giants of China, India²⁴ and to a
462 lesser extent Latin America, in the form of South-South-partnerships. The move-
463 ment toward a truly "Development Round" of trade negotiations raised Africa's
464 expectations and brought the following salient factors to the fore.

465
466

467 **6.3.1 Values**²⁵ 468

469 Despite experiments in "African socialism" in early post-colonial times, Africa
470 accepts the principles of a market economy to maximize her potential. But con-
471 trary to a narrow mercantilist view of trade negotiations, based on the principle of
472 self-interested bargaining, "economic efficacy and solidarity, efficiency and equity,
473 growth and sustainable development, short term gains and long term prospects"
474 must be combined (AUC 1, p. 10) to inform trade negotiations and to judge their
475 outcomes.

476
477

478 **6.3.2 Participation** 479

480 Like many other developing regions, Africa has low negotiation capacities both in
481 terms of human resources²⁶ and technical knowledge. "Africa could in effect remain
482 in a 'spoke' situation while richer countries with more negotiating capacities are
483 able to place themselves at the centre – the hub – of a network of trade agree-
484 ments" (ECA 2007, p. 90). Africa is in the process of self-developing its trade
485 negotiation capacities, but would need the assistance of the WTO to participate
486 effectively.

487
488

489 ²⁴At the first major bi-lateral meeting between Africa and India in New-Delhi (8 April 2008), it
490 was announced that India would grant priority trade access to the least developed countries of the
491 world.

492 ²⁵See the discussion of *ubuntu* as a value expression under section 5. See also the passionate
493 arguments for embedding fairness and social justice in the WTO by Stiglitz and Charlton (2005).

494 ²⁶There are hundreds of meetings and informal negotiations to be conducted, but some developing
495 countries can scarcely afford a permanent trade representative in Geneva, and are outnumbered by
other countries and the special interest groups that represent them.

6.3.3 Agenda

An explicitly pro-development agenda holds the potential to overcome the imbalances of earlier trade negotiations (e.g. the Uruguay Round) by actually reforming the multilateral trading system to ensure a more equitable share in the gains of global trade (ECA 2007, p. 76). Africa has a particular interest in negotiations concerning agriculture and services. Although the outcomes have not been finalized, there is at least agreement in principle that the distorted subsidies in the North, and market access for the South should be realized by 2013, though intermediate deadlines have yet to be achieved.

6.3.4 Trade Liberalization and “Aid for Trade”

Africa accepts trade liberalization as the general aim of trade negotiations, but has been at the receiving end of failed development interventions in the form of enforced structural adjustment programmes (AUC 1, p. 9). Therefore, allowance must be made for trade liberalization according to the development needs and adjustment capacities of a particular country or region, because a “one size fits all”-strategy creates huge adaptation costs and actually retards development (ECA 2007, p. 87). In this regard, Africa supports the notion of aid specifically aimed at meeting the adjustment cost of trade liberalization. However, it is important that this aid is not misused as a political weapon in the negotiation process, or as a replacement for current aid commitments (0.7% of Gross National Income) (Stiglitz & Charlton 2006).

6.3.5 African Union Initiatives and the Question of Identity

The underlying question facing the AU is how to regain relative autonomy and initiative for a continent that has lost its sense of self-worth over the past 500 years? This is extremely difficult for a continent that is emerging from colonial rule, and finding itself on the margins of a global system from which it cannot and does not want to escape, but where the power to shape that system towards justice and equity is clearly lacking. This fundamental question of identity underlies initiatives like NEPAD and the African Renaissance. In a courageous paragraph the AUC writes:

Therefore, as far as Africans are concerned, it is no longer a question of catching up with anything; it is no longer a question of trailing behind any one or being relegated to the sidelines by anyone; rather, it is a question of being at the centre of their own affairs. Africans should devise for themselves watchwords, namely self-development, self-reliance, self-reliance for recognition and development. . . Having thus clarified the direction of its endeavors for full development, Africa can seek to integrate itself into the globalization process without losing its soul (AUC 1, p. 10).

One could translate the above as follows: Without reconstructing the African identity, socio-economic reconstruction will be extremely difficult. This brings trade

541 negotiations into the ethical arena of cultural justice and the rights of indigenous
 542 peoples. Only then can the hard economic policies outlined by the AU follow,
 543 namely: modernization of agriculture; acceleration of industrialization; beneficia-
 544 tion of Africa's enormous mineral wealth; integration of the sub-regions of Africa;
 545 and a decisive drive towards the diversification²⁷ of African economies.

548 **6.4 Differential Treatment and Prioritarian Justice**

549 Africa has high expectations concerning the principle of "special and differential
 550 treatment" (part of GATT and accepted by the WTO) and especially the hope that
 551 it will be mainstreamed into all trade negotiations and enforced in practice. For
 552 example, there are 34 African countries in the Least Developed Countries (LDC)
 553 group, and initiatives such as the Generalized System of Preferences and the EU's
 554 "Everything but Arms" have brought additional benefits to them. Although not
 555 directly related to WTO negotiations, special actions like debt relief²⁸ and collective
 556 efforts to reach the Millennium Development Goals are important to many African
 557 countries.
 558

559 The notion of "special and differential treatment" introduces *new kinds of jus-*
 560 *tice* that were previously absent or under-represented. One thinks, for example, of
 561 emerging debates about ecological justice, inter-generational justice, cultural jus-
 562 tice²⁹ and participative justice.³⁰ Africa understands that it will never reach a point
 563 of higher integration into the global economy unless a *redefinition of distributive*
 564 *justice* in the context of an integrated global monetary system is accepted.

565 Distributive justice³¹ is a form of socio-economic justice that regulates the dis-
 566 tribution of goods and services amongst the people of a specific society, or amongst
 567 societies in a regional or global arrangement. The result of such a distribution will
 568 obviously depend on the notion of justice and the specific theory of justice adopted.
 569

571
 572 ²⁷Note the sub-title of the Economic Report on Africa: "Accelerating Africa's development
 573 through diversification" and the discussion of diversification in the report itself (ECA 2007,
 574 p. 113ff).

575 ²⁸Of the 19 countries that reached completion point in the HIPC debt relief process, 15 were from
 576 Africa.

577 ²⁹This is a form of justice not as widely discussed in the literature yet. I have found the essay
 578 by Kwenda (2003) very helpful in this regard. He argues that cultural justice is established when
 579 people are allowed unselfconscious living, i.e. they live in acceptance and appreciation of their
 580 own identity. For an analysis of the link between cultural justice, identity and globalization, read
 581 Naudé (2005).

582 ³⁰Bedford-Strohm makes the astute observation that both material and socio-cultural poverty find
 583 their origin in "fehlende Teilhabe" (1993, p. 169). People are poor because of a lack of participation
 584 in the (in)formal economy and a lack of power to influence decisions. This is one of the most urgent
 585 issues in discussions of global economic justice today.

586 ³¹For a definition and wide-ranging discussion of different theories of distributive justice, read
 587 Roemer (1998).

586 Egalitarian understandings of justice will, for example, seek to spread benefits more
587 equally than entitlement notions of justice.³²

588 There is now a growing consensus that to make the emerging global monetary
589 system moral and sustainable, special focus on disadvantaged nations and people is
590 needed. The notion of “preferential” treatment, has over the last few decades been
591 expressed in different terms by theologians, philosophers and economists:

592 In the 1960s and 1970s, Latin American liberation theologians³³ – followed later
593 by African liberation theologians³⁴ – developed “the preferential option for the
594 poor” as a prophetic critique against failed development and structural adjustment
595 policies in Latin America and Africa.

596 John Rawls developed his ideas about “justice as fairness” and the priority of
597 the least advantaged person in his remarkable book, *A theory of justice* (1971). He
598 based this on his judgment that utilitarian ethics that simply maximizes happiness
599 will not create just societies, and later (1999) stated that burdened societies need –
600 at least for a specified period – special assistance in a new global order.

601 Joseph Stiglitz (2006) recently made a strong economic argument to replace
602 “reciprocity for all” with the dictum of “special and differential treatment” for the
603 poor nations of the world. In what he calls “fair trade for the poor”, he suggests a
604 reform of international trade. This reform entails that the principle of “reciprocity
605 for and among all countries – regardless of circumstances” should be replaced by
606 the principle of “*reciprocity among equals, but differentiation between those in
607 markedly different circumstances*” (Stiglitz 2006, p. 83, my emphasis).

608 In practice, Stiglitz proposes a three-tier system of rich, middle-income and poor
609 countries – a classification based on agreed empirical norms. The rich countries
610 open up their markets to others in their own group, but also to the middle-income
611 and poor countries without reciprocity, or political conditionality expected from the
612 latter two groups. The middle-income group opens trade to all in its own group
613 and to the poor countries without conditionality, but is not required to extend such
614 preferences to the rich countries. In such a system, developing nations will receive
615 “special and differential treatment”, as has already happened in some bilateral trade
616 agreements (see the EU in 2001; Stiglitz 2006:83). However, such preferential treat-
617 ment should not be voluntary, but become part and parcel of WTO negotiations and
618 enforced in fields such as agriculture, tariffs and non-tariff barriers.

619 The clear WTO Ministerial Declaration adopted on 14 November 2001 gave
620 Africa at least, theoretical hope:

621 We agree that special and differential treatment for developing countries shall be an inte-
622 gral part of all elements of negotiations and shall be embodied in the schedules and
623

624
625 ³²This difference is, for example, illustrated in the debate between John Rawls (egalitarian view)
626 and Robert Nozick (entitlement view).

627 ³³The most famous proponent of this radical challenge to traditional Catholic social thought is
628 Gustavo Gutierrez, whose classical Spanish exposition was published in English as *A theology of
629 liberation* (1973).

630 ³⁴Well-known names are Manas Buthelezi, Desmond Tutu, Itumeleng Mosala, Allan Boesak, and
womanists like Mercy Oduyoye and Isabel Phiri.

631 concession and commitments and as appropriate in the rules and disciplines to be nego-
 632 tiated, so as to be operationally effective and to enable developing countries to effectively
 633 take account of their development needs, including food security and rural development
 634 (paragraph 13).

635 We as Africans view this as a sincere commitment to and as a yardstick for the
 636 processes and outcomes of trade negotiations.

639 **6.5 Ubuntu as Guiding Philosophy for a New Trade Regime?**

641 The ancient value system of traditional African societies is condensed in the notion
 642 of *ubuntu*.³⁵ Whereas the Enlightenment view of the human person – power-
 643 fully expressed by, for example, René Descartes and Immanuel Kant – focuses
 644 on individuality and an assumed universal rationality, African philosophy rests on
 645 the assumption of communality: *Cogito ergo sum* stands in contrast to *ubuntu* as
 646 explained by African philosopher, John Mbiti (1969, pp. 108–109): “I am, because
 647 we are; and since we are, therefore I am.” In short: I am a person through other per-
 648 sons. The “other” does not stand in an accidental or a posteriori or pragmatic relation
 649 to me, but is in fact a constitutive ontological part of my identity. My success is
 650 invariably tied up with the promotion of communal well-being, and the criterion of
 651 “success” is not in the first place material wealth accumulation, but the promotion
 652 and restoration of vital force, the life-giving spirit that permeates our existence and
 653 the cosmos of which we are a part.

654 If one translates this ethic from its tribal and local roots, to the emerging global
 655 order, one realizes that what the ecological crisis and global warming recently
 656 brought to our attention – namely that we share this finite world and we are liter-
 657 ally dependent upon one another and cannot “go it alone” – was already embedded
 658 in ancient African wisdom. A trade negotiating system, primarily imbued by self-
 659 gain in the power game of win-loose-scenarios, may lead to short term “victories”,
 660 but will not yield the required social goods for sustainable economic growth in the
 661 medium to long term.

662 If all countries enter trade negotiations on the premise to build one human com-
 663 munity, they will understand that building such a community requires sacrifices,
 664 and at times altruism instead of strict reciprocity. Furthermore, if burdened societies
 665 (Rawls) that are in transition are treated in a special and differential way – Africa
 666 might at one point in history also be in a position to reciprocate materially to a
 667 greater extent than is possible at the moment.

670
 671 ³⁵ *Ubuntu* has been widely discussed by African and other international scholars. Mbiti (1969) is
 672 considered to be the *locus classicus* in academic literature in this regard. Recent contributions are
 673 by Gyekye (1996), Ramosa (1999) and Shutte (2001). Like all good notions, *ubuntu* has also been
 674 misused and must obviously be subject to critical analysis. *Ubuntu* has in recent years also been
 675 translated into business management and leadership literature. See for example Broodryk (2005)
 and Mbigi (2005).

676 Despite the shortcomings of the WTO,³⁶ ranging from member access to asym-
 677 metric enforcement, the Ministerial Declaration does reflect this spirit of a single
 678 world community:

679 We recognize the need of *all our people* to benefit from the increased opportunities and
 680 welfare gains that the multilateral trading system generates. . . We shall continue to make
 681 positive efforts designed to ensure that developing countries, and especially the least devel-
 682 oped among them, secure a share in the growth of world trade commensurate with the needs
 683 of their economic development (paragraph 2, my emphasis).

684 As far as we keep one another to this vision, there is indeed hope.

685 Nkosi sikelel' iAfrika!³⁷

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717 ³⁶See the incisive critique of both the assumptions and actual functioning of the WTO by
 718 Australian economist, Graham Dunkley (2004, especially Chapter 8).

719 ³⁷“God bless Africa”, is the first line of a pan-African hymn and is also the first line of the official
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01 **Chapter 7**

02 **Fairness in International Trade and Investment:**
03 **Latin American Challenges**
04

05
06
07 **Elio Ferrato and Maria Cecilia Coutinho de Arruda**
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13 **7.1 Introduction**
14

15 The objective of this chapter is to discuss a Latin American perspective on
16 three topics raised by the coordination of the International Society of Business,
17 Economics, and Ethics (ISBEE), as part of the Global Research Project on Fairness
18 in International Trade and Investment:
19

- 20 1. To what extent are the workings and outcomes of the WTO perceived as fair in
21 your region?
22 2. What are the main ethical issues regarding the WTO in your region?
23 3. What developments are there in your region to address these ethical issues?
24

25 Despite differences in the social, economic and historical formation of Latin
26 American nations, we can assume that the data and ideas in this paper are
27 sufficiently representative, as we have relied upon regional sources such as
28 Economic Latin America and the Caribbean World Trade Organization (WTO),
29 Economic Commission for Latin America and Caribbean (ECLAC), Inter-American
30 Development Bank (IADB), and professional and academic associations and univer-
31 sities, among others, in twelve countries in the Region.
32
33

34 **7.2 Fairness in International Trade**
35

36 Speeches and proposals of member countries in the WTO, either poor or rich, often
37 mention the need for fairness, justice and legitimacy. The actor, other negotiat-
38 ing parties, and the forum in which negotiations are taking place are factors that
39 influence the criteria for a clear definition of fairness.
40

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46 Thomas Franck's conception of fairness has often served as a starting point:

47
48 . . . fairness is a composite of two independent variables: legitimacy and distributive justice.
49 Thomas Franck's Fairness discourse is the process by which the law, and those who make
50 law, seek to integrate those variables, recognizing the tension between the community's
51 desire for both order (legitimacy) and change (justice), as well as the tensions between
52 different notions of what constitutes *good* order and *good* change in concrete instances
53 (Franck, 1995, pp. 26–27).

54 Suranovic (2000) described seven principles to divide *equality fairness* and
55 *reciprocity fairness*. Equality fairness includes non-discrimination, distributional
56 fairness and golden rule fairness. Reciprocity fairness embraces positive reciprocity
57 fairness, negative reciprocity fairness, privacy fairness, and maximum benefit
58 fairness.

59 Davidson et al. (2006) describe a series of surveys related to what they call a
60 "language" of fairness. Among several meanings, the authors indicate that "one of
61 the most fundamental foundations for public claims about fairness in Liberal society
62 is (in)equality. Conditional on a wide variety of contextual information, there is
63 considerable evidence that people possess some preference for equality" (p. 997).
64 "We are only at the very beginning of a systematic understanding of the public
65 politics of trade policy, but it seems likely that an understanding of the politics of
66 fairness will be central to any advance in this area." (p. 1001)

67 In a more concrete way, for Narlikar (2006) fairness means legitimacy of pro-
68 cess and equity of outcomes in the context of the General Agreement on Tariffs and
69 Trade / World Trade Organisation (GATT/WTO). Analyzing the shifts in attitudes of
70 developing countries toward the GATT/WTO, she noticed some changes in the con-
71 cepts. Different concepts may result in "claims that are mutually contradictory and
72 yet equally legitimate" (p. 1005). Disputes between North and South may indicate
73 these differing claims.

74 Brown and Stern (2007) argue that fairness in the global trading system is not to
75 be understood as a moral principle, but as an instrumental criterion. Thus, equality
76 of opportunity and distributive equity are conditions for fair agreements.

77 Our understanding is that Brown and Stern's principles to guide the relation-
78 ships among WTO members should be reciprocity, most favored nation treatment
79 and national treatment. Furthermore, the respect given to these values should be
80 considered moral and not only instrumental. De Jasay (2006) even discusses the
81 convergence of the terms *fairness* and *justice* whose concepts are frequently applied
82 as synonymous.

83 84 85 **7.3 Perception of Fairness in Workings and Outcomes** 86 **of the WTO in Latin America**

87
88
89 A starting point is to look at the WTO self definition and its statement of main
90 purposes:

91 The World Trade Organization is the only international body dealing with the rules of trade
92 between nations. At its heart are the WTO agreements, negotiated and signed by the bulk
93 of the world's trading nations. These documents provide the legal ground-rules for inter-
94 national commerce. They are essentially contracts binding governments to keep their trade
95 policies within agreed limits. Although negotiated and signed by governments, the goal
96 of these contracts is to help producers of goods and services, exporters, and imports con-
97 duct their business" . . .the system's overriding purpose is to help trade flow as freely as
98 possible – so long as there are no undesirable side-effects. That partly means removing
99 obstacles. It also means ensuring that individuals, companies and governments know what
100 the trade rules are around the world, and giving them the confidence that there will be no
101 sudden changes of policy. In other words, the rules have to be "transparent" and predictable.
102 Because the agreements are drafted and signed by the community of trading nations, often
103 after considerable debate and controversy, one of the WTO's most important functions is to
104 serve as a forum for trade negotiations. A third important side to the WTO's work is dispute
105 settlement. Trade relations often involve conflicting interests. Contracts and agreements,
106 including those painstakingly negotiated in the WTO system, often need interpreting. The
107 most harmonious way to settle these differences is through some neutral procedure based
108 on an agreed legal foundation. That is the purpose behind the dispute settlement process
109 written into the WTO agreements (WTO 2008).

108 The General Agreement on Tariffs and Trade (GATT) had provided the rules for
109 the trading system since 1948. The Uruguay Round lasted from 1986 to 1994 and
110 led to the creation of the WTO on 1 January 1995, but its trading system seemed
111 half a century older. Whereas GATT had mainly dealt with trade in goods, the WTO
112 and its agreements now additionally cover trade in services and in traded inventions,
113 creations and designs (intellectual property).

114 A framework to address the topic Fairness in International Trade and Investments
115 was Singer's four charges to WTO, which appear to be applicable to Latin America:

- 116 1. The WTO places economic considerations ahead of concerns for the environ-
117 ment, animal welfare, and even human rights.
- 118 2. The WTO erodes national sovereignty.
- 119 3. The WTO is undemocratic.
- 120 4. The WTO increases inequality; or (a stronger charge) it makes the rich richer
121 and leaves the world's poorest people even worse off than they would otherwise
122 have been (Singer 2002, p. 16).

124 These charges raise a question: How can one identify or make such a judgment
125 about WTO? Concerning Latin America, it seems that most dispute panels and
126 results are almost solely controlled by the WTO. According to its internal principles,
127 some decisions may be interpreted as complying with particular interests. This can
128 be judged as undemocratic, as it erodes national sovereignty and increases inequal-
129 ity. A current example of that is the Doha Round. Apparently, instead of moving
130 forward to positive results for every country involved, it seems to go backwards,
131 imposing that developing countries individually negotiate – as much as possible –
132 with developed countries.

133 The evidence to support the first of Singer's charges to WTO is often found
134 in the media, for instance, when the global warming risk to mankind is pointed
135 out. Regarding Latin America, a large area of the Amazon rainforest is located in

136 different countries. Little international support has been offered to preserve it from
137 devastation and erosion. The WTO seems indifferent to the impact of free trade on
138 workers' rights, child labor, the environment and health. These and other realities
139 may indicate that WTO lacks democratic accountability, in that its hearings on trade
140 disputes are closed to the public and the media (BBC 2008). The IADB (2007a) has
141 raised significant issues in the health sector, which are a consequence of corruption
142 and lack of transparency. The studies provided by the IADB (2007b) can be help-
143 ful to support strategies, policies and procedures of the WTO, related to sustainable
144 development of Latin America and the Caribbean.

145 The Uruguay Round discussed the need of a fair and market-oriented agricultural
146 trading system. This could be reached with more discipline in the areas of market
147 access, export subsidies and internal support. Protectionism has been shown to be
148 an obstacle to the development of the countries and the achievement of positive
149 results with such a system. WTO should be concerned and neutral about the eco-
150 nomic opportunities of developing countries, which have commodities to offer and
151 are attempting to develop manufacturing industries, while developed countries tend
152 to protect their agricultural markets, imposing the export of industrialized products.
153 It would be a responsibility of WTO to reduce this inequality. On the other hand,
154 Latin America and the Caribbean countries tend to adopt offensive and defensive
155 positions on different topics within agricultural negotiations. For instance, Brazil
156 and Argentina have proposed ambitious proposals on tariff cuts. However, China,
157 India and South Africa have significantly supported proposals such as trade facil-
158 itation, intellectual property, and public health, special and differential treatment
159 (ECLAC 2006).

160 As reported by Klapper from Associated Press (2007), in a meeting promoted by
161 WTO involving the United States (US), European Union (EU), Brazil and India, it
162 would be "crucial" if the WTO were to succeed in concluding a deal to liberalize
163 the world by the end of 2007. The US and Brazil disagreed in that meeting over
164 how far the US should cut farm subsidies as part of a global trade pact. The US indi-
165 cated it was willing to limit its trade-distorting farm subsidies to \$17 billion, while
166 Brazil insisted on a figure somewhere below \$ 15 billion. Critics of the subsidies say
167 they unfairly depress international prices, making it impossible for poorer nations
168 to develop their economies by selling their agricultural products abroad (Singer's
169 fourth charge). The North American government has not publicly moved since
170 offering in October 2005 to restrict its subsidies to \$ 22 billion. Both the US and
171 EU say that their agriculture concessions must be matched by lower industrial tar-
172iffs in Brazil and India. The Doha Round is already years behind schedule and may
173 set the whole process back to 2010 as subsidy and tariff concessions were seen as
174 unlikely in 2008, when US elections were held, and in 2009, when Indian elections
175 are scheduled.

176 As per Djelic and Quack (2003), the rational choice perspective is found predom-
177 inantly amongst economists and political scientists, particularly, for the latter group,
178 in the International Relations literature. Nevertheless, some politicians and scholars
179 of other areas seem also to be concerned about the growth of social problems caused
180 by the lack of equilibrium in international commerce. Such a perspective tends to

181 focus on formal and structural political and economic institutions worldwide. To a
182 certain extent, this could explain how and why corruption is universalized and lasts
183 so long. Despite an intense effort of the Organization for Economic Co-operation
184 and Development (OECD), World Bank, IADB and of other organizations to eradicate
185 it in many countries, in Latin America, corruption deeply affects the image
186 of the Region and enables barriers to be imposed in international commerce. As
187 a paradox, a United Nations (UN) publication (UNCTAD, 2008) indicated Latin
188 America as an excellent region for foreign long-term investments, because Brazil
189 is ranked 8 in the world after the United Kingdom (UK), The Netherlands, France,
190 US, China, Singapore, and Russian Federation. Very recently, the two most famous
191 rating Indicators, Standard & Poor's and Fitch, have elevated Brazil to Investment
192 Grade, which is going to speed up direct investments in the country. For the
193 time being in Latin America only Chile, Peru, Brazil, and Mexico are qualified
194 Investment Grade. On the other hand, research reports have found, and authorities
195 have warned, about some kinds of corruption (*Transparency International* 2007 and
196 *Transparencia Brasil* 2007). A controversial explanation of this fact is that Latin
197 American countries were discovered and settled by developed countries. For cen-
198 turies developing countries served as a source of genuine raw material suppliers, no
199 matter the social cost to reach the goals. According to this perspective, the creation
200 of the WTO as an institution to mostly support the interests of rich countries can be
201 perceived as unfair by many Latin Americans (Abramo 2007a, b).

202 According to its objectives and mission, the unconformity of certain procedures
203 by the WTO can be perceived as unfair by societies, especially in the developing
204 world. In many ways, good examples were expected from the developed countries,
205 concerning the capacity and skills to orchestrate actions toward the developing and
206 less developed ones. Rich countries can be, and have been shown to be, as corrupt
207 as less developed or developing nations. In fact, the means of communication have
208 disclosed scandals in the US, Japan, UK, Italy, France and several others countries
209 widely perceived as less corrupt. Therefore, poverty should not be perceived as a
210 synonym of corruption, as ethics does not necessarily mean wealth (IADB 2007b).

211 Therefore, the existence of irregular or unfair decisions by WTO leads develop-
212 ing countries to lose confidence about those who are supposed to manage based on
213 principles of goodwill, moral equilibrium, equity and integrity (Llano 1991a, b, c).

214 Nevertheless, it is plausible, and it would be unfair not to recognize, that WTO
215 has provided among countries in Latin America a certain impulse for the develop-
216 ment of a free trade sense, especially with the assistance of the International
217 Chamber of Commerce (ICC), based in most countries in the world, by establishing
218 the Incoterms (2000) and Banking Regulations through Brochure 600 (ICC 2008).

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7.4 Ethical Issues Regarding the WTO in Latin America

223 Ethical issues regarding international trade and investment can be closely related
224 to the image of countries that have experienced economic uncertainties and politi-
225 cal instabilities since they were created. In this regard, the Link Global Economic

226 Outlook (United Nations, 2007) states that the trade balances in developing
227 countries reached the amount of 615.4 billions of US dollars against 62.9 billions of
228 US dollars in Latin America and the Caribbean. The annual growth rate of real Gross
229 Domestic Product (GDP) in developing countries reached 6.9% in 2007 against
230 5.2% in Latin America and the Caribbean, which puts Latin America behind the
231 rest of the developing world. Aiming at change, some corruption tools have been
232 shaped mainly by non-governmental organizations (NGOs) in several countries in
233 Latin America. A number of politicians perceive that corruption may lead to a sad
234 end of a career, either for those who decide to be corrupt or those who act as the cor-
235 ruptor. Booklets and books have been issued by individuals and NGOs, to explain
236 the procedures to impeach mayors in city government throughout Latin America.
237 In addition, specifically in Brazil, private initiatives are developing a sustainabil-
238 ity program for competition among local (national and transnational) corporations,
239 associating financial results to environmental and social targets, as a way to inhibit
240 corruption and promote ethical development. It expresses goodwill to eliminate cor-
241 ruption, aiming at possibilities to progressively increase local and external trade and
242 investments.

243 Contrasting situations may remain, no matter the political trends in govern-
244 ment. In spite of all uncertainties and complexities, Latin Americans' typical
245 spirit is described by Castells (1975) and Osland et al. (1999) as full of personal
246 dignity, classism, personalism, paternalism, collectivism, humor and happiness. The
247 easy-going style may hide some lack of trust and opportunism, and does not deny the
248 stigma inherited from slavery, not only of Negroes or natives in the pre-colonial era,
249 but also of whites composed of European immigrants, especially those not affected
250 by the savage capitalism.

251 Some figures on international merchandise and services trade in Latin America
252 can be helpful to understand these ideas. Table 7.1 offers a general view of trade
253 operations by Latin American countries.

254 It is obvious that these figures indicate relevant factors that contributed to the
255 countries' economic growth as a result of international trade. Nevertheless, social
256 improvement still needs the boost of political measures to establish a sort of equi-
257 librium in the respective economies, in order to diminish or eliminate severe debts
258 that "erode national sovereignty" (Singer 2002).

259 Table 7.1 shows positive Account Balance in Argentina, Bolivia, Brazil, Chile
260 and Venezuela. Other Latin American countries would have many reasons for the
261 important debts upon the International Monetary Fund (IMF), the World Bank and
262 other financing organizations, mainly those owned by private banks and equities in
263 developed countries.

264 Again, Table 7.1 indicates that the growth itself (imports and exports) seems to be
265 excessively high. Nevertheless, looking at the results of fifteen years, the outcomes
266 can be considered poor and far away from ideal, especially when compared with
267 Asian countries.

268 It is important to notice in Table 7.1 that most Latin American countries presented
269 a negative balance trade during a long period of time. The results could suggest
270

Table 7.1 Trade development in the period 1990–2005 (in percentage, accumulated)

Countries	Imports (%)	Exports (%)	Trade Balance (*) (%)	Current account balance(**)
Argentina	510	313	−197	127%
Bolivia	264	323	+59	493%
Brazil	347	382	+35	528%
Chile	416	467	+51	218%
Colombia	363	281	−82	Negative
Costa Rica	457	495	+38	Negative
Cuba	Not registered	Estimated 159	Unknown	Not registered
Dominican Republic	507	548	+41	Negative
Ecuador	469	350	−119	Negative
El Salvador	471	470	−1	Negative
Guatemala	526	314	−212	Negative
Honduras	448	331	−117	Negative
Mexico	468	472	+4	Negative
Nicaragua	482	474	−8	Negative
Panama	253	242	−11	Negative
Paraguay	189	156	−33	Negative
Peru	371	471	+100	Negative
Suriname	183	163	20	Negative
Uruguay	279	235	−44	Negative
Venezuela	305	302	−3	+ 308%

Source: World Trade Organization (2007), adapted by the authors

(*) Trade Balance is the arithmetical difference between imports and exports per country, in the period 1990–2005

(**) Current Account Balance represents the sum Trade Balance + net factor incomes + transfer payments in the period 1990–2005

that WTO should re-visit David Ricardo's (Ricardo 1817) comparative advantage to better understand what happened to Latin America in the period 1990–2005.

Table 7.2 shows the low social and economic growth in Latin America. An important point to be observed is that no single Latin American nation presented a GNP *per capita* higher than US\$ 9,000.00 in the year 2006.

It appears to be significant that about 8 million families in Latin America (out of 524 million inhabitants in the Region) can afford monthly installments of US\$ 200 to cover college expenses (MEC/INEP).¹ By the way, only three Latin American universities are cited among the best 200 in the world. The University of Sao Paulo and the University of Campinas in Brazil are respectively ranked 175th and 177th positions. The National Autonomous University of Mexico occupies the 192nd (QS World University Rankings 2007).

¹ See www.inep.gov.br. Accessed 29 October 2009.

Table 7.2 Nominal GDP in the period 1990–2005

Countries	1990 (Millions US\$)	2005 (Millions US\$)	Population/ (thousands)/GNP* per capita in US\$-2006	Average Growth rate 2004–2005 (%)
Central America				
Costa Rica	7.254	19.818	4.399/4,792	2.3
El Salvador	4.801	16.980	6.762/2,188	2.1
Guatemala	7.650	31.923	13.029/1,610	3.2
Honduras	3.049	8.374	6.969/1,365	4.2
Mexico	262.710	768.437	105.342/6,322	2.8
Nicaragua	3.598	4.910	5.532/843	4.0
Panama	6.077	15.241	3.288/4,749	5.5
South America				
Argentina	141.353	183.310	39.134/8,733	9.2
Bolivia	4.868	9.728	9.354/1,058	2.7
Brazil	438.228	799.413	189.323/4,021	3.3
Chile	33.507	111.339	16.465/5,873	5.9
Colombia	47.743	121.877	45.558/2,674	4.0
Ecuador	11.248	33.062	13.202/1,608	0.7
Guyana	396	786	739/858	−2.8
Paraguay	4.904	7.684	6.016/1,396	2.7
Peru	29.281	76.607	27.589/2,555	5.5
Suriname	467	1.503	455/2,343	5.1
Uruguay	8.368	16.792	3.331/6,770	6.4
Venezuela	47.028	132.373	27.191/5,429	9.3

Source: UNCTAD, 2008/CEPAL (United Nations, 2007), adapted by the authors

* Per capita gross product, at constant market prices – dollars at constant 2000 prices

According to Table 7.2, only 6 out of 19 countries achieved more than US\$ 1 hundred billion of Nominal GDP in 2005. Brazil, Mexico and Argentina lead the group. Most Latin American countries depend considerably on exports of commodities in general to develop their economies. However, due to Doha Round decisions by developed countries, the barriers remain strong and seem to limit the growth of developing countries. The major reason why developing economies do not open up to the developed world is in response to those barriers. They may be procrastinating future social problems, as they open facilities for opportunism to manage countries with weak or no institutional rules. Douglas North, the 1993 Nobel Prize of Economics winner, stated: “Only countries that develop solid institutions will have progress” (North 2004).

Latin America ended 2009 with various leftist governors. Why? Singer’s charges or arguments of 2002 still seem to be valid. No significant changes have occurred since then. A simple case, among others, could be added to Singer’s report. In 2001, Brazil submitted a trade consultation question to the US through the WTO. No answer was received by 2008. Who is to be blamed for such a delay? Meanwhile, Brazil continued to face barriers in the introduction of certain goods in the US.

361 Not written down but apparently effective is that trade flow is tied up by economic
 362 interests that transcend the WTO limits of power. More bargaining articulation is
 363 given to developed nations as compared to developing ones. Speaking in financial
 364 terms, developing countries have had a very limited participation as members of
 365 the WTO. This issue is frequently summarized in the question: Does every member
 366 have the same power to vote in the sessions? If not, why? The transparency concept
 367 mentioned in the WTO purposes can become questionable, as dispute panels proce-
 368 dures are not described. It is not clear who is nominated to participate in a dispute
 369 judgment.

370 Interpretation seems to be another issue. As an example, the import of sec-
 371 ond hand tires into Brazil from other Latin American countries has been stopped
 372 by the WTO, while the EU received the exclusive right to be the only economic
 373 group to export those goods to Brazil. Apparently this is not what fair trade
 374 implies.

377 ***7.4.1 Protectionism and Barriers Suffered by Latin American*** 378 ***Countries***

380 Despite all efforts of developing countries to reduce tariffs, developed countries
 381 found new ways to reinforce protectionism on the basis of non-tariff barriers:
 382 sanitary, phytosanitary and environmental. A recent example is the European
 383 embargo towards Brazil, one of the most important beef exporters in the world,
 384 and the major supplier of the EU. A list of qualified sanitary farms, ready to
 385 export beef, was presented to the EU and refused. Disproportional criteria were
 386 required from some countries, characterizing a true protectionism measure to ben-
 387 efit Ireland. The Brazilian Government and the Associacao EuBrasil (EuBrazil
 388 Association) considered the decision a real boycott. Cristiana Muscardini, an Italian
 389 Congresswoman, sent a document to Mr. Markos Kiprianou, head of the European
 390 Health Commission, stating:

391
 392 One thing is correct: the European Union never registered a case of aphthous fever
 393 attributed to the beef imported from South America. As opposed to Ireland and the United
 394 Kingdom, Brazil currently has no registration of any case of mad cow and the beef exported
 395 to the European Union follows the standards established by the World Animal Health
 396 Organization, according to which the aphthous fever virus can not survive . . . the restric-
 397 tions are purely commercial and protectionist, with no scientific basis. (Muscardini 2007,
 our translation)

398 Similar controversy seems to exist in the WTO concerning the Agriculture
 399 Agreement. Constant conflicts of interest between developed and developing coun-
 400 tries rise due to the lack of compliance with the commitments assumed in the
 401 Uruguay Round (Jank 2005; Carvalho 2007). The current ethanol case is a typical
 402 example.
 403

404 A Brazilian sector that may attract more international attention in what relates to agricultural
 405 subsidies is the sugar-alcohol production. The catalyser of this process would be a proposal

406 from the United States to establish a partnership with Brazil, broadening the global market
407 for ethanol, so that this product could become a global commodity. Such a partnership
408 foresees the involvement of other South American countries, either in the biofuel production
409 or the consolidation of the consumer market. (Carvalho 2007, p. 88).

410 Jank (2005) calls attention to the circumstances that may lead to a new kind of
411 protectionism. When the main focus of discussions and negotiations related to the
412 Agriculture Agreement are the reduction of subsidies and tariffs, and the increase of
413 quotas of exports, new trends seem to be consolidating the application of sanitary and
414 phytosanitary measures to food products. The Sanitary and Phytosanitary (SPS)
415 Agreement seems to be an efficient support for agricultural protectionism, due to
416 the rapid results that each of these measures can generate.

417 Taking this into consideration, it seems strange that the WTO allows an excep-
418 tion to free trade as a protectionist measure, using as tools the high and legitimate
419 interests of protecting human, animal and vegetable life and health. "Between 1995
420 and 2004, 204 specific trade issues related to the SPS Agreement were detected by
421 the WTO Secretariat." (Carvalho 2007, pp. 88–89).

422 Several situations have been analyzed by the Agency for Solving Controversies,
423 which belongs to the WTO. For instance, the Peruvian *sardine* generated a recent
424 controversial issue. Its species was classified as *Sardinopus Sagax*, found in the
425 Pacific coast of Peru and Chile. In the North Atlantic and in the Mediterranean, the
426 common species was named *Sardina pilchardus*. Both were sold as tinned sardines.
427 In 2001, the EU claimed that only products using *S. pilchardus* could be sold for
428 tinned sardines. Peru's appeal was accepted in 2002 (Carvalho 2007).

429 It is also clear that Article X: 3 of the GATT 1994 establishes certain minimum
430 standards for transparency and procedural fairness in the administration of trade
431 regulations which, in our view, are not met here. The non-transparent and *ex parte*
432 nature of the internal governmental procedures applied by the competent officials in
433 the Office of Marine Conservation, the Department of State, and the US National
434 Marine Fisheries Service throughout the certification processes under Section 609,
435 as well as the fact that countries whose applications are denied do not receive formal
436 notice of such denial, nor of the reasons for the denial, and the fact, too, that there is
437 no formal legal procedure for review of, or appeal from, a denial of an application,
438 are all contrary to the spirit, if not the letter, of Article X:3 of the GATT 1994 (Da
439 Silva 2002):

440 The provisions of Article X: 3191 of the GATT 1994 bear upon this matter. In our view,
441 Section 609 falls within the "laws, regulations, judicial decisions and administrative rul-
442 ings of general application" described in Article X: 1. Inasmuch as there are due process
443 requirements generally for measures that are otherwise imposed in compliance with WTO
444 obligations, it is only reasonable that rigorous compliance with the fundamental require-
445 ments of due process should be required in the application and administration of a measure
446 which purports to be an exception to the treaty obligations of the Member imposing the
447 measure and which effectively results in a suspension *pro hac vice* of the treaty rights of
448 other Members. (Da Silva 2002).

449 Since 1991, Brazil has suffered such barriers in other fruits or vegetables, regard-
450 ing the Sanitary and Phytosanitary (SPS) agreement. Long inspection and liberation

451 processes either in local ports, or in the importer countries, mostly in the US char-
 452 characterizes the protectionism that jeopardizes the developing nations, condemning
 453 them to become only suppliers of primary goods for developed countries and going
 454 against the equal conditions preconized by the WTO (Moraes 1995):

455 Despite progress, SPS measures remain significant barriers in many cases, in part driven by
 456 Brazil's implementation of the harmonized phytosanitary standards of the Southern Cone
 457 Phytosanitary Committee (COSAVE). Brazil prohibits the entry of poultry products from
 458 the United States, alleging lack of reciprocity. The issue, however, should not be reci-
 459 procity, but rather the fulfillment of WTO obligations regarding sanitary and phytosanitary
 460 decisions, which dictate that such determinations shall be based only upon sufficient sci-
 461 entific evidence. Brazilian legislation bans the importation of beef produced with growth
 462 hormones; however, beef imports from the United States have been allowed on a waiver
 basis since 1991. (Da Silva 2002).

463 The Doha Round still does not include this issue in the agendas of the WTO
 464 meetings. The complexity of SPS measures, as well as the stages of application and
 465 requirements to be followed, seems to bring more difficulties to negotiations, mainly
 466 with the EU (Da Silva 2002).

467 Negotiations around the SPS Agreements can be polarized by developed coun-
 468 tries, which reflect the consumers' always more severe requirements concerning
 469 quality and control. The developing countries interpret these measures as dissimu-
 470 lated trade barriers (Thorstensen 2003; Carvalho 2007).

473 ***7.4.2 Sustainable Development and the Environment***

475 The sustainable development concept has become a development paradigm in the
 476 last decade with special interest in multilateral organizations, governments, devel-
 477 opment agencies, NGOs and private sector, in many areas, but mostly in health
 478 and organic products. Protection of the environment generated several multilateral
 479 agreements and conventions. Some of them are:

- 481 – (b) necessary to protect human, animal or plant life or health; (. . .);
- 482 – (g) relating to the conservation of exhaustible natural resources if such measures
- 483 are made effective in conjunction with restrictions on domestic production or
- 484 consumption. (GATT 1947, Art. XX, pp. 27, 28)

486 The WTO is not and has no intention to be an environmental protection agency.
 487 Nevertheless, in its area of competence promoting the relationship between trade
 488 and environment, its policies are limited to the commercial objectives, and to the
 489 significant impact of the environmental aspects upon the trade activities (WTO
 490 2004). In this sense, members do not expect that the WTO offers answers to the
 491 environmental issues. They do believe that the trade and environmental policies are
 492 mutually complementary:

493 In reaching these conclusions, we wish to underscore what we have not decided in this
 494 appeal. We have not decided that the protection and preservation of the environment is of
 495 no significance to the Members of the WTO. Clearly, it is. We have not decided that the

496 sovereign nations that are Members of the WTO cannot adopt effective measures to pro-
497 tect endangered species, such as sea turtles. Clearly, they can and should. And we have not
498 decided that sovereign states should not act together bilaterally, plurilaterally or multilater-
499 ally, either within the WTO or in other international *fora*, to protect endangered species or
500 to otherwise protect the environment. Clearly, they should and do (Da Silva 2002).

501 Thus, the WTO is not involved with environmental legislations, but with the
502 intensity of laws and rules that may interfere in the trade of products, meaning
503 to balance environmental concerns and free trade. Extreme protectionism exists in
504 some developed countries that mostly encourage developing nations to adopt free
505 trade. With this practice, developing countries find difficulty in accessing the mar-
506 ket of products and services that compete with those of the developed countries
507 (Carvalho 2007).

508 Even though some Latin Americans perceive the current WTO president as posi-
509 tive and fair, nonetheless, it is generally believed that the WTO is dominated by
510 unfair neo-liberal economic attitudes. Certainly, almost nothing has been changed,
511 in the sense of putting into effective practice the written rules. For instance, con-
512 tracting parties agree that there is a need for positive efforts designed to assure
513 that less developed contracting parties secure a share in the growth in international
514 trade commensurate with the needs of their economic development (Carvalho and
515 Barbieri, 2008).

516 Details of the WTO definition, mission and principles indicate outstanding
517 humanitarian and economic concerns. However, what is observed in Latin America
518 is that the WTO administrators treat certain issues with an exclusive economic
519 power bias, or allow politics to influence and guide some resolutions and conclu-
520 sions. In this sense, Singer's four charges to WTO may be perceived as applicable
521 and may be used, as per analogy, in limited circumstances, as related to the local
522 power in towns and cities in Latin America.

523 A group of Latin American authors of books and booklets denouncing corrup-
524 tion in different spheres declares that a permanent supervision and monitoring of
525 public administrators' lives is an ethical way to lead the political system into jus-
526 tice. It impels organizations to be honest and fair both internally and abroad. This
527 requires available information, which is expensive and time consuming. One pub-
528 lication refers to the case of Ribeirao Bonito, a town of Sao Paulo State, in Brazil.
529 Founders of the "Friends of Ribeirao Bonito" organization, monitoring the acts of
530 public local administrators, led the mayor to be impeached from governance of the
531 town. He was sued, and several judicial processes were started, implicating him in
532 various sorts of crimes. This case reflects the abuse of power by corrupted politi-
533 cians to the detriment of the system. The population supports many private and
534 non-governmental organizations in Latin America, to avoid the proliferation of cor-
535 ruption, which is deeply perceived as a cancer that destroys any society. Because of
536 the stigma of corruption in the Region, Latin Americans are more and more reluctant
537 to comply with immoral ways to do business.

538 Most countries in Latin America have their own ethics institutions, generally
539 established in the form of a non-governmental organization, which independently
540

541 monitor private and state enterprises. The Asociacion Latinoamericana de Etica,
 542 Negocios y Economia (Latin American Association of Business, Economics, and
 543 Ethics, ALENE)² was created in 1998, and the most active members live in
 544 Argentina, Bolivia, Brazil, Chile, Ecuador and Peru. Its regular meetings enable it to
 545 maintain the objective of questioning and discussing ethical issues in governments
 546 and companies in the Region. Other organizations in Latin America are very active
 547 and dynamic, aiming mostly at corporate social responsibility and sustainability. It
 548 is often seen that socially and environmentally responsible enterprises attract invest-
 549 ments, as corporate codes of ethics are perceived as a clue that the organization is
 550 ready to start a substantial negotiation.

553 **7.4.3 Moral Norms Framework**

555 De George (1993) states that moral norms in international business can be uni-
 556 versally formulated, despite different interpretations related to characteristics of
 557 different societies:

558 Some general ethical norms apply to any business operating anywhere. These norms are
 559 universally applicable because they are necessary either for a society to function or for
 560 business transactions to take place. They are widely held, and everyone is expected to live
 561 by them and up to them; they are obvious, common sensical, and available to all. If they
 562 were arcane or difficult or available only to an intellectual elite, they could not serve as basic
 563 norms governing all human interactions. (De George 1993, p. 19)

564 Fairness in international trade and investments can be observed through prohibi-
 565 tion against arbitrariness in commerce, truthfulness, transparency, and respect for
 566 properties, citizens, companies and governments. The WTO could certainly be the
 567 sphere to assure that these ethical values are present in all rules and agreements.

568 We can speak similarly about exercising fairness in business dealings. If there were not
 569 some minimum level of trust between buyer and seller on international level, just as on the
 570 national level, business transactions would prove impossible . . . lack of fairness undermines
 571 the systems and works against the norm of efficiency so important to the workings of a free
 572 market. (De George 1993, p. 21)

573 According to this perspective:

574 . . . these general ethical norms apply to all businesses in all countries and across all borders;
 575 they do not depend on one's ethical theory (p. 21) . . . The reason why the norms apply no
 576 matter which of the basic ethical theories one adopts is that of these theories attempt to
 577 justify these norms, which are pretheoretic. (De George 1993, p. 199)

578 Just as it is expected that multinational companies operate with integrity abroad
 579 as they do in their home country, so too governments should be careful when
 580 negotiating through multilateral or bilateral agreements. De George (1993) calls
 581

583
 584 ² See www.alene.org Accessed 31 October 2009.

586 attention to differences that may occur in doing business in the international
587 scenario:

588

589 – Absence of many legal and other restraints that constrain American business at
590 home;

591 – Varying outlooks, needs and practices of foreign societies and of multinational
592 corporations from those countries;

593 – Presence of corruption of governmental and other levels within some societies that
594 far exceeds the corruption found in the United States (which has its fair share);

595 – Economic power between the largest of the multinationals and the smallest and
596 the frailest of the less developed countries in which they sometimes operate (De
597 George 1993, p. 22).

598

599 These same procedures should be applied to the decisions of the WTO. Mahoney
600 (1999) encourages organizations to develop a climate of compliance with the
601 approved procedures. It not only facilitates ethical behavior, but encourages indi-
602 viduals to act in ways which on occasion may not be foreseen by these established
603 procedures. In this sense, the virtue ethics can bring out more than any other ethical
604 theory applied to business activities. “There is no substitute for the integrity, includ-
605 ing the trustworthiness, loyalty, and moral courage of the individual person working
606 within the company and for its best interests” (Mahoney 1999, p. 258). This ratio-
607 nale is applicable to all persons involved with the WTO, if the goal is to reach the
608 common good.

609

610

611 **7.5 Developments in Latin America to Address** 612 **the Ethical Issues**

613

614 Based upon Elkington’s triple bottom line model, and the SustainAbility assump-
615 tions, a Brazilian sustainability index was created in 2006, as a joint effort of
616 BOVESPA (Sao Paulo Stock Exchange), Fundacao Getulio Vargas (Center of
617 Studies on Sustainability of the Business School in Sao Paulo) and other organi-
618 zations. Over 200 large companies filled out questionnaires, and a ranking of the
619 20 most sustainable was published in *Revista Exame*, a leading business maga-
620 zine in Brazil. The publication of these results has served as benchmarking for
621 enterprises – including state owned corporations – willing to become more transpar-
622 ent and eliminate organizational corruption, which indicates deep commitment with
623 social and environmental responsibility, transparency and corporate governance.
624 In 2007, these companies were: Accor, Acesita, Amanco, Aracruz, Arcelor, Basf,
625 Brasken, Caterpillar, CPFL, Elektro, IBM, Itau, Mapfre, Natura, Philips, Promon,
626 Banco Real, Serasa, Suzano, and Unilever.

627

628 These reports are submitted once a year, aiming to measure sustainability in its
629 strategic, economic, financial, environmental and social aspects. At times ethics is
630 understood as one more characteristic of sustainability, while ethicists stress that it
has to be the basis, the essence of the process.

631 It is expected that within ten years similar contests will attract more than five hun-
632 dred companies in the whole Region, also called *The Latin American Continent*. It
633 will imply more transparency and less corruption in a generalized context, where
634 governments will be involved in the process in a natural manner. From 2010
635 onwards, Brazilian companies expanding IPO's in the Stock Exchange will have
636 to adapt themselves to the International Financial Reporting Standards, correspond-
637 ing to the Sarbanes-Oxley procedures in the US. Their true commitment with ethics
638 and sustainability will then be clear.

639 Just as the criticism of WTO measures was brought up by this Latin American
640 Panel, expecting immediate effective changes for the good, in terms of actions ver-
641 sus goals, WTO deserves the compliments from this Panel for some positive efforts
642 regarding the Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the
643 last few years. Correa (2000) shows that TRIPS contain elements which whenever
644 adequately applied allow a certain equilibrium in its implementation. For example,
645 the agreement establishes in its preamble the recognition of the basic objectives of
646 political policies of national systems for the protection of the intellectual property,
647 including the objectives of technological development.

648 The 7th Article, referring to objectives of the agreement, declares that the protec-
649 tion to these rights may contribute to the promotion of the technological innovation,
650 the transfer and diffusion of technology, in mutual benefit of producers and users of
651 technological knowledge, in a way conducive to the social and economical welfare
652 and a balance between rights and obligations.

653 The 8th Article establishes among the agreement principles that members, by for-
654 mulating or amending laws and rulings, may adopt necessary measures to protect
655 public health and nutrition, as well as to protect the public interests and sectors of
656 vital interest for its social economical development. It also determines that mea-
657 sures may be adopted in order to avoid the abuse of proprietors of those rights
658 or in order to avoid practices that limit in an unjustifiable way the commerce or
659 affect adversely the transfer of international technology. Among those measures,
660 Correa (2000) cites the parallel import admissibility, according to the international
661 principle of exhaustion of rights, contemplated in the 6th Article of TRIPS; the non-
662 patentability of substances existent in nature, plants, animals, and the compulsory
663 license. The preamble, objectives and principles of the agreements administered by
664 WTO are frequently used by the Controversy Solution Agency to mitigate conflicts.

665 Two relevant points are to be recommended to those responsible for TRIPS
666 at WTO:

- 667
- 668 1. The question of technology transfer as a promise by TRIPS still remains a critical
669 blank to be filled out (Barbieri and Chamas 2008)
- 670 2. Latin American countries find limited capacity to develop and to deal with many
671 details in terms of intellectual property and commerce. It is imperative that urgent
672 investments in human resources and in capabilities in intellectual property be
673 made, so that those countries may be in condition to analyze and propose public
674 policies concerning economic, technological, and industrial development. In a
675 more intensive and continuous basis, they could influence the global debate.

7.6 Final Considerations

Singer points out the importance of the WTO:

Even those who accept the general argument for the economic benefits of a global free market should ask themselves how well a global free market can work in the absence of any global authority to set minimum standards on issues like child labor, worker safety, the right to form a union, and environmental and animal welfare protection. (Singer 2002, p. 103).

An honest, transparent, egalitarian, and fair global leadership could lead nations to discuss their ethical dilemmas in the light of social and economic justice. It should not be overlooked that even in developing countries there are intellectuals aware of crises and trends in political, economic, and social arenas. It seems to be the case of the Doha Round: why are the negotiations of the Doha Round moving backwards, instead of forwards? This might happen because the US and the EU have a common understanding about settling agribusinesses, according to their respective interests: the US, by cutting down subsidies; the EU, by defining less or lower tariffs. In a related step, developing countries as Brazil, Argentina, Mexico, among others, are pressured to make more concessions in the manufacturing industry, services, and, nowadays, in the environmental area as well. It means that developed countries offer a little, as compensation for the higher prices charged. Up to a certain level, the developing countries ask themselves whether it is worthwhile to negotiate.

The agribusiness market is a good example of these trends: many countries have already cut import tariffs to combat inflation. As food prices are high, they reduce the duties to allow cheaper imports. Currently, the situation has reached a point in which the reduced import duties became higher than what the Doha Round may offer.

For Latin Americans, it seems clear that global negotiation brings results, provided that there is an effective agreement. Such an agreement will possibly be implemented within perhaps ten years. This means that the tariff cutting or subsidies will not happen all of a sudden. This is why Argentina states that the country has already earned what it had to earn in agribusiness. Indeed, the reduction of tariffs has already happened. In this context, why should Latin Americans accept the price to expand its market for foreign industrial and consumer products?

This is the most common picture perceived in the Region. Developed countries agree among themselves and pressure the emergent. Developing countries like Mexico, Argentina, Brazil, among others, have the feeling that they do not need to make concessions in other areas to obtain worldwide agribusiness openings, which necessarily occur due to the increase of food prices. What could then be expected? Will the Doha Round negotiations be settled by 2010? Hopefully they will. Significant movements seem to be influencing the trends: Mexico or Brazil joining G8, active participation in G20, intensive agreements through Mercado Comun del Sur (MERCOSUR), or Southern Cone Common Market (MERCOSUR 2008).

Rich countries manipulating the poor has led Latin Americans to think that they can be cheated by the First World with the consent and approval of the WTO.

721 This cannot be considered positive in institutional terms, which is aiming at the
722 preservation of good customs and at friendly relationship among peoples.

723 If trade or commerce were the only reason for creating the WTO, maybe GATT
724 and other mechanisms might have been enough. Development should be pursued
725 as an objective, as sustainability becomes the order of the day (Carvalho 2007).
726 Consensus in multilateral agreements, characteristic of WTO, will occur only if the
727 nation-members aim at the same target. Barriers, tariffs, antidumping, anticorruption
728 and several other practices will make sense only if there is a fair trade in the
729 international context. This requires a high level of ethical commitment on all sides
730 and respect to the economic vocation of each country. Growth without development
731 does not lead to sustainability. Narlikar (2006) emphasizes the significant role of
732 India and Brazil as large developing countries in WTO and concludes, as follows,
733 that her paper:

734 . . . has traced the process through which notions of fairness, as advanced by developing
735 countries, have evolved in the WTO since the early days of the GATT. It is still too early
736 to assess the effectiveness of re-introducing the fairness-as-equity discourse into the WTO,
737 but the strategy of challenging the institution on its own terms by framing issues in conformity
738 with its underlying norms seems to have already generated some success. Perhaps
739 the biggest indicator of the new-found sensitivity to the concerns of developing countries
740 is the name of the new round, the *Doha Development Agenda*. Paragraph 2 of the main
741 Ministerial Declaration states: *The majority of WTO member are developing countries. We
742 seek to place their needs and interests at the heart of the Work Programme adopted in this
743 Declaration.* (p. 1028).

744 A lack of greater development outcomes in developing countries can be the
745 result of the policy of preferences. On one side, trade may enable a unidirectional
746 economic growth and development. On the other side, each country may adopt its
747 own trade and investment policies and strategies, in line with its development needs
748 (Ochieng 2007).

749 Thanks to Latin American idealists with ethical principles in business, corruption
750 possibly will reduce power in the medium and long run (Paladino et al. 2007;
751 Schmidt 2000). Similarly, with the same degree of effort, rich countries must change
752 the image for fair business doers in the short run. Initiatives as the sustainability
753 index will reinforce the need of changes in enterprises and in society. This should
754 occur in such a way that investments, production, and trade serve as levers for
755 prosperity, to the benefit of all Latin Americans.

756 Hayes and Moore (2005, p. 3) point out that, according to FINE,³ an informal
757 network that involves several institutions in Europe, an acceptable definition of Fair
758 Trade is: “Fair Trade is a Trading Partnership, based on dialogue, transparency and
759 respect, that seeks greater equity in international trade.” So far, this concept seems
760 to mean more for trade among enterprises than among nations. Under the Latin
761 American point of view, provided WTO works under these guidelines, life would
762

763 ³ FINE (2008). An informal network that involves Fairtrade Labelling Organizations International
764 (FLO), the International Federation for Alternative Trade (IFAT), the Network of European World
765 Shops (NEWS!) and the European Fair Trade Association (EFTA).

766 be better for all, because it would bring and support a real development among
767 countries worldwide.

768 The objective of this chapter was not to offer a deep analysis of actions taken
769 by the WTO regarding Latin America, but to raise discussions on the proposals
770 made by the Coordination of the ISBEE Congress. However, future studies can add
771 contributions from other Latin-American perspectives, mainly in what is related to
772 ethics in the Region. Similar or different research projects or surveys are strongly
773 encouraged, so that information can be shared and compared with other countries.
774 Interesting findings may emerge.

775 The intention here was not to offer a one sided criticism of the WTO, but to raise
776 issues that may improve the image of an institution created by governments, aiming
777 at the improvement and development of countries in the whole world.

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784 different Latin American countries, which dedicated time and attention to providing adequate
785 information. Without it, the ideas here registered might have been understood as
786 emotional.

789 Abbreviations

791	BOVESPA	Bolsa de Valores do Estado de Sao Paulo (Sao Paulo Stock Exchange)
792		
793	ECLAC	Economic Commission for Latin America and Caribbean
794	EU	European Union
795	GATT	General Agreement on Tariffs and Trade
796	GDP	Gross Domestic Product
797	IADB	Inter-American Development Bank
798	ICC	International Chamber of Commerce
799	ISBEE	International Society of Business, Economics, and Ethics
800	MEC/INEP	Instituto Nacional de Estudos e Pesquisas Educacionais Anísio 801 Teixeira – Ministério de Educação
802	MERCOSUR	Mercado Comun del Sur
803	NGO	Non-Governmental Organization
804	OECD	Organization for Economic Co-Operation and 805 Development
806	UK	United Kingdom
807	UN	United Nations Organization
808	UNCTAD	United Nation Conference on Trade and Development
809	US	United States of America
810	WTO	World Trade Organization

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01 **Chapter 8**
02 **Fairness in International Trade and Business**
03 **Ethics: A Japanese Perspective**
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05
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07 **Iwao Taka**
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13 **8.1 Introduction**
14

15 The following questions were raised by the FITI project. Therefore, the purpose of
16 this chapter is to answer all those questions.
17

- 18 1. To what extent are the workings and outcomes of the World Trade Organization
19 (WTO) perceived as fair in your region/continent?
- 20 2. What are the main ethical issues regarding international trade and investment (or
21 alternatively the WTO) in your region/continent?
- 22 3. What developments are there in your region/continent to address the above
23 ethical issues?
24

25 In order to answer those three questions, in this chapter, we will refer to the
26 following six points:
27

- 28 (1) Formal Position of the Japanese Government on the WTO
- 29 (2) From the WTO-Centered to the Bilateral EPA Approach
- 30 (3) A Typical Ethical Issue for Japan: Protecting Rice Farming
- 31 (4) Reconsideration over Globalization and the WTO: Poverty Reduction
- 32 (5) Initiatives by the Japanese Government: MDGs and TICAD
- 33 (6) Initiatives by Leading Japanese Corporations: Education and Basic
34 Infrastructure
35

36 With regard to the first question, “To what extent are the workings and outcomes
37 of the WTO perceived as fair in Japan?” we will answer by referring to point (1) and
38 (2) at Sections 8.2 and 8.3. As for the second question, “What are the main ethical
39 issues regarding international trade and investment (or alternatively the WTO) in
40 Japan?” we will pick two ethical issues, (3) protecting rice farming and (4) poverty
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46 reduction, each of which is discussed at Sections 8.4 and 8.5. In order to answer
47 the last question, “What developments are there in Japan to address the ethical
48 issues?” we will introduce initiatives taken (5) by the Japanese Government and
49 (6) by leading Japanese corporations at Sections 8.6 and 8.7.

51 **8.2 Formal Position of the Japanese Government on the WTO**

52 The first question is “To what extent are the workings and outcomes of the WTO
53 perceived as fair in Japan?” In order to answer this question, we will highlight the
54 formal position of the Japanese Government on the WTO and EPAs as the following
55 two sections.
56
57

58 ***8.2.1 Free Trade and the WTO Are Indispensable 59 for Development***

60 Like other developed countries, the Japanese Government basically has seen that
61 the WTO and its Agreement are necessary and desirable for developing the global
62 economy. In accordance with the preamble of the Agreement Establishing The
63 World Trade Organization, *The 2007 Report on Compliance by Major Trading
64 Partners with Trade Agreement* published by the Ministry of Economy, Trade,
65 and Industry (METI) of Japan describes the objectives of the WTO Agreement
66 as raising living standards, ensuring full employment, growing income and effective
67 demand, and expanding the production of and trade in goods and services
68 (METI 2007a: 247).
69

70 Japan has long benefited from the free trading system based upon the GATT.
71 Thanks to this system, after World War II, it miraculously revived out of the dev-
72 astating situation it faced, and has grown up to be one of the biggest economies in
73 the world. Because of this, Japan is likely to think that free trade is an indispens-
74 able basis for nations’ economic development, and is a very effective activity to get
75 nations out of poverty. With regard to solving poverty issues, this way of thinking
76 is very much like a conclusion of the WTO secretariat study published in the year
77 2000: It says, “trade liberalization helps poor countries to catch up with rich ones,”
78 and “faster economic growth helps to alleviate poverty” (WTO 2000). The Japanese
79 Government basically agrees with this conclusion.
80
81

82 ***8.2.2 Provisions on Exemptions Are Necessary***

83 Due to this, the Japanese Government supports the WTO’s fundamental principles
84 like Most-Favored-Nation Treatment, National Treatment, and General Prohibition
85 of Quantitative Restrictions, because those principles are very clear and simple
86 to understand, and are designed to remove various barriers for the purpose of
87 promoting international trade.
88
89
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91 But at the same time, when Japan was at the earlier developmental stage, it
92 took various protective measures such as import control, restrictions on foreign
93 investment, and supports for technological developments of private corporations
94 (Oxfam 2002: 231–232). Therefore, while welcoming the free trading system, the
95 Japanese Government also shares understanding over the necessity of exceptions to
96 those fundamental principles. Namely, it considers that the fundamental principles
97 should not be enforced to all nations at once and uniformly (Oxfam 2002: 233).
98 Especially when developing countries have not yet fostered enough abilities to ful-
99 fill their trade obligations, Japan believes that the WTO Members (Members) should
100 provide them with a special status (METI 2007a: 249).

101 For this reason, the Japanese Government appreciates the fact that the WTO
102 considers not only traditional matters but also new issues such as environmental
103 protection and developing countries (METI 2007a: 247). As for environmental con-
104 sideration, the WTO allows “the optimal use of the world’s resources in accordance
105 with the objective of sustainable development,” which makes it possible for each
106 country to protect and preserve the environment in a way consistent with their needs
107 and concerns at different stages of economic development. As for consideration
108 for developing countries, the WTO expects developed countries to make efforts to
109 ensure that developing countries, especially the least developed countries, enjoy a
110 share of the growth in international trade (METI 2007a: 251; Urata et al. 2007: 26).

112 **8.2.3 List of Annexes**

114
115 Up until the Uruguay Round (from 1986 to 1994), the GATT had concentrated on
116 introducing tariffs to trade in all goods (except for agricultural products). Its main
117 strategy had been (1) to replace quantitative restrictions with tariffs, and then (2)
118 to gradually reduce tariff rates through negotiations on a reciprocal basis. In other
119 words, before the Uruguay Round, it was not so complicated for Members to under-
120 stand how the GATT worked. At the same time, because Members did not raise
121 serious questions on agricultural policies of developed countries, the GATT worked
122 in favor of industrialized countries. But this picture started to change drastically
123 during the Uruguay Round.

124 On the one hand, developing countries began to criticize the agricultural poli-
125 cies of developed countries, insisting that import restrictions on agriculture products
126 should be replaced with tariffs, tariff rates should be reduced, and export subsi-
127 dies and domestic support should be abolished as early as possible. On the other
128 hand, developed countries proposed that the WTO Agreement include agreements
129 designed to liberalize services (GATS) and designed to protect intellectual property
130 rights (TRIPs), expecting to enter services market in developing countries, and to
131 prevent developing countries from using intellectual properties free of charge.

132 GATS and TRIPs were the last things developing countries wanted to include
133 so that they strongly opposed this proposal. But since developed countries did not
134 make any concession on this proposal, in the end, in exchange for GATS and TRIPs,
135 developing countries requested to add agreements on agriculture and textiles, hoping

Table 8.1 Contents of the WTO agreement

136	
137	AGREEMENT establishing the World Trade Organization (Marrakesh Agreement)
138	ANNEX 1
139	ANNEX 1A: Multilateral Agreements on Trade in Goods
140	(b) Agreement on Agriculture
141	(d) Agreement on Textiles and Clothing
142	ANNEX 1B: General Agreement on Trade in Services (GATS)
143	ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)
144	

145 that those sectors of developed countries would be liberalized in a way consistent
 146 with GATT basic rules. What is more, developing countries urged the developed
 147 countries to introduce provisions of Special and Differential Treatment (SDT) to
 148 most of the WTO agreements. Therefore SDT provisions are now spread across
 149 almost all the agreements.

150 The result of compromising and coordinating processes between developed and
 151 developing countries is now clearly reflected in Annex 1 (Table 8.1). In response
 152 to developing countries' requests, ANNEX IA now includes new agreements like
 153 Agreement on Agriculture and Agreement on Textiles and Clothing. In response
 154 to developed countries' requests, ANNEX IB (GATS), and IC (TRIPs) are newly
 155 created.

156 Even if the Japanese Government formally supports the WTO and its purpose,
 157 we have to admit that from the beginning of its establishment, the WTO has
 158 grappled with complicated issues, many of which are extremely controversial and
 159 mutually exclusive (METI and Keidanren 2007: 5). At the same time, because the
 160 WTO decision-making process is consensus-based, and because the Membership
 161 has rapidly increased to over 150, it has been getting more and more difficult for
 162 Members to reach an agreement within the WTO framework.

165 8.3 From the WTO-Centered to the Bilateral EPA Approach

166 Japan had long supported multilateral negotiations within the GATT and WTO
 167 frameworks, and had assumed that regional efforts for Free Trade Agreements
 168 (FTAs) are rather undesirable for fair development of the global economy (Urata
 169 et al. 2007: 112). It had believed that the multilateral approach is much better than
 170 the FTA case-by-case approach, simply because the former minimizes distortions in
 171 international trade, applies the same rules to all Members non-discriminately, and
 172 thereby reduces transaction costs as far as possible. Put differently, the latter makes
 173 market transactions very complicated, requires strenuous efforts to coordinate rules
 174 set out among different trade partners, and thereby makes transaction costs very
 175 expensive.

176 During the 1990s, however, notifications on establishing FTA to the WTO rapidly
 177 increased. Entering the 21st century, this number continued to rise, and finally
 178 reached 210 in the year 2006 (rising from 27 in 1990). The establishment of the
 179
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181 single market within the European Economic Community (1992), the agreement to
 182 promote the ASEAN Free Trade Area (1992), and the inauguration of the NAFTA
 183 (1994) were part of this sharp increase in number (METI 2007a: 515). In this con-
 184 text, Japan began to reconsider its long-standing position toward the multilateral
 185 negotiation approach. What made the Japanese Government decisively change its
 186 approach is a failure of the Seattle WTO Ministerial Conference in 1999, which
 187 revealed how difficult it was to promote multilateral trade negotiations only within
 188 the WTO framework (Urata et al. 2007: 112; METI 2007a: 517).

189 **8.3.1 *Shifting to Bilateral Economic Partnership Agreements***

192 After the Seattle Conference, in fact, many countries accelerated their efforts to
 193 establish FTAs, so as to eliminate tariff and non-tariff barriers between contracting
 194 countries, and to establish new rules in areas of investment, competition, services,
 195 and intellectual property rights. Seeing this new trend, the Japanese Government
 196 also started to establish Economic Partnership Agreements (EPAs) with a number
 197 of countries (METI 2007a: 517).

198 Needless to say, the METI thinks, “the efforts toward multilateral trade policies
 199 in the WTO and the efforts for bilateral agreements in EPAs are complementary
 200 to each other,” and “under the WTO framework, EPAs are positioned as an excep-
 201 tion” (METI 2007a: 516; Urata et al. 2007: 20–23). But at the same time, it strongly
 202 believes that there are many advantages of bilateral EPAs over WTO multilateral
 203 negotiations. That is, even if contracting parties have difficult issues, which have not
 204 been resolved within the WTO framework, by considering actual economic condi-
 205 tions of each country, they could find realistic solutions in a flexible and constructive
 206 manner (METI 2007a: 517).

207 Thinking this way, Japan initiated its first negotiation with Singapore in January
 208 2001. Since then, it has been making bilateral EPAs with a number of coun-
 209 tries (Urata et al. 2007: 113; METI 2007a: 518). So far, EPAs with Singapore,
 210 Mexico, Malaysia, Thailand, and the Philippines already came into effect. EPAs
 211 with Indonesia, Brunei, and Chile were signed. Negotiations with Switzerland,
 212 Gulf Cooperation Council, India, Vietnam, Korea, China, Australia, and others are
 213 underway (METI 2007b: 226–227).

215 **8.3.2 *Five Characteristics of Japan’s EPAs***

217 There are five characteristics of Japan’s EPAs. These are as follows:

- 219 (a) It places emphasis on eliminating non-tariff barriers such as complicated
 220 customs procedures;
- 221 (b) Most of Japan’s EPAs have taken a form of bilateral co-operation. Making use
 222 of know-how accumulated through Overseas Development Assistance (ODA)
 223 programs in the past, the Japanese Government has been responding to various
 224 requests from partners in the fields of trade, investment, competition, human
 225 resources, services, intellectual property, and environment. Such co-operations

- 226 are believed to contribute to improving trade and investment infrastructure of
 227 contracting partners;
- 228 (c) Japan's EPAs aim to facilitate the movement of people from partners (mainly
 229 Asian countries) to Japan. In fact, it plans to accept more skilled workers from
 230 Singapore, the Philippines, and Indonesia (Urata et al. 2007: 110–111);
- 231 (d) The main purpose of establishing EPAs with Mexico and Chile is to make it
 232 possible for Japanese corporations to catch up with American and European
 233 counterparts, which have taken advantage of RTA or FTA with Latin American
 234 countries. Now that EPAs with Mexico and Chile have started, Japanese corpora-
 235 rations can do business on an equal footing with those non-Japanese competitors
 236 (Urata et al. 2007: 115);
- 237 (e) Japan regards EPAs with ASEAN countries as a hub of a broader free trade
 238 network, which will cover India, China, Korea, Australia, and New Zealand
 239 (Urata et al. 2007: 81–109).

241 ***8.3.3 Is the WTO Effective and Fair?***

242
 243 With those movements in mind, we simply conclude that the Japanese Government
 244 views that (1) at least to some countries, the outcome of the WTO does not seem
 245 fair enough, and because of this, (2) the WTO is not functioning effectively (METI
 246 2007c: 5). Based upon this observation, Japan has shifted its approach from the
 247 WTO-centered multilateral negotiations to the bilateral EPAs.

248 Nonetheless, even if the Japanese Government thinks the WTO is not function-
 249 ing effectively, as far as the Dispute Settlement Body (DSB) is concerned, Japan
 250 believes that the WTO is basically working in a fair and balanced manner. Under
 251 this Dispute Settlement Mechanism, Members have an equal right to take a case to
 252 the DSB (Takikawa 2005: 22–24). Discussed in this forum are a variety of issues
 253 such as technical barriers to trade, antidumping measures, export subsidies, coun-
 254 tervailing measures, trade in services and the like. In fact, since its establishment in
 255 1995, the WTO has settled 361 cases as of March 2007 (MTSD 2007: 3).

256 Like other member countries, when faced with difficulties in trade with
 257 Members, Japan has also resorted to this mechanism (MTSD 2007: 3). In the case of
 258 EPAs, however, even if there is an agreement on a dispute resolution mechanism, we
 259 cannot expect this mechanism to work as effectively as the DSB. Yet, when parties
 260 are truly dissatisfied, in the end, they could bring cases to the WTO as its Members.
 261 Thanks to existence of this system of the DSB, EPA partners are likely to make
 262 some compromises, before going to the WTO panel. Seeing this practical merit, the
 263 Japanese Government feels that the DSB and its mechanism are basically useful,
 264 effective, and fair for all the WTO Members (METI and Keidanren 2007: 12).

266 ***8.3.4 Is the Outcome of Japan's EPAs Fair?***

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 268
 269 By mentioning that the DSB seems to work in a fair manner, we have suggested
 270 that part of the WTO “process” is fair. But this does not mean that the “outcome”

Table 8.2 Is WTO fair?

	A View of the Japanese government	A View of NGOs or developing countries
Process of the WTO	<i>At least, the DSB process is Fair</i>	<i>Probably Unfair</i>
Outcome of the WTO	<i>Not Working</i>	<i>Not Satisfactory</i>

of activities by the WTO is also fair (Table 8.2). In order to evaluate the outcome, probably we would need to have a couple of decades to observe the full effects. Yet, most of us cannot wait so long. Although we cannot definitely conclude that the outcome of the WTO is not fair, at this point of history, one thing is very clear. That is, NGOs and developing countries insist that the outcome of the WTO is not satisfactory (they might also think that the process has not been fair, either).

If we assume that the outcome of the WTO is not fair, then how about the outcome of Japan’s EPAs? In comparison with European EPAs with African, Caribbean and Pacific countries, Japan’s EPAs have not been severely criticized yet in Japan. According to Geoff Moore, in Europe there has been a “Stop EPAs campaign” run by NGOs for a number of years (see Moore’s chapter later in this volume). As far as Japan’s EPAs are concerned, we have not seen radical campaigns led by Japan’s civil society. To be sure, there have been opposing activities organized by farmers, hog-raisers, and other agricultural stakeholder groups. But their main concern is not on fairness of EPAs but on protection of their vested interests.

Nonetheless, outside of Japan, globally acting environmental NGOs have been criticizing Japan, saying that Japan’s EPAs include a provision for transferring hazardous wastes between contracting countries. Although Japan ratified the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, it has not ratified the 1995 amendment, because this amendment prohibits all the transnational movement of wastes even if its purpose is to recycle wastes and to reduce an environmental impact. Whatever reasons the Japanese Government gives, those NGOs have been attacking Japan’s EPAs from the viewpoint of the environmental impact. Environmental News Service describes this as follows (<http://www.ens-newswire.com/ens/mar2007/2007-03-14-02.asp>):

SEATTLE, Washington, March 14, 2007 (ENS) -Since 2002, Japan has been laying the groundwork for a plan to liberalize and promote toxic waste trade among Asian countries in violation of an international treaty, claims a hazardous waste watchdog group based in Seattle. The Seattle-based Basel Action Network, BAN, filed a formal complaint against Japan on Monday concerning what BAN calls Japan’s ‘intent to create toxic waste colonies around Asia.’ BAN says that Japan is utilizing bilateral trade agreements concluded with Singapore, the Philippines, Malaysia, and Thailand that eliminate tariffs on hazardous wastes such as pharmaceutical wastes and waste oils containing PCBs to promote trade in these substances.

We do not know the credibility of this news (Taka 2006: 227–236). But if this information is not one-sided, then we have no choice but to say that the outcome of Japan’s EPAs is not fair.

8.3.5 Is the Process of Japan's EPAs Fair?

Then how about the process of Japan's EPAs (Table 8.3) (EPA Team, 2007: 380–381)? As far as the process is concerned, we might be able to say that it could be fair. Three reasons are worth referring to. First, in the case of Asian countries, Japan did not tempt contracting partners with ODA. The decade in which Japan intensively provided them with ODA was the 1990s. At that time, Japan did not have any plan to form EPAs with them. Second, in the case of Latin American partners, they were far better than Japan at making a Free Trade Agreement. Mexico especially had already accumulated experiences of establishing FTAs. Therefore, making full use of such experiences, Mexico entered negotiations with Japan. Because of this, Japanese experts confess that through a series of negotiations Japan learned a lot from Mexico (EPA Team, 2007: 70–82). Third, when Japan started to explore possible co-operations with a contracting partner, Japan tried to understand developmental stages of the candidate. In other words, placing oneself in the partner's shoes, and taking their conditions into account, Japan has offered an EPA model suitable for the contracting partner. This is why Japan has always taken a form of bilateral EPAs.

Needless to say, those reasons might not be enough to convince all the contracting partners that the process of Japan's EPAs is fair. Despite such possibilities, we would like to mention that at least the Japanese Government feels that the "process" of EPAs is fair for most of its trading partners. The main reason why it feels so is that so far trading partners have not shown clear indignation and have not made substantial complaints against Japan. If the view of the Japanese Government reflects the reality, we could say that the "process" of EPAs is fair. Yet even if this conclusion is correct, this does not imply that the "outcome" of Japan's EPAs is also fair. Although the Japanese Government assumes that the outcome of EPAs is also fair, the actual outcome could be much different from this assumption (MOFA 2005b: 8).

To sum up, as far as officially published documents are concerned, firstly we conclude that the Japanese Government thinks that the WTO is not working effectively (because some Members feel that the outcome and process of the WTO are not fair). And this is why the Japanese Government has shifted its focus from the WTO to EPAs. Secondly, we could say that the government believes that the process of Japan's EPAs is fair on the whole, but that in the latter case this belief is contested. These are the answers to the first question of the FITI project.

Table 8.3 Is Japan's EPA fair?

	A view of the Japanese government	A view of contracting partners	A view of NGOs
Process of Japan's EPAs	<i>Fair</i>	<i>Probably Fair</i>	Unknown
Outcome of Japan's EPAs	<i>Probably Fair</i>	Unknown	<i>Unfair</i>

8.4 A Typical Ethical Issue for Japan: Protecting Rice Farming

The second question is “What are the main ethical issues regarding international trade in Japan?” In order to respond to this question, we shed light on two issues. The first one is a very sensitive issue for Japanese people, and the second one is also extremely important for the global community.

8.4.1 Issues of Agriculture

GATT Article XI does not admit any restrictions other than duties, taxes or other charges, simply because other restrictions are basically against the WTO basic principles. The WTO assumes the imposition of tariff as the only method to control trade. Following this principle, the Uruguay Round and Doha Round have been exploring various possibilities in reducing tariff rates on agricultural products and in abolishing other restrictive measures.

For example, Members have been in discussion over the modalities, which contain general rules and formulae for cutting tariffs and trade-distorting subsidies. Within this framework, Members are given flexibility in determining where to reduce tariffs significantly and where to make lesser tariff cuts, as long as such an approach is not against the tariff reduction formula in the modalities (ICTSD 2002: 17).

The general ideas evident in the modalities are (1) Tariff reductions should be progressive with deeper cuts in higher tariffs. (2) Linear tariff reductions should be applied at different rates to developed countries and developing countries. For instance, in the case of the lowest tariff band range, reduction rates could be from 25 to 70 percent for developed countries and from 15 to 50 percent for developing countries. In the case of the highest range, reduction rates could be from 40 percent for developed countries and from 30 percent for developing countries. (3) Members should be given a right to decide “sensitive products,” and set lower tariff reductions on sensitive products (Blandford and Josling 2006: 9; MAFF 2008a: 14).

As we can imagine from these general ideas, interests of Members are so complicated that fulfilling demands of all the parties requires strenuous efforts for Members to achieve and needs seemingly an unlimited number of years to discuss (Maeda 2007).

8.4.2 High Tariff Rates on Agricultural Products

Taking into account results of the Uruguay Round (1993 Agreement on Agriculture), and in response to criticisms from agricultural exporting countries (G20), Japan gave up its long-standing import restrictions, replaced them with the imposition of tariffs on agricultural products. As far as rice is concerned, tariffs were introduced to import rice with the minimum access obligation, in which Japan has to import a certain quantity of rice with no tariffs (Takikawa 2005: 115). But the

406 Japanese Government is said to maintain protective tariffs on import rice exceeding
407 the predetermined quantity (e.g., 778 percent tariff on polished rice, 568 percent on
408 unpolished rice, 252 percent tariff on wheat) (MAFF 2008a: 1–4; MAFF 2008b: 7).
409 Because of this, we have to admit that basically Japan has not changed its stance
410 of protecting rice and rice farmers for a long time. The reasons why the Ministry
411 of Agriculture, Forestry, and Fisheries (MAFF) of Japan consistently supports this
412 stance are as follows.

413 In 2000, agricultural negotiation among Members started to explore the General
414 Framework designed to overcome sensitive issues for the Doha Round (WTO 2001).
415 Before entering details of this round in December 2000, the MAFF formally made
416 five proposals, stating that, “Agriculture is the foundation of society in every coun-
417 try, and provides a variety of functions that are beneficial to the society. As there are
418 differences in the natural conditions and the historical background from one country
419 to another, the diversity and coexistence of agriculture among various countries need
420 to be preserved.” After this introduction, five proposals were made (MAFF 2000):

421 “(i) Consideration of the multifunctionality of agriculture; (ii) Ensuring food security, which
422 is the basis of the society in each country; (iii) Redressing the imbalance between rules and
423 disciplines applied to agricultural exporting countries and those applied to importing coun-
424 tries; (iv) Consideration for developing countries; and (v) Consideration for the concerns of
425 consumers and civil society. These five points reflect the general consensus of the people of
426 Japan, which itself is the biggest net food-importing country, having imports equivalent in
427 amount to the consumption of 75 million people.”

428 **8.4.3 Mutli-functionality**

429
430
431 In relation to the first point, GATT Article XX on General Exemptions shows
432 instances in which Members could be exempted from GATT basic rules. It describes
433 that if it is necessary to protect human, animal or plant life or health, or if it is related
434 to the conservation of exhaustible natural resources, Members are allowed to adopt
435 policy measures that would normally be inconsistent with GATT principles.

436 With those exemptions in mind, the MAFF thinks that life in Japan’s rural areas
437 is heavily dependent upon rice farming in an economic and cultural sense. And it
438 believes that rice farming has made sustainable use of natural resources, and through
439 this activity, rice cultivation has long maintained the landscape and natural envi-
440 ronment of rural areas. That is, the MAFF feels that fulfilling the minimum needs
441 of rural areas’ life, and protecting the natural environment meet the conditions of
442 GATT Article XX.

443 Reflecting this, Japan’s Basic Law on Food, Agriculture and Rural Areas
444 (Article 3) stipulates, “In consideration of the importance of maintaining the stabili-
445 ty of the people’s lives and the national economy, the multiple roles that agriculture
446 plays through stable production in rural areas, from the conservation of national
447 land, water resources, and the natural environment to the formation of a good
448 landscape and maintenance of cultural tradition, in addition to its conventional role
449 as a primary food supplier shall be fulfilled sufficiently for the future” (MAFF
450 1999).

8.4.4 Food Security

With regard to the second point, food security, the MAFF places emphasis on the fact that Japan is the biggest net importer of agricultural products, and that its degree of self-sufficiency in foods is the lowest among the major developed countries. As far as agricultural products are concerned, in the year 2004, Japan's total importation was US\$ 41.5 billion, while its exportation US\$ 1.9 billion. This means, Japan's agricultural trade was in the red, and still remains almost the same. The gap between importation and exportation, 39.6 billion dollars worth of the net importation, is the largest in the world (the second biggest net importer is the UK, whose net importation was US\$ 20.2 billion in 2004) (MAFF 2008b: 3).

In order to deal with this unstable situation, the Basic Law on Food, Agriculture and Rural Areas (Article 2) states "(1) In consideration of the fact that food is indispensable in maintaining human life and important as a basis for healthy and fulfilled living, a stable supply of good-quality food at reasonable prices shall be secured for the future. (2) In consideration of the fact that there are certain unstable factors in the world food trade and supply/demand, this stable food supply to the people shall be secured with the increase in domestic agricultural production as a basis, together with an appropriate combination of imports and stockpiles" (MAFF 1999).

The MAFF has long believed that in every country, agricultural products are extremely important and indispensable for people's life, and therefore, the supply of foods must be guaranteed. But Japan does not have a reasonable ability to supply foods to its people. Therefore, if something serious happens to the supply of agricultural products, Japanese people might starve within a year or so. To be sure, GATT Article XI prohibits quantitative restrictions not only on importation of products but also on exportation of products to other countries.

Yet, in 2008, for the purpose of keeping agricultural products for their own people, exporting countries (in the case of rice, India, Vietnam) reduced the export of their products to other countries. We understand that such a governmental intervention is a rational action or rather an obligation any government has to take for the benefit of its people. Seeing this situation, however, the Japanese Government sensed a crisis, and accordingly it insisted on the necessity of ensuring food security far more seriously than previously.

8.4.5 Other Factors: Environmental Impact and Food Safety

Currently environmentalists have begun to refer to another factor. That is, they assert the necessity of reducing the total emission of carbon dioxide, using the words, "food mile" or "food mileage," which is defined as the aggregate product of a food item's weight and transportation distance. Although food mileage is just one factor in the total environmental impact, proponents are insisting that by reducing food imports from a great distance, societies could reduce carbon dioxide emissions.

496 In addition to this, citizens and consumers began to avoid buying imported foods,
497 with concerns over food safety. Even if exporters explain that the production process
498 is safe, and free from toxic chemicals, they are now very skeptical about overseas
499 safety standards and labeling practices. To be sure, extremely protective measures
500 taken by a government are against the Technical Barriers to Trade Agreement. But
501 if exporters' explanations are not based upon scientific data, and products do not
502 meet basic requirements of the international safety standard, non-tariff restrictions
503 imposed by a government would be acceptable. This is because ensuring food safety
504 is another obligation each government has to take.

506 **8.4.6 Protecting Rice Farming**

508 On the surface, the first point (multi-functionality) seems plausible and justifiable,
509 because liberalization of rice importation could destroy not only the lives of peo-
510 ple in the rural areas (on the whole, the less advantaged people in Japan), but also
511 the culture and natural environment of the countryside of Japan. The second point
512 (food security) is also important, since further importation of agricultural products
513 could threaten the food security of Japan. Third, buying more foods from domestic
514 suppliers contributes to reducing carbon dioxide emissions, and lastly food safety is
515 an indispensable obligation every government has to take, so as to ease concerns of
516 citizens and consumers.

517 Although those reasons seem persuasive, if we look at them from the view-
518 point of GATT's basic principles such as the General Prohibition of Quantitative
519 Restrictions, we have to admit that Japan's logic is inconsistent with the spirit of a
520 free trading system. In addition, from the perspective of agricultural exporting coun-
521 tries, Japan's logic could be seen to be self-centered. For Japan, this is a very difficult
522 ethical dilemma between increasing import from developing countries and protect-
523 ing interests of the less advantaged people in Japan, because they seem mutually
524 exclusive. For now, although we do not know how to handle this situation, Japan has
525 been exploring possibilities of overcoming this dilemma. We will return to Japan's
526 initiative in this regard at Section 8.6.

529 **8.5 Reconsideration of Globalization and the WTO: 530 Poverty Reduction**

532 Importation of rice is a difficult issue for Japan. Therefore, we have reviewed this
533 issue and described reasons why the Japanese Government has long protected rice
534 and other sensitive agricultural products. From the size of the Japanese economy,
535 however, we cannot confine our focus to just a domestic agricultural issue. With a
536 broader perspective, we have to highlight other ethical issues, which are extremely
537 important for the global community. So what is the most important global issue? We
538 believe that it is the issue of poverty reduction.

8.5.1 *The Ultimate Purpose of Globalization in the Original Position*

541 What is the ultimate purpose of globalization? We believe, that it is not to maximize
542 profits of some private corporations, that it is not to benefit specific countries or
543 regions, and that it is not to develop certain industries. Whatever globalization has
544 been actually bringing about, or no matter how difficult the issues that globalization
545 has caused, its ultimate purpose must be to benefit all countries, every race, and all
546 citizens. In other words, its purpose must be to make the world a better place to live,
547 to share the merits of trade among Members, to alleviate poverty, and to get poor
548 nations out of desperate situations.

549 This belief should be established theoretically. To this end, we utilize a concept of
550 “the veil of ignorance” and the “rational person in the original position,” which John
551 Rawls once introduced. As is well known, he tried to identify fundamental principles
552 of justice, from the viewpoint of a rational person on the original position, a person
553 behind a veil of ignorance. The veil of ignorance is a hypothetical situation where a
554 person does not know his/her place in society, his/her strength in comparison with
555 others, which income class he/she belongs to, which generation he/she belongs to,
556 etc. Rawls assumed that if this rational person with no information of his/her place
557 in society tried to derive ideal Principles of Justice, the rational person eventually
558 would come to an ideal set of principles (Rawls 1971: 11–22).

559 For example, Rawls assumed that in the original position, natural talents dis-
560 tributed in a society are regarded as a common asset for a society, and an individual’s
561 talent is regarded as just a part of a common asset. Because of this, the rational
562 person thinks that advantaged persons with talents may gain benefits only if their
563 conduct would improve the situation of the least advantaged in the society. This is
564 the core part of the Difference Principle.

565 But unfortunately this principle does not explain to what extent a situation of the
566 least advantaged should be improved. To be sure, whatever principles we propose,
567 and no matter how carefully those principles are applied, it could be almost impos-
568 sible to show clearly how much the situation should be improved. Therefore, we do
569 not intend to define here how much it should be improved. We would rather sim-
570 ply confirm what is the ultimate purpose of globalization, from the viewpoint of the
571 rational person behind a veil of ignorance.

572 In order to do this, (1) we suppose that a rational person knows at least the gaps
573 between the situation of the most developed countries and the situation of the least-
574 developed countries at the global level, and gaps between the situation of the most
575 advantaged class of people and the situation of the least advantaged class of people
576 at the national level. Then, (2) we assume that this rational person does not know
577 which group of countries and which class of people he/she belongs to. And finally,
578 (3) we check why this rational person joins the movement for globalization, on the
579 grounds that there should be a substantial motive to join.

580 When those conditions are given, we believe that this rational person eventu-
581 ally comes to think that the ultimate purpose of globalization is to narrow gaps
582

586 by improving the situation of the least-developed countries and the situation of the
587 least advantaged class of people. Stated another way, with this definition, all parties
588 in the global community are expected to contribute somehow to poverty reduction
589 internationally and domestically.

592 ***8.5.2 Criticism Against the WTO***

594 If we define the goal of globalization like this, a number of NGOs and developing
595 countries might continue to attack the WTO and its outcomes. It is because they
596 believe that the WTO is acting as an agent for influential corporations, and does
597 not consider the interests of the poor seriously (Sachs 2005: 355). Although we do
598 not know whether their criticism is correct or not, at least we have to face the fact
599 that they are likely to insist that both the process and the outcome of the WTO are
600 neither acceptable nor fair (Oxfam 2002: 217, 221).

601 For example, the Third World Traveler insists, "Every ruling of the WTO proves
602 that the institution is fundamentally flawed, designed to place corporate profits
603 above the need to protect our environment, our health and our democracy" (Third
604 World Traveler). We can easily find similar critical articles on the web. A typical
605 one is on the ZNET. In one article, the author (Vodovnik) quotes the following
606 communiqué (communiqué of Subcomandante Marcos), which was addressed to
607 the civil society at the time of the WTO Ministerial Conference in Mexico in
608 September 2003:

610 In complex equation that turns death into money, there is a group of humans who command
611 a very low price in the global slaughterhouse - the indigenous, the young, the women, the
612 children, the elderly, the migrants, all those who are different. That is to say, the immense
613 majority of humanity. This is a world war of the powerful who want to turn the planet
614 into a private club that reserves the right to refuse admission. . . . All of us are given the
615 option of being inside this zone (club), but only as servants. Or we can remain outside
616 of the world, outside life. But we have no reason to obey and accept this choice between
617 living as servants or dying. . . . Brothers and sisters, there is dissent over the project of economic
618 globalization all over the world. Those above, who globalize conformism, cynicism,
619 stupidity, war, destruction and death. And those below, who globalize rebellion, hope, creativity,
620 intelligence, imagination, life, memory and the construction of a world that we can
621 all fit in, a world with democracy, liberty and justice. We hope the death train of the World
622 Trade Organization will be derailed in Cancun and everywhere else (Ziga Vodovnik, "WTO
623 Derailed," December 2004, p. 3).

624 We refrain from making comments on this communiqué. But from the rhetoric
625 and tone of the communiqué, one thing is very clear. That is, there exists a deep-
626 rooted suspicion on the side of radical NGOs or bellicose activists, and in the future,
627 this suspicion might trigger severe violence and in a very extreme case, it might
628 mistakenly justify acts of terrorism against developed countries or multinational
629 corporations, even against citizens in developed countries. Needless to say, all who
630 believe that human rights should be respected and protected never tolerate any form
of terrorism, whatever reasons exist.

8.5.3 *The Ultimate Purpose of the WTO*

Then how should we define the purpose of the WTO? This institution was established in 1995, so as to liberalize unnecessary regulations and so as to develop the global economy. Usually, we define its purpose as developing the global economy through the liberalization of trade in goods and services. Yet, we would like to define it here in a different manner. As long as the WTO is a means of globalization, its purpose should also be the alleviation of poverty. It is because, as noted above in relation to globalization, in the original position, any rational person, who knows the gaps between developed and least-developed countries, and who does not know which group of countries he/she belongs to, will eventually come to conclude that the main reason why a country should join the WTO is to alleviate poverty at the global as well as the national levels, and to make the world a better place to live.

At Section 8.3, we referred to both the process and the outcome of the WTO, the process and outcome of Japan's EPAs, and then discussed them in terms of fairness. Now that we have defined the purposes of globalization and of the WTO like this, the process of the WTO or the process of EPAs becomes less important than the outcome. The outcome here means how much poverty has been reduced. In other words, even if the process of alleviating poverty was agreed upon among Members, if this process is not contributing to poverty reduction, soon Members will raise a question on the process, and begin to insist upon changing the process, in a way to make it easier to achieve the purpose (the outcome). Although we do not intend to ignore the importance of the process (rule-making process, decision-making process, monitoring process, dispute settlement process, etc.), once we adopt this definition of poverty reduction, the outcome eventually becomes far more important than the process.

8.5.4 *How to Make Use of Globalization*

There exist criticisms against globalization and the WTO, saying that globalization does not reduce poverty. According to Ann Harrison, there is not enough evidence on the relationship between globalization and poverty reduction. But we witness that one way or another globalization has steadily reduced poverty in the past 50 years (Harrison 2005: 3, 32–33). According to Jeffrey Sachs, a head of the UN Millennium Project, two generations ago, a half of the world population lived below the poverty line (1.08 US\$ a day, usually rounded down to 1.00). At that time, no one could imagine that solving the poverty issue was achievable. But one generation ago, that proportion declined to 1/3. And now it has reached 1/6. It means even if globalization has been causing problems, it has been somehow reducing poverty (Sachs 2005: 289).

On account of this, just criticizing the WTO, multinational corporations, and globalization might not contribute to solving the poverty issues. Of importance seems to be finding out creative ways to make full use of the merits of globalization for getting the poorest out of a desperate situation and helping poor countries start

676 their own sustainable development. Then how do we alleviate poverty in the world?
677 Regarding this question, Sachs suggests that if a small percentage of GNP of devel-
678 oped countries, which consists of 1/6 of the world population, is invested in basic
679 infrastructure (transportation, electricity, water supply, soil development, hygiene,
680 epidemic prevention, medical care) and human resources (education) of the poorest
681 countries, extreme poverty would disappear within a decade (Sachs 2005: 227).

682 Amartya Sen also places emphasis on basic infrastructure and education. For
683 him, poverty means the deprivation of basic human capabilities rather than the low
684 level of incomes. Although he assumes low income as one of the major causes
685 of poverty, he does not think that low income is identical with poverty. Coupled
686 with low income, other causes such as physical handicaps, illness, isolation, or
687 lack of information place people in poverty or a desperate situation. With this in
688 mind, instead of simply saying that income should be increased, Sen insists that the
689 human environment should be improved in a way to make it possible for people to
690 demonstrate their potential and capabilities (Sen 2000: 87–110). For this purpose,
691 he emphasizes the importance of infrastructure such as healthcare and basic educa-
692 tion. Since Sachs regards basic infrastructure and human resources as key factors to
693 alleviate poverty, we could say that both of them agree on the same requirements
694 for poverty reduction.

695 In order to respond to the second question, “What are the main ethical issues
696 regarding international trade in Japan?” we have suggested that typical issues are
697 (1) protection of rice farming and (2) poverty reduction. The last question required
698 us to ask how Japan has been addressing this identified issue. We feel that Japan has
699 engaged in a number of initiatives especially in the fields of basic infrastructure and
700 human resources at the level of government and at the level of private corporations.
701 And we believe that those initiatives have somehow contributed to poverty reduc-
702 tion in the world, mainly in the Asian region. Having TICAD (Tokyo International
703 Conference on African Development) in May 2008, and facing the world food cri-
704 sis, Japan is about to make the best use of its own experience and its experience in
705 Asia for poverty reduction in Africa.

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709 **8.6 Initiatives by the Japanese Government: TICAD and MDGs**

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711 At Section 8.4, we described how Japan has been exploring possibilities of over-
712 coming the dilemma between the interests of Japanese farmers and the interests of
713 agricultural exporting countries. In this section, first of all, we will see agricultural
714 initiatives taken by the Japanese Government in Africa. Although those initia-
715 tives promised in the TICAD process might not directly overcome that dilemma,
716 they could contribute to poverty reduction, the ultimate purpose of globalization.
717 Then, secondly, we will overview Japanese initiatives relating to the Millennium
718 Development Goals (MDGs), and describe initiatives in the TICAD process, which
719 also constitute a major part of the MDGs. We regard all those initiatives as
720 developments in Japan to address the two major ethical issues.

8.6.1 *World Food Crisis and TICAD IV*

In April 2008, the World Bank explained that the price of all staple food had risen by about 80 percent in the past 3 years. Experts list a number of reasons. One of the plausible reasons is environmental challenges to convert agricultural land into biofuel production. For example, in the US, the government has encouraged farmers to switch their land from food supply to energy supply, and in Europe, the European Union plans to boost biofuel production. Seeing such changes, other countries like Argentina, Brazil, Canada and Eastern Europe have been diverting foods into biofuels.

As a result, in 2008 the price surge on staple food hit the poorest, especially Sub-Saharan Africa, very hard, and the world itself fell into a food crisis. But just criticizing biofuels does not solve problems of food shortage and climate change simultaneously. From the viewpoint of food security, we had better explore other creative ways to solve the problem. Thinking this way, the Japanese Government has initiated several initiatives in this regard.

In May 2008, hoping to make the 21st century “the Century of African Growth,” Japan held TICAD IV (the Fourth Tokyo International Conference on African Development), which received the attendance of representatives from 52 African countries, including 36 heads of state, and major international organizations (MOFA 2005a: 5). At the end of the conference, it adopted the Yokohama Action Plan, which covers a variety of initiatives in the next 5 years. One of them is on Agriculture and Rural Development of Africa (TICAD 2008a). Regarding this initiative, this action plan lists three actions for Japan to take in Africa. That is, (1) To enhance capacity to increase food production, (2) To improve access to markets, and (3) To support sustainable management of water resources. Let us review the first and the third actions.

8.6.2 *Boosting Rice Production in Africa*

As for the first action (Increasing food production), Japan’s then Prime Minister Yasuo Fukuda stated that, “In order to fully ensure growth in Africa, the development of agriculture is extremely important, as some two-thirds of the total population of Africa is engaged in it. As Africa seeks to achieve its own Green Revolution, I would like to put out a call for action, aiming to double the current rice production output of 14 million tons over the next ten years” (TICAD 2008b).

Since Africa’s current food self-sufficiency is around 50 percent, having dropped from 96 percent two decades ago, the food price surge dealt African countries a severe blow. In order to make the impact of food shortages smaller in the long run, agricultural productivity of Africa should be enhanced as early as possible (TICAD 2008b). Keeping this belief in mind, in the past Japan has provided technological supports as a part of MDGs (MOFA 2005a: 9), and from now through the TICAD process, it will offer more concrete support to the production of New Rice for Africa (NERICA), which could grow even in harsh climate conditions (TICAD 2008a).

To proceed with this action, the Japanese Government newly created an international organization in October 2008 (the headquarters is located in Nairobi), so as to analyze ways to increase rice production and to select nations as recipients of assistance.

8.6.3 Sustainable Management of Water Resources

With regard to the third action, then Prime Minister Fukuda also emphasized the necessity of sustainable management of water resources. Focusing on water management, Japan has long offered “comprehensive assistance that covers provision of drinking water and sanitation, improvement of water productivity, water pollution control, disaster mitigation and water resources management.” It is said that in quantitative terms, “Japan has been the largest contributor in the water supply and sanitation sector. Its assistance accounted for 41 percent of the global total in the five years from 1998 to 2002” (MOFA 2005a: 13).

Based upon such experiences in the past, Japan now plans to promote further “development, rehabilitation and maintenance of water resources management infrastructure to contribute to the joint efforts aiming at expanding the irrigated area by 20 percent in 5 years” (TICAD 2008a). In this regard, for example, Japan organizes a new technical assistance team of water specialists known as W-SAT (Water Security Action Team), which works with people in Africa, in drilling new wells, fixing broken water supply pipes, etc. (TICAD 2008b).

As mentioned before, Japan’s policy on rice import has long been criticized. But in the past Japan has made constructive use of its own experiences in the field of agriculture for poverty reduction overseas, and now intends to utilize them far more seriously than ever for the benefit of Africa. What is more, the Japanese Government facilitates research and development on the next generation of biofuels, and plans to share the results with poverty-stricken countries. Currently, it has been studying possibilities to use crop waste such as straw for production of biofuels. It might be too early to predict anything at this point. But if such efforts bear fruit, Japan’s initiative would surely contribute to solving problems of food shortage and global climate change simultaneously. To sum up, by challenging agricultural, environmental, and global issues with firm determination, Japan expects the global community to show some understanding over Japan’s own policy on agriculture. At any event, those agriculture-related initiatives toward Africa could be regarded as some of the developments to address the issue of protecting rice farming in Japan.

8.6.4 Major Initiatives Related to Millennium Development Goals (MDGs)

Then how has the Japanese Government been responding to the global ethical issue, poverty reduction? Needless to say, supporting African agriculture is a part of the poverty reduction initiative. But from the broader perspective, we want to

811 see Japan's MDG activities, and then characterize its basic stance toward poverty
812 reduction.

813 According to a report published by the MOFA, during the 1990s, Japan's ODA
814 toward basic education, basic health, nutrition, water and sanitation, was at its high-
815 est levels in terms of volume among the DAC (Development Assistance Committee)
816 member countries (MOFA 2005a: 1–2). Since Japan believes that education plays a
817 critical role in human development and nation-building, it has used a large portion
818 of ODA for education (MOFA 2005a: 10). It also believes that without a safety-net
819 for people's lives, any country cannot maximize the use of people's experiences,
820 skills, and know-how in their society. Coupled with this reason, Japan has long sup-
821 ported activities to fight HIV/AIDS, Tuberculosis and Malaria. For example, as far
822 as combating Malaria is concerned, Japan had provided 10 million special mosquito
823 nets to African countries by the year 2007 (MOFA 2005b: 9).

824 Although there have been a variety of MDG initiatives like these, Japan has
825 always placed a great importance on economic infrastructure. The main reason
826 comes from its own and East Asian experiences. The same report describes, "Japan's
827 ODA to East Asia and the Pacific, which accounted for about 60 percent of its total,
828 played an important role in supporting the development efforts of the countries in
829 the region." "Based on this experience as well as its own experience after World War
830 II, Japan has placed an emphasis on the provision of economic infrastructure in its
831 ODA. The development of infrastructure in the developing countries in areas such
832 as transportation, energy, and water is essential for promoting private sector activ-
833 ities and economic growth. Japan's ODA for infrastructure development in East
834 Asia, together with relevant capacity building, has been instrumental in facilitat-
835 ing growth in the region. Japan's ODA for economic infrastructure between 1990
836 and 2003 totaled 66.9 billion dollars – by far the largest among the DAC member
837 countries" (MOFA 2005a: 8).

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840 *8.6.5 Mobilizing Private Sector and Japan's ODA Policy*

841

842 The Japanese Government basically thinks that in order to promote economic
843 growth, the private sector should be mobilized as effectively as possible. Namely, it
844 considers that if the private sector is at the centre of strategy, eventually poverty will
845 be reduced, and then MDGs will be achieved accordingly. From 1990 through 2001,
846 average GDP growth rate of East Asia and the Pacific region was 7.5 percent, which
847 led to a reduction of nearly 200 million people out of poverty. During the same
848 time period, the total amount of ODA provided to this region was about 78 bil-
849 lion dollars. This amount was less than the total provided to Sub-Saharan Africa,
850 which received about US\$ 110 billion. Taking this data into account, Japan insists
851 that how ODA is utilized is extremely important for countries' economic develop-
852 ment (MOFA 2005a: 7–8). A lesson Japan learnt from its own development is, at
853 the early stage of economic development, to concentrate as much investment as pos-
854 sible on infrastructure such as transportation, energy, and water, which eventually
855 encourages the private sector's investment (MOFA 2005a: 5).

Table 8.4 Industrialized countries' debt ratio (%)

Year	1995	2000	2005	2007
Japan	87.7	137.1	173.1	177.6
USA	70.7	55.2	61.8	61.8
UK	52.4	45.7	46.7	49.0
Germany	55.7	60.4	71.1	69.9
France	62.6	65.2	76.1	74.6
Italy	121.8	121.0	120.4	121.0
Canada	101.6	82.1	70.8	66.3

*Calculation based upon OECD Data originated by the Ministry of Finance of Japan

Although Japan provided the largest ODA in the 1990s, we have to admit that it has been reducing ODA and, in 2007, it finally dropped to 5th place in terms of the total amount of assistance. Since it is still the second-largest economy, the international community might have doubt as to the seriousness of Japan's commitment to poverty reduction. While we understand such a criticism against Japan, it might need to be set in the context of Japan's financial situation.

To be frank, the Japanese Government has serious trouble with a towering budget deficit. As of March 2008, it accumulated about US\$ 5.5 trillion of debt, and the ratio of accumulated governmental bonds to Japan's GDP reached almost 180 percent (see Table 8.4). This ratio is the worst among the industrialized countries, and its debt is still mounting. Because of this, Japan is now searching for a new and sustainable way of managing itself, which also enables Japan to keep taking international responsibilities in a consistent manner.

But even if Japan is suffering from a towering budget deficit, it has to make the best efforts to support developing countries as effectively as possible. For this reason, Japan is exploring three directions to go forward. First, it is steadily shifting its emphasis from Asia to Africa, since some of the Asian and the Pacific countries have already succeeded in achieving economic growth. Second, it intensively applies financial support like ODA to specific fields. As noted above, since Japan assumes that economic infrastructure is important, it tends to concentrate on construction of transportation networks and the like. Third, it also supports fundamentals such as finance, trade insurance, livelihood protection, and human resources, because if those fundamentals are not provided, the private sector might not be mobilized.

8.6.6 Establishing Economic Infrastructure in the TICAD Process

From the viewpoint of these directions, let us describe the initiatives in the TICAD process. First of all, at the Opening Address, Mr. Fukuda emphasized, "The time has come for the countries of Africa to adopt as their own a model that led to success in post-war Japan and many other Asian countries." Then, secondly he described the importance of economic infrastructure. That is, "In particular, the experiences of

Table 8.5 Contents of TICAD IV Yokohama Action Plan

901	
902	Preamble
903	I. Boosting Economic Growth
904	(a) Infrastructure
905	(b) Trade, Investment and Tourism
906	(c) Agriculture and Rural Development
907	II. Achieving MDGs
908	(a) Community Development
909	(b) Education
909	(c) Health
910	III. Consolidation of Peace, Good Governance
911	IV. Addressing Environment/Climate Change Issues
912	V. Broadening Partnership
913	
914	
915	

916 Japan and other Asian countries tell us that improvements in transportation infras-
 917 tructure play a critical role in attracting private investment.” Because of this, as
 918 we see in the Contents of the Yokohama Action Plan (see Table 8.5), this formal
 919 document starts with “Infrastructure,” aiming at “Boosting Economic Growth.”

920 This “Infrastructure” section covers (1) Regional transport infrastructure, includ-
 921 ing roads and ports, (2) Regional power infrastructure, (3) Water-related infras-
 922 tructure, (4) Enhanced involvement of regional institutions, and (5) Promotion
 923 of public-private partnership (PPP) in infrastructure. Placing extreme importance
 924 on (1) Regional transport infrastructure, Japan believes that missing links in
 925 transportation networks should be connected as early as possible.

926 As concrete measures, Japan plans to “Provide financial and technical assis-
 927 tance for the planning, construction and improvement of regional transport corridors
 928 and international ports,” “Support capacity building for the management and
 929 maintenance of regional infrastructure,” and “Promote facilitation of cross-border
 930 procedures such as One Stop Border Post (OSBP)” (TICAD 2008b). As far as OSBP
 931 is concerned, since building roads, linking roads, and connecting roads with ports
 932 are not enough to achieve its original purpose, the Action Plan touches upon the
 933 necessity of training officials at OSBP, on the ground that better customs and immi-
 934 gration procedures would contribute to making cross-boarder transportation more
 935 efficient and less time-consuming (TICAD 2008b).

936 By establishing and improving such economic infrastructure, Japan hopes the
 937 private sector will increase its investment, and transfer technologies and managerial
 938 know-how to Africa, thereby creating more job opportunities in the continent. As
 939 for fundamentals, Japan plans to reinforce trade insurance, and to launch the Facility
 940 for African Investment within the Japan Bank for International Cooperation (JBIC),
 941 the purpose of which is to finance businesses in African countries and to guarantee
 942 the financing provided by Japanese banks for businesses in Africa. It is said that
 943 financial assistance for Africa through the JBIC will be on a scale of US\$ 2.5 billion
 944 over the next 5 years. Through such public-private collaborative initiatives, Japan
 945 plans to double private investment in Africa (TICAD 2008b).

8.6.7 MDG Initiatives in the TICAD Process

As in the Yokohama Action Plan, there are many other initiatives such as agriculture, community development, education, and health. At TICAD IV, Japan promised to gradually double the amount of ODA, currently around US\$ 0.9 billion (excluding debt waivers), to US\$ 1.8 billion over 5 years (this does not include debt waivers). Japan plans to use a large portion of ODA for alleviating issues in those areas. Among them, basic education is given great importance.

As his philosophy, then Prime Minister Fukuda mentioned, “For Japan, a country with virtually no underground resources to speak of, the most important type of resources is human resources. First, we give our children a thorough education. Then, we make them self-reliant. On that basis, they live in harmony together with others, pooling their abilities to deal with any difficulties that their friends might face. This is the principle of “self-reliance and mutual cooperation.” This is almost the same as the founding philosophy of TICAD, namely “ownership” and “partnership.” Where there is no “ownership,” which respects self-reliance, neither sustainable development nor growth is possible” (TICAD 2008b).

With this premise, the Yokohama Action Plan refers to the importance of basic education - expansion of access and quality, on the ground that in order to eradicate extreme poverty, access to education should be provided securely and equally. In this regard, Japan has pledged to “Support construction and rehabilitation of school buildings and related infrastructure,” and to “Provide assistance to train and retain primary and secondary school teachers and support the establishment and expansion of teacher training systems and organizations” (TICAD 2008b). For example, Japan plans to build about 1,000 primary and secondary schools in Africa within 5 years to come. This plan will provide around 400,000 students with 5,500 classes to study. Since it is reported that teachers are not well trained in Africa, Japan will offer training programs to 300,000 instructors of science and mathematics, including 100,000 African teachers.

In order to answer the third question, what developments are there in Japan to address the ethical issues, we have seen governmental initiatives such as agricultural contributions, efforts toward MDGs, and promises at the TICAD IV. We assume that all these initiatives led by the Japanese Government could be regarded as developments to address the agricultural (food security) and global poverty issues.

8.7 Initiatives by Leading Japanese Corporations: Education and Basic Infrastructure

The governmental initiatives are just a part of the developments in Japan to address ethical issues. Other stakeholders are also addressing those issues. Among them, multinational corporations are especially important in the context of global issues. Therefore, with the intent of supplementing our answer to the third question, we would like to review contributions made by major Japanese corporations.

8.7.1 Contributions Corporations Can Make

MDGs might be understood as goals to be pursued by governments. Nonetheless, this does not mean that corporations are not expected to help in alleviating world poverty. On the contrary, No. 8 of MDGs expects the private sector to cooperate. In fact, corporations have very competitive technology, know-how, skilled and talented staff, well-organized networks, and ways to operate with high efficiency. Therefore, if they cooperate with governments and others, extreme poverty might be reduced far more effectively than if governments work alone.

According to our research, Japanese NGOs and the mass media believe that the WTO widens the income gap within a country. NGOs also suggest that the WTO does not bring benefits to all countries. This is in clear contrast to the perceptions of officials at Business Federations and business people. In spite of such perception gaps among different Japanese stakeholders, all the stakeholder groups believe that multinationals can play an important role in solving global issues as good partners. Reflecting this shared belief, Japanese corporations have long been involved in Corporate Social Responsibility (CSR) activities. Therefore, in this section, we would like to see what initiatives leading Japanese corporations have taken so as to address the poverty issue.

Needless to say, there must be a variety of ways to alleviate poverty. But here let us confine our focus to major contributions in the fields of education (human resources) and basic infrastructure, because the Millennium Project assumes that those two fields are especially important for poor countries to achieve sustainable development. In addition to this, although there are a number of corporations involved in such activities, it is impossible to refer to all of them. Therefore, we would like to introduce only a few typical examples.

8.7.2 Improvement of Educational Environment

As we have seen at Section 8.6, the Japanese Government places a stress on basic education, promoting a variety of programs such as constructing schools, offering training to instructors, etc. Interestingly, Japanese corporations have also been proceeding with similar programs in various countries. Three cases are worth referring to.

First, in South Africa, with six NGOs and educational institutions, Toyota has participated in a training program for teachers and administrators. Before starting this program, they came to the conclusion that in South Africa, a large number of students are not academically prepared for high schools or vocational schools, and it is because teachers themselves are not sufficiently trained (Neighbors 2005: 10). Taking this conclusion very seriously, they launched the training program for the purpose of helping South Africa improve its educational environment.

Second, an initiative of Mitsui & Co. is also worth mentioning. In Thailand, through its subsidiary (Mitsiam International), Mitsui & Co. has taken part in the Doi Tung Development Project, a national project. The purpose of this project is

1036 to alleviate rural poverty, by helping villagers master how to manufacture their
1037 own local products. In fact, this project has successfully provided them with job
1038 opportunities and effectively eradicated illicit activities related to drug production.
1039 In addition to this national project, as an independent initiative, in 2006, Mitsui &
1040 Co. launched the Library Gift Project, believing that reading is a key to develop
1041 promising people in Thailand. In this project, they selected the poorest and the most
1042 underprivileged 10 elementary schools, visited all the 10 schools so as to under-
1043 stand their real needs regarding a library. Based upon their inquiry and analysis, it
1044 has donated a library suitable for each of those elementary schools.

1045 Lastly, an initiative in Sub-Saharan countries by Sumitomo Group four corpo-
1046 rations is also noteworthy. Since they believe that the educational environment for
1047 children is a key element for poverty reduction in Africa, and this is a practical way
1048 for them to contribute to MDGs, Sumitomo Chemical, Sumitomo Trust & Banking,
1049 Sumitomo Life Insurance, and MSIG (Mitsui Sumitomo Insurance Group) joined
1050 the elementary school construction project organized by World Vision. So far they
1051 have built elementary schools equipped with a dining hall and teachers' accommo-
1052 dation in Tanzania, Kenya, Uganda, and Zambia. The school construction project
1053 of the Japanese Government could be considered an imitation of this Sumitomo
1054 Group's initiative.

1055

1056

1057 ***8.7.3 Improvement of Basic Infrastructure***

1058

1059 As the Japanese Government has contributed to poverty reduction by improving
1060 conditions of health, safety, agriculture, and land use, Japanese corporations have
1061 also engaged in similar activities. Let us review three typical contributions Japanese
1062 corporations have made in this regard.

1063 First, in poverty-stricken communities of the Philippines, Toyota Motor and its
1064 charitable foundation have conducted the so-called Medical and Dental Outreach
1065 Program. The program has taken place twice a year. By 2006, more than 75,000
1066 people had received medical attention through this program. According to a report
1067 published by Toyota, most of the patients might have otherwise never received care
1068 from medical professionals. Usually parents bring children for treatment of a par-
1069 asitic disease. And when it is necessary, physicians perform simple surgery at the
1070 outreach sites (Neighbors 2006: 24–25).

1071 Second, Sumitomo Chemical's contribution in the field of healthcare might be
1072 well known. It is said that each year, about 300 million people contract Malaria
1073 and one million die of it. In order to challenge this tragedy, Sumitomo Chemical
1074 has participated in the roll back Malaria campaign and has supplied its original
1075 mosquito nets (Olyset nets) to poor villages through UNICEF and WHO. While the
1076 company offered manufacturing know-how to a Tanzanian company free of charge,
1077 it has also been expanding the production capacity in response to increasing needs
1078 for the nets. So far Sumitomo Chemical has supplied 30 million nets to the global
1079 community. The Olyset net is said to be very effective in preventing Malaria. For
1080 example, in 2006 the company donated 330,000 nets to the Millennium Promise,

1081 one of the influential NGOs, and this donation is believed to save and protect over
1082 500,000 people from Malaria.

1083 The last one is a very brave and far-reaching initiative. The president of
1084 Yamanashi Hitachi Construction Machinery, a very small company, has been mak-
1085 ing strenuous efforts to return fertility to land and safety to children in poor countries
1086 devastated by wars. According to a report, currently about 110 million antipersonnel
1087 landmines are in place around the world. If people try to find all of them following
1088 the established procedure, it will take more than 100 years. Shocked by this reality,
1089 Mr. Kiyoshi Amemiya, president of the company, launched a landmine clearance
1090 project to improve the situation where many civilians, especially children, become
1091 victims of those mines. Keeping a strong belief that without cultivable and fertile
1092 land any country cannot support itself, he has devoted his life to developing special
1093 bulldozers and to clearing the land of many countries with his inventions.

1094 We have indirectly suggested that in order to mitigate criticisms against the
1095 WTO and the business community, multinationals have to make social contribu-
1096 tions. But as far as corporations introduced here are concerned, we cannot see such
1097 motives in a clear manner. They seem to have engaged in global challenges and pro-
1098 moted philanthropic movements, just because of a very strong sense of corporate
1099 social responsibility. In other words, they take poverty as one of the most important
1100 ethical issues, and have proceeded with their self-setting missions. Regarding the
1101 third question of the FITI project, we believe that a series of those initiatives taken
1102 by leading corporations could be also noteworthy developments by the business
1103 community.

1104

1105 **8.8 Summary and Closing Remarks**

1106

1107 ***8.8.1 Answering the First Question***

1108

1109 In this chapter, we have discussed a number of issues so as to answer three ques-
1110 tions of the FITI project. As for the first question, we described the formal position
1111 of the Japanese Government. In a nutshell, it considers that a part of the WTO pro-
1112 cess (DSB) is fair and effective, but it sees that the WTO has not been working
1113 effectively, because the outcome of the WTO does not seem fair enough to some
1114 Members. This is the main reason why Japan has shifted its position from a WTO-
1115 centered to a bilateral EPA-driven strategy. When it comes to the perceptions of
1116 ordinary Japanese, we found that most of them (except for NGOs) are likely to con-
1117 sider that the WTO is working in a fair manner. One of the interesting points is that
1118 every stakeholder group in Japan including NGOs feels that corporations and civil
1119 society could work together as good partners.

1120

1121 ***8.8.2 Answering the Second Question***

1122

1123 With regard to the second question, we identified two ethical issues as the most
1124 important and challenging issues.
1125

1126 First is protection of rice farming in Japan. From the viewpoint of life in rural
1127 areas, natural environment, sustainable management of water resources, cultural tradi-
1128 tions, and food security, the Japanese Government has long protected rice farming.
1129 On the other hand, agricultural exporting countries have urged Japan to import more
1130 agricultural products, and reduce tariff rates on them, including rice.

1131 Second is poverty reduction, especially alleviation of extreme poverty in the least
1132 developed countries. Given the size of its economy, Japan has to take this respon-
1133 sibility far more seriously than ever. It is suggested that so far Japan has made
1134 contributions mainly to the development of East Asia and the Pacific. Now that
1135 many countries in this region have begun to develop economically on their own,
1136 even if poverty remains in some areas of this region, it is clear that Japan has come
1137 to a point to shift its focus from Asia to Africa.

1138 Before answering the third question, we defined the ultimate purpose of glob-
1139 alization and the WTO, from the viewpoint of a rational person on the original
1140 position. That is to reduce both the gap between developed and developing coun-
1141 tries at the global level, and the gap between the most advantaged people and
1142 the least advantaged people at the national level. With this definition in mind, we
1143 explained typical initiatives led by the Japanese Government and by major Japanese
1144 corporations.

1145

1146

1147 ***8.8.3 Answering the Third Question (1): Protecting Rice Farming***

1148

1149 As for the first ethical issue, protection of rice farming in Japan, through the TICAD
1150 process, the Japanese Government has started to make the best use of Japan's experi-
1151 ences in rice production for the benefits of Sub-Saharan Africa. Faced with the food
1152 shortage crisis, Japan has facilitated the development of NERICA, and explored pos-
1153 sibilities of producing the next generation of biofuels. By committing itself to those
1154 initiatives, Japan expects WTO Members to understand its policy on rice and its
1155 contributions to rice harvesting in poor countries, even if such contributions do not
1156 solve clearly the dilemma between the requests of agricultural exporting countries
1157 and the interests of domestic rice farmers.

1158

1159

1160 ***8.8.4 Answering the Third Question (2): Poverty Reduction***

1161

1162 With regard to the second ethical issue, poverty reduction, like other developed
1163 countries, Japan has also engaged in MDGs from the beginning. Based upon its
1164 own experience and its experience in East Asia, the Japanese Government will
1165 input more resources into the infrastructure of Africa. As one of the major ini-
1166 tiatives through the TICAD process, Japan plans to connect missing links in
1167 transportation infrastructure. It strongly believes that by improving market access,
1168 the private sector would eventually be mobilized. On top of that, the Japanese
1169 Government has initiated the primary and secondary school construction project,
1170 and offers training programs to instructors of science and mathematics in Africa.

1171 In addition to those governmental initiatives, major Japanese corporations have
1172 also addressed the second issue. As we have seen, when it comes to the develop-
1173 ment of a country, Japanese people are likely to place great importance on education.
1174 Following that belief, in the field of education, the private sector has offered training
1175 programs to local teachers and administrators, has provided libraries to elementary
1176 schools in the most underprivileged areas, and has constructed primary schools in
1177 the least developed countries. Many corporations have also made contributions in
1178 the fields of health and security. For instance, some have supplied mosquito nets
1179 to fight Malaria, and others have made strenuous efforts to clear anti-personnel
1180 landmines so as to make the war-devastated land safe and cultivable. All of them,
1181 including governmental initiatives, could be regarded as developments in Japan to
1182 address these global issues. This is the answer to the last question the FITI project
1183 raised.

1184

1185

1186 **8.8.5 Remaining Issues**

1187

1188 We have seen initiatives to achieve poverty reduction. All those initiatives, whether
1189 government-led or private sector-led, are basically voluntary not obligatory. As long
1190 as those voluntary-based initiatives are working well, we might not need to consider
1191 other ways to assist. But at the end of this chapter, we would like to mention a lit-
1192 tle bit about a new movement, which might give us some ideas, when we think of
1193 making the world a real global community. This is the so-called “global taxation”
1194 movement. A typical example is to impose a tax on airline tickets for achiev-
1195 ing MDGs, mainly for funding the global fight against diseases like HIV/AIDS,
1196 Tuberculosis, and Malaria.

1197 TRIPs came into effect in 1995, which prohibited pharmaceutical manufacturers
1198 from producing generic medicines without authorization of the patent right holders.
1199 As a result, the price of quality drugs like HIV-related drugs became very expen-
1200 sive. To be sure, developing countries can still manufacture or import cheap generic
1201 drugs, if they invoke the compulsory license procedure within the TRIPs frame-
1202 work. But even in those countries there are still many people who cannot afford
1203 quality drugs. As one of the effective ways to alleviate this situation, the global tax
1204 was introduced and imposed on airline tickets. On the basis of this taxation system,
1205 UNITAID, an international drug purchase facility, negotiates prices for those drugs
1206 on behalf of poor patients. Seeing this mechanism working well, NGOs began to
1207 explore possibilities to impose global taxes on other activities or sectors such as
1208 speculative money transactions, carbon dioxide emissions, etc.

1209 It is clear that in this taxation system there are many difficult issues such as how
1210 to maintain fair taxation among industries or among taxpayers, how to distribute tax
1211 revenues among recipients in a fair manner, and how to govern this taxation system
1212 in a responsible and accountable manner. Despite those complicated issues, we feel
1213 that at least, this mechanism designed to contribute to MDGs might be useful, since
1214 it could work on an obligatory-basis. Imposing taxes on individuals not on countries
1215 is also a very interesting point. If we take into consideration the fact that even in

1216 developed countries there are many poor people, and even in developing countries
 1217 there are wealthy people, imposing global taxes on individuals could be rational and
 1218 practical. With those reasons in mind, we conclude by suggesting that the global
 1219 taxation movement would be worth examining further.

1220

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01 **Chapter 9**

02 **Fairness in International Trade and Investment:**
03 **North American Perspectives**
04
05
06

07 **Frederick Bird, Thomas Vance, and Peter Woolstencroft**
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13 **9.1 Introduction**
14

15 North Americans have adopted a number of different views with respect to what
16 they consider fair in relation to international trade and investment. These differences
17 reflect the distinctly different histories of the United States, Canada, and Mexico;
18 the varied roles that international trade plays in these countries; markedly different
19 social and economic positions of groups within these countries; and varied political
20 and economic interests. Within each country typically different positions regard-
21 ing fairness in international trade have been taken by small and large businesses,
22 farming groups, trade unions, consumers, and different regions. In spite of these dif-
23 ferences, Canada, Mexico, and the United States have joined together in the North
24 American Free Trade Agreement (NAFTA), which has been both widely applauded
25 and criticized. All three countries are members of the World Trade Organization
26 (WTO).

27 In the initial part of the chapter we review recent developments with respect to
28 trade. We note the way that the multi-lateral trade arrangements associated with
29 the WTO have modified how regional bi-and-tri-lateral agreements have been inter-
30 preted in ways that have at times promoted the interests of smaller countries. In
31 the second part of the chapter we discuss four typical normative views that North
32 Americans have taken with respect to international trade and investment. In addi-
33 tion to a traditional and currently resurgent protectionist stance, the other major
34 view, which we refer to as the liberal fair play position, has championed both inter-
35 national trade and fairness in such trade based on notions associated with procedural
36 justice. This mind set has not only at times influenced official government policies,
37 especially in the United States, but also informed the negotiations that led to the
38 creation of the General Agreement on Trades and Tariffs (GATT). While likewise
39 championing international trade, a third perspective, has called for greater atten-
40 tion to concerns for distributive justice and fair outcomes. Finally, while not being
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overtly protectionists, a number of North Americans have raised serious questions about the ways current trading relations endanger the environment and aggravate inequalities.

These differing interests and views of international trade and the fairness of this trade – national, sectoral, and normative – do not seem to be simply resolvable, either by invoking overarching principles or common interests. However, adopting a normative perspective in parts three and four, we argue that fairness is best approached not by trying to overcome these different interests and values but through open and reciprocating political processes that enable these differences to be voiced, acknowledged, and debated and thereby encourage compromises to emerge. In addition, we identify five fundamental affirmations, which seem to be both important for these inevitable ongoing debates and ones that these diverse points of view can embrace as basic despite their differences. In the last two parts of the chapter, we outline these views calling particular attention to views of commutative justice and issues associated with abusive transfer pricing.

Since its birth in 1995, the WTO, successor to the GATT, has grown rapidly – from an original 76 members to its current roster of 152, with approximately 30 additional “observer governments” making strides toward full membership (WTO, 2008). Membership growth has been accompanied by an expanding agenda. While GATT restricted itself to commercial trade issues, the WTO’s initial mandate was wider; and since then it has had to deal with myriad issues, especially pertaining to the environment and human rights, trade in services and intellectual property rights, unknown in the pre-WTO period. Some see the emergence of the WTO as the embodiment of globalization and economic liberalism (Hart, 2002: 434–7). Others see the WTO as not just a trade liberalizing vehicle but one that is oriented towards privatization of services – for example, health and education – that heretofore had been the prime responsibilities of governments; that is, they argue, the WTO’s agenda has come to include more than issues related to trade and investment; it has come to include a number of more value-laden and thus contested social, economic, and political objectives (McDougall, 2006: 64–5).

9.2 Bilateral and Multilateral Trade Relations in North America: Recent Developments

North Americans have adopted a number of quite different views with respect to whether, and to what degree, current international trade practices are fair or unfair. The Mexican, Canadian, and American governments frequently hold different views on these matters, even though all three countries are members of the North American Free Trade Agreement (NAFTA). In each country various groups have defended positions associated with fair trade, protectionism, economic nationalism, bilateralism, and free trade. In the first part of this chapter, we examine issues of fairness in international trade largely from a Canadian perspective. We begin with recognition of the asymmetrical relationships between the three large countries that constitute North America.

9.2.1 *Three Asymmetries*

North America is a complex social, economic, and political entity, characterized by growing commonalities and also great differences. Since the 1980s two overall themes have been evident in discussions about the future of North America. First, since the 1988 Canadian-US Free Trade Agreement (CUSFTA) and NAFTA (signed in 1994), which created the world's largest trading bloc, there has been increasing interest in – and debate about – the desirability of North American economic integration. For many, increasing economic integration leads to more and more political integration, desirable or not. At the same time, heightened consciousness of three asymmetries between Canada, Mexico, and the United States raises questions about how future economic and political arrangements will be structured.

First, by measures of gross economic activity, the three countries of North America rank in the top 15 of the world's economies. However, the United States, the world's largest economy (with about one-quarter of the world's economic activity), exercises far greater economic power in the world than do Canada, ranked eight (less than 1 percent of the world's economic activity) and Mexico, ranked 15 (International Monetary Fund, 2008). Further, the United States – the world's leading political and economic power – overwhelms its northern and southern neighbours in many other respects, such as population, per capita purchasing power, and annualized growth rates. For example, Canada's market is only 9 percent of the US market.

Second, Canada and the United States clearly represent developed economies, a small subset of all the world's economies in terms of numbers, at the same time as they constitute a large fraction of the world's economic activity, with both countries belonging to the G8. Mexico, by contrast, clearly falls into the category of developing countries, which number many and are slowly growing in economic weight. Differences between developed and developing countries underlie much of the protracted and failed Doha development round of negotiations. The differences between these countries in terms of per capita income or overall economic activity have not decreased over the past several decades.

The third asymmetry pertains to the role of international trade in each nation's economy. Global international trade is immensely important for both Canada and Mexico (respectively, trade-to-GNP ratios in 2006 being 70.1 and 65.1), but less important for the United States, with a ratio of 28.1, the lowest of states in the Organization for Economic Co-operation and Development (OECD Statistical Abstracts).

As shown in Table 9.1, there are important differences in trade patterns within North America. For both Canada and Mexico, trade with the United States is of signal importance, representing for each country over 85 percent of its global trade. Trade between the United States and its neighbours commands less weight, though Canada is the leading destination for American exports and Mexico the third.

Regular meetings between the leaders of Canada, Mexico, and the United States speak to the continuing importance of intra-regional issues, with trade and investment being prominent but security issues assuming great importance, principally

Table 9.1 Percentage of all merchandise imports and exports between Canada, Mexico, and the United States, 2007

	Exports to			Imports from		
	Canada	Mexico	USA	Canada	Mexico	USA
Canada		1.1	79.3		4.2	54.2
Mexico	2.6		89.5	2.3		59.9
USA	21.4	11.7		15.7	10.6	

Source: World Trade Organization, International Trade Statistics, 2008

driven by the attacks on the United States on September 11, 2001. The three countries signed in 2005 the “Security and Prosperity Partnership of North America” (SPP). Its purpose was twofold: to develop trilateral agreements on security issues and to provide for economic cooperation and information sharing. Both Canada and Mexico are apprehensive that American security issues will lead to hardening of America’s two borders with economic consequences more severe for Canada and Mexico than for the United States. Indeed, some see the United States in the post 9/11 period turning away from its long-standing and public commitment to trade liberalization in favour of “strategic power” and “economic power” (Staples, 2007).

The idea of “asymmetrical dependency” best captures the dynamics of the economic relations between the three countries in that one – the United States – is much less dependent on the other two than are the latter two dependent upon the United States (Baldwin, 1980: 471–506).

9.2.2 North America and the WTO

In general, Canada and the United States have supported trade liberalization in both the GATT and WTO eras. Mexico moved toward support of trade liberalization in the 1990s. The United States, again in general, has justified trade liberalization in terms of enhancing choice and spurring economic growth through competition and comparative advantage. Canada and Mexico, conscious of size differentials between themselves and the United States and desirous of protecting social, economic, and political institutions, have perceived competitive pressures and economic weight as potentially disrupting, if not destroying, “Canadian” or “Mexican” ways of doing things.

North American debates about trading arrangements and governments pivot on two questions. The first concerns whether regional or global trading agreements are preferable. The second pertains to the relationship between society (advocacy groups, interest groups, and political parties) and governments.

In the case of Canada, after over a century of political argumentation about the desirability of “free trade” with the United States, the signal event clearly was the 1998 CUSFTA. The voluminous literature on the agreement contains two significant points. First, an important motivation for the Canadian government to enter into

181 negotiations with the United States was the fear of ascendant protectionist forces,
 182 especially in the U.S. Congress. Canada was perceived to be especially vulnera-
 183 ble in the absence of formalized trade arrangements. Second, in an age of concern
 184 about fossil-fuel reserves and security of supply, coupled with price uncertainties,
 185 the United States will be increasingly looking for Canada to meet its future energy
 186 needs (Council on Foreign Relations, 2005). The growing interdependence between
 187 the Canadian and American economies makes it very difficult for the Canadian
 188 government to interfere with the flow of energy to the hungry American market.
 189 Mexico, for its part, was interested in a trade arrangement with the United States in
 190 order to establish itself as a secure and attractive destination for investment monies.
 191 Canada joined what became NAFTA in order to protect its interests in any agreement
 192 reached between the two countries to the south.

193 Multi-lateral trade arrangements highlighted, of course, by the WTO provide a
 194 telling contrast with the regional trade arrangements found in North America. The
 195 WTO – in its stated objectives – clearly is oriented toward trade liberalization on
 196 the basis of general rules. That is, very much embedded in the WTO system is the
 197 establishment and implementation of policies, procedures, and practices that allow
 198 for free, smooth, and predictable trade flows, all of which should be reflected in
 199 international trade law. Five principles constitute the WTO’s framework for trade
 200 policies; they are:

- 201 non-discrimination;
- 202 reciprocity;
- 203 binding and enforceable commitments;
- 204 transparency; and
- 205 “safety valves” which allow governments, under certain conditions, to restrict
- 206 trade.

207
 208
 209 The premise, then, of the WTO is that unencumbered international economic
 210 exchanges will be beneficial to all countries. Let us turn to the case of North
 211 America, primarily through an examination of the American and Canadian cases,
 212 the two countries having had a long history of commercial relations, to understand
 213 the differences between regional and multilateral trade arrangements.

214 The two North American trade treaties, in comparison with the European
 215 Community and the WTO, have one important distinguishing feature, namely the
 216 lack of overarching institutional structures. Free-market proponents of the trade
 217 agreements did not appreciate the need for supranational political institutions. Those
 218 looking for such institutions were confronted with the clear unwillingness on the
 219 part of the United States to contemplate the possibility and the fear on the part of
 220 Canada and Mexico that they, singly or jointly, could and would not be heard in
 221 such institutions. Simply, trade arrangements did not change political ones, with the
 222 United States happily pursuing its tradition of unilateralism and Canada and Mexico
 223 relying on bilateralism for the furtherance of their interests (Pastor, 2001). Indeed,
 224 the three governments, in the course of the NAFTA negotiations, “seemed to be
 225 haunted by the specter of the European Union” and its many institutional forms

226 which incorporated many of the executive, legislative, and judicial functions of
227 government (Clarkson, 2008: 51).

228 Another telling feature of the North American trade agreements is the organi-
229 zation of dispute resolution mechanisms (DRM). In the case of NAFTA, provision
230 is made for governments to attempt to resolve disputes about interpretative matters
231 through discussion and negotiation. Failing such agreement, the matter is transmit-
232 ted to ad hoc bilateral panels for arbitration. These panels are low-level in that they
233 lack enforcement mechanisms, thus allowing governments to follow decisions as
234 they wish. A similar low degree of institutionalization is evident in regards to the
235 settlement of disputes about anti-dumping or countervailing duties. While Clarkson
236 argues that NAFTA trade disputes have been successful in attenuating somewhat
237 the power differences between the United States and its two neighbours, he points
238 to an important condition: Washington has accepted decisions when there is little
239 domestic opposition, but “bi-national panel rulings have not managed to discipline
240 American government behaviour on issues of major domestic salience” (Clarkson,
241 2008: 81). On critical matters, then, the trade agreements do not appreciably alter
242 the asymmetrical power relations in North America.

243 What does the WTO mean for North America? That question leads to consid-
244 eration of the WTO and its two decision-making features. First, decisions are to be
245 made consensually. Second, the current (and now failed) negotiations were a “single
246 undertaking”. This means that instead of negotiations proceeding sequentially from
247 issue to issue or from sector to sector, all issues proceed simultaneously and must
248 be resolved before the negotiations have concluded. Failure in one part is a failure
249 in all parts.

250 The fundamental decision-making rules of the WTO are highly contentious.
251 The requirement for consensus is problematic in small groups as it encourages
252 “hold-out” behavior; (some) participants, knowing the norm, take hard positions,
253 calculating that others will concede at least some critical points. Within larger
254 groups, the likelihood that negotiations will be successful would seem to be quite
255 low. A compounding institutional factor that contributes to the low probability of
256 success is that states vary enormously in their approval processes, highlighted by
257 the United States, where the Senate must approve any international commitments.
258 Assertive domestic political interests may trump what American negotiators have
259 accepted. American leaders have spoken glowingly about the desirability of trade
260 liberalization. However, many cases that have gone before the WTO concerning
261 American actions and laws have been resolved in ways that have been favorable to
262 economic interests in the United States.

263 The “single-undertaking” requirement has been interpreted by many to be
264 inordinately demanding and inevitably destructive of success. The “utilitarian”
265 interpretation of states and interests says that negotiations take place within the
266 context of each state trying to maximize its gains and minimize its losses. Two pre-
267 dictions follow from this perspective: first, that there will be collapsed negotiations
268 because of the unwillingness to make the compromises necessary to reach consen-
269 sus; second, the agenda of western industrialized nations – the liberalization of trade
270 in its many forms – will not be matched by the full opening of their markets to the

271 produce and products of developing countries because of the heavy weight that they
272 bring to negotiations; in other words, the asymmetries between the developed and
273 developing countries work to the advantage of the former.

274 A contrary view, cogently argued by Robert Wolfe (2008), sees the negotiating
275 context of the WTO in positive terms. His “constructivist” perspective is predicated
276 on the assumption that actors enter negotiations, not with interests in mind that per-
277 haps will be begrudgingly trimmed in light of their bargaining strategies, but in a
278 context “in which contracts and treaties furnish a framework for an ongoing rela-
279 tionship of the relationship, not a precise definition of the relationship.” Arguing
280 processes lead actors to contemplate reasons for positions – for all actors, not just
281 theirs—and to think about ways to reach agreement in light of what they have
282 learned. In other words, the institution of trade negotiations embodied in the WTO
283 system will not only reflect power politics but also the reasoned accommodation
284 by actors of interests through the interpretation, understanding, and appreciation
285 of the reasons for stated positions. The constructivist perspective, as compared
286 to the underlying “power” politics of utilitarianism, is consistent with the idea of
287 procedural fairness.

288 From the perspective of Canada and Mexico, the WTO represents their best
289 hope of arriving at trade and investment agreements that do not reflect the strong
290 asymmetries that exist in North America. In utilitarian terms, regional or bilateral
291 agreements will reflect the weight of the United States. (And, indeed, some com-
292 mentators see an emerging interest on the American side in the marginalization of
293 the WTO in favor of bilateral trade agreements.)

294 Three important cases point to the importance of the WTO for Canada. The
295 first originated in the WTO ruling in 1997 that “content requirements for magazine
296 advertising were illegal, raising the prospect that quotas and subsidies protecting
297 Canadian culture would be stripped away” (Byers, 2007: 113). In the subse-
298 quent decade the Canadian government worked energetically to move the WTO
299 to accept that cultural industries are separate from other economic sectors despite
300 American objections that choice by consumers and the profits of its large corporate
301 entertainment sector were threatened.

302 The second case comes from the agricultural sector. Agriculture is not ordinarily
303 identified as being caught up in globalizing forces, yet, as Coleman and his col-
304 leagues (2004) point out, it is very much at the centre of the interaction between
305 myriad actors – states, transnational corporations, global institutions (including the
306 WTO), international non-governmental organizations (NGOs), and social move-
307 ments – and the intersection between issues of intellectual property (especially
308 genetically-modified seeds), food supply and security, biological diversity, and envi-
309 ronmental protection and enhancement. The linkages between the state, the market,
310 and agricultural producers are also variable, as is exemplified by the comparison
311 between Canada and the United States. One important difference is the existence in
312 Canada of a number of marketing boards which have monopoly buying and sell-
313 ing powers whereas in the United States producers operate in the open market
314 (although subsidies, as in many countries, are an important element of the agri-
315 cultural economy). Agriculture is one of Canada’s leading value-added economic

316 sectors, with wheat constituting an important export product, thereby competing
317 under the auspices of the Canadian Wheat Board with American producers. The
318 difference between the Canadian and American approaches in support of their agri-
319 cultural industries is that there “is a perception in the American wheat industry that
320 the Canadian Wheat Board (CWB) is structured in such a way as to ensure it will
321 not operate in accordance with commercial considerations – that is, in the interests
322 of free market competition” (Froese, 2008: 2).

323 The United States challenged the Canadian system at the WTO by arguing that
324 the Canadian Wheat Board, a state-trading enterprise (STE), acted as a monopsony.
325 By being the single buyer and seller of wheat, it alleged that the CWB undercut the
326 workings of competitive markets. However, the issue was more than just a matter of
327 economic outcomes, but, rather, one that reflected different approaches to the role
328 of government in the economy (Froese, 2008: 5). In 2004, the WTO ruled, for the
329 most in favour of Canada, and on the central issue of the legality of the marketing
330 board supported Canadian arguments.

331 The third case concerned the softwood lumber industry in Canada. It paralleled
332 the agriculture issue in one sense as Canadian practices related to stumpage fees
333 (how Canadian governments sell harvesting rights on crown land, which consti-
334 tute over 90 percent of Canada’s forestland) were seen by protectionist-minded
335 American competitors, who work within a market-system, as leading to an unfair
336 competitive advantage; however, the issue was more complex, as American con-
337 sumers, benefiting from lower Canadian prices for softwood, were an interest not
338 at play in the dispute about the CWB’s impact on global wheat pricing. The issue
339 was also more protracted, running for about 25 years and going through many FTA,
340 NAFTA and WTO dispute settlement mechanisms (Anderson, 2006: 586).

341 One point is especially pertinent in light of the foregoing discussion of fair-
342 ness in trade and investment. As the American case failed in the course of going
343 through various dispute settlement mechanisms, the response of the United States
344 government was to seek solutions outside of NAFTA – that is, through a negotiated
345 settlement between the Canadian and United States governments (Gagne, 2003).
346 The long-term goal of Canadian governments in pursuing formalized trade agree-
347 ments with the United States had been institutionalization of the dispute settlement
348 mechanisms, which would have the effect of depoliticizing disputes. Although the
349 eventual decision – rendered by a WTO panel – was mixed, nonetheless it was a
350 victory for the Canadian government inasmuch as a solution to the impasse was
351 found. At the same time the panel supported the basic contention of the US gov-
352 ernment that stumpage fees amounted to a subsidy for Canadian softwood exports
353 (Williams, 2008). On the whole, American economic power and pressures were
354 undercut by the WTO. Tellingly, however, with the American government refusing
355 to accept judgments from both NAFTA and WTO panels, the Conservative govern-
356 ment of Canada bowed to the American demand for a negotiated settlement, which
357 in its details contradicted WTO rulings (Clarkson, 2008: 83).

358 In constructivist terms, large-scale negotiations promise the possibility of balanc-
359 ing interests given the WTO’s two overriding principles – that of non-discrimination
360 and most-favoured-nation (in which trade concessions to one must be extended to

all). The constructivist perspective presumes that learning (and attendant appreciation and understanding) will function to balance the weight of state interests.

Clearly multi-lateral trade relations, like those embodied in the WTO, function to serve the interests of relatively large economies like Canada's and Mexico's in their relationships with the much larger economy of the United States.

9.3 Several North American Normative Perspectives on Fairness in International Trade and Investment

In part one, we have examined several active political positions which North Americans have adopted with respect to achieving what proponents of these several movements have regarded as fairness in international trade. We have in particular examined the practical impact of the multilateral approach on trading issues between the United States and Canada. In part two, we will examine several normative perspectives articulated by North Americans on how to foster fairness in multilateral trade. While all parties invoke basic principles of fairness, they do so in quite different ways.

9.3.1 *Protectionism and the Prevailing Liberal Views of Fair Play*

In order to protect what Alexander Hamilton regarded as its infant industries, the early American Republic adopted a protectionist perspective towards international trade. Tariffs served both as a means of fostering domestic businesses and industries as well as a reliable means of raising public revenues. This position remained dominant until sometime during the New Deal years of the 1930s as Americans began to develop what we are here labeling as the liberal fair play view of fairness with respect to international trade. As they negotiated a number of bilateral treaties in the thirties and forties and as they took the lead in championing multilateral approaches to trade in the post world war two years, American governments sought to encourage the expansion of foreign trade in keeping with certain basic principles of fair play. Several principles have remained basic to the notions of fair play with regard to international trade throughout the subsequent years.

One, the initial assumption emphasizes the importance of free choice. Accordingly, trading arrangements ought to be established so that firms and nations can freely negotiate the terms of their exchanges. The traditional rules and tariffs restricting these choices should be liberalized in due course. Two, countries should proceed with these negotiations in keeping with the principle of non-discrimination such that all nations would be treated the same in keeping with a general set of rules. Often referred to as the "most favored nation" principle, this standard requires that the same basic rules and procedures be followed in negotiating trading relations with any and all other countries. Finally, three, it was assumed that these liberal market exchanges only became viable to the extent that contracts and property rights were adequately guaranteed in law. These principles of fair play have been typically justified in utilitarian terms. Thus, as governments created opportunities for free market

406 negotiations and exchanges, it has been widely argued that they thereby also fostered
407 arrangements that favored constructive wealth creation.

408 Based on these normative beliefs, American governments from the 1930s onward
409 negotiated dozens of bi-lateral treaties to liberalize trade. In the post World War
410 Two years they proposed establishing an International Trade Organization and when
411 this effort failed, they joined with other countries in efforts to promote the General
412 Agreement on Tariffs and Trade (Zampetti, 2006).

413 The liberal ideas of fair play assume that governments should and would pro-
414 ceed to work to liberalize trading rules with other countries, thereby enhancing
415 the opportunities of domestic exporters and investors. In exchange the government
416 would make concessions that provided opportunities for foreign firms to sell imports
417 domestically so long as imports in no way injured the opportunities of domestic
418 firms. Liberal notions of fair play were thus closely connected with assumptions
419 about reciprocity. Opportunities would be extended mutually on something like a
420 tit for tat basis so long as these arrangements did not put domestic businesses at a
421 decided disadvantage.

422 Similarly with liberal ideas about equal opportunity, these beliefs about fair play
423 focus on the conditions that allow for open, rule-regulated, competition. Ideas of
424 fair play do not focus on whether outcomes are just or not. Rather, this perspective
425 seeks to allow for and support the free choices of individuals and firms: it assumes
426 that individuals and firms will compete on the basis of their own self-interest; it
427 seeks to identify and reinforce impersonal rules that will facilitate the expansion of
428 trade; and it assumes that public good will be maximized by fostering this kind of
429 self-interested competition.

430 This view of fair play is limited in several important ways. One, it is assumed
431 that, while governments ought to restrain their intrusive efforts to over-regulate com-
432 merce, they will nonetheless act to provide the legal and political infrastructures that
433 facilitate and protect free market exchanges (Finn, 2006). Two, the beliefs about fair
434 play presuppose as well that governments will act constructively in several different
435 ways to support domestic enterprises as these firms enter into competition in inter-
436 national markets: by protesting against what seem like unfair competition by others,
437 by offering subsidies for industries especially threatened by foreign competitors
438 with cheaper labor markets, and by keeping them well informed of technological
439 and even economic innovations. Three, additionally this liberal fair play approach
440 assumes a national not global perspective. This view has been used progressively
441 to liberalize trading relations within particular industries and sectors but only to
442 the extent that reciprocating relationships can be developed with other countries.
443 Where this kind of mutual adjusting and repositioning has been resisted both by
444 other countries and national enterprises, for example, with respect to a wide range
445 of agricultural products, then these trading relations have not been correspondingly
446 liberalized.

447 Liberal views about fair play in international trade have been widely embraced.
448 They have been articulated and defended as economic common sense. Along with
449 some protectionists' sentiments voiced in defense of domestic workers, in prac-
450 tice these views have shaped much of American international trade policy since the

451 Great Depression. These views have also influenced American policies with respect
452 to the proper role of the World Bank, the International Monetary Fund, and the
453 General Agreement on Tariffs and Trade. To a large extent, Mexican and Canadian
454 economic liberals adopt similar views.

455 Over the years different groups have interpreted and expressed the core set of
456 basic liberal standards of fair play somewhat differently. While some neo-liberal
457 defenders of these principles have set forth their views in ways that seemed to sug-
458 gest that international trading markets were almost free standing institutions, other
459 more traditional liberals have called for greater attention to the important roles that
460 governments, their laws and regulations, trade agencies, and central banks, have
461 played in creating and maintaining these institutions. Because of these variations,
462 the liberal views of fair play have often seemed vague if not amorphous.

464 **9.3.2 The Liberal Search for Distributive Justice**

465
466
467 Typically, North Americans have dissented from this liberal position by supporting
468 some form of trade protectionism. Whether in defense of particular industries, in
469 the name of national self-determination, on behalf of domestic workers and their
470 wages, or in protest against the environmental damages of international businesses,
471 many North Americans at both ends of the political spectrum have assumed genuine
472 fairness would be best achieved through tariffs and subsidies in support of the farm-
473 ers, laborers, and businesses of their own countries. However, there have also been
474 those who criticized the liberal fair play position in hopes of achieving a more just
475 although still liberal system of international trade. Basically, these liberal dissenters
476 argue that the fair play ideas as they have been put into practice have been applied
477 in ways that been both inconsistent and excessively doctrinaire. They argue further,
478 that the fair play liberals have not given sufficient attention to whether the actual
479 experiences of fair play trading arrangements have worked in practice to occasion
480 outcomes – patterns of distribution—that were also fair.

481 Joseph Stiglitz and Andrew Charlton have recently published an articulate state-
482 ment outlining an alternative liberal approach in defense of international trade with
483 greater focus on achieving practical outcomes that were just for all. We will use their
484 account as a contemporary expression of liberals who especially signal the impor-
485 tance of distributive justice. Stiglitz and Charlton set forth their ideas in a book *Fair*
486 *Trade For All: How Trade Can Promote Development*. They mount a number of crit-
487 icisms of the fair play ideas, which they refer as the “classical model.” This model
488 erroneously assumes, they argue, full employment in all countries engaging in trade.
489 It assumes as well that local markets everywhere work effectively, overlooking in
490 the process how the absence of effective legal, regulatory, and physical infrastruc-
491 tures distorts markets. Further, they argue that the fair play model overlooks the
492 historical fact that industrializing nations as well as new nations have traditionally
493 used tariffs both to develop their national industries and to raise public revenues.
494 Stiglitz and Charlton note as well that the fair play model fails to take account of the
495 often excessive costs involved in instituting and implementing fair trade practices.

496 Finally, and in some ways, most importantly, because of its national bias and its con-
497 tinued commitment to protect certain industries, the fair play doctrine has allowed
498 liberal-minded politicians to defend the continued existence of international trade-
499 restricting tariffs, subsidies, and regulations with respect both to trade in agricultural
500 products and services (Stiglitz and Charlton, 2005).

501 In keeping with their reading of Rawls' *Theory of Justice* (1970), Stiglitz and
502 Charlton insist that a fair system of international trade ought to be one that not only
503 operates in terms of liberal principles of free choice to liberalize trading arrange-
504 ments but also works to the advantage of the least advantaged peoples (Stiglitz and
505 Charlton, 2004). That is, the situation of developing countries ought to be improved
506 and not aggravated as a result of way the rules governing international trade are
507 interpreted and applied. Stiglitz and Charlton make a number of proposals.

508 First, they set forth in principled terms guidelines on thinking about the "Special
509 and Differential Treatment" for which developing countries supposedly qualified
510 in keeping with the charter that established the WTO. In practice the language
511 of "special and differential treatment" has been used to extend the deadlines by
512 when developing countries have to comply with a number of the WTO regula-
513 tions. In addition, Stiglitz and Charlton propose a couple of basic principles with
514 respect to market access. These guidelines are as follows. One, countries with larger
515 economies and larger per capita incomes should establish no barriers to trade arriv-
516 ing from countries with smaller economies and lower per capita incomes. Two, in
517 order to help their own economies to grow, countries with smaller economies and
518 lower per capita incomes can impose tariffs on goods and services arriving from
519 countries with larger economies and higher per capita incomes. Stiglitz and Charlton
520 defend these standards as being procedurally fair because they apply the same to all
521 countries and fair in keeping with norms of just distributions because these standards
522 would both foster increased trade, which is advantageous to all, and would espe-
523 cially help the poorest countries to enter into trading relations in ways that would
524 facilitate their own development.

525 Second, Stiglitz and Carlton argue that a system of international trade only
526 becomes genuinely fair when all countries have comparable capabilities to partici-
527 pate in this system. Here the authors are focusing on practical matters. For example,
528 all countries, they argue, should have equivalent opportunities to assess the conse-
529 quences for their own economies when alternative trading arrangements are being
530 discussed. The WTO ought, therefore, to provide the research services that would
531 help each country to gain a good sense of the economic impact of alternative regu-
532 lations and trading regimes. Additionally, each country ought to be able to call upon
533 relevant legal and accounting services so they are not disadvantaged in trade nego-
534 tiations and dispute resolution conferences. If the least developed countries cannot
535 afford these services, then by some means these services ought to be made available
536 for them. In practice the prevailing fair play model overlooks these discrepancies,
537 which greatly disadvantage poorer countries.

538 Third, Stiglitz and Charlton make a number of specific recommendations with
539 respect to the items discussed as part of the Doha Round of international trade nego-
540 tiations. Their aim here is to identify in general terms some modification in overall

541 systems of rules governing international trade which would both foster increased
542 liberalization of trade and do so in ways that would especially benefit poorer coun-
543 tries. Thus, with respect to the proposed General Agreement on Trade in Services
544 (GATS), they observe that poorer countries would especially benefit from changes
545 that would allow the temporary migration of low skilled laborers, who typically send
546 home remittances that greatly help their home economies. Stiglitz and Charlton
547 support as well proposed broad changes in the rules governing international agri-
548 cultural trade that would reduce tariffs and price supports for agricultural products
549 currently employed by the industrialized countries. They go on to note that while
550 these proposed changes are consistent with the general support for free trade, they
551 are likely to produce uneven benefits for poorer countries, helping larger producer
552 countries while raising food prices for consumers. They suggest some more specific
553 reforms, such as reducing tariffs for all tropical products, which are overwhelm-
554 ingly produced by poorer countries, as well as cotton. Stiglitz and Charlton suggest
555 specific foci for liberalizing trade in industrial goods, namely reducing the tariffs
556 for low-skilled manufactured goods from developing countries. By retaining these
557 tariffs, industrialized countries penalize developing countries from developing their
558 own value-added industrial processes. Stiglitz and Charlton propose that develop-
559 ing countries might focus greater attention on how they might use existing non-tariff
560 barriers for their own purposes. By and large dumping duties, countervailing duties,
561 and safeguards have been used by the large industrialized countries to the disad-
562 vantage of poorer countries. However, these authors note that in a number of cases
563 developing countries might well use these devices to their own advantage. Finally,
564 these authors examine the domestic costs involved in adjusting to more liberal-
565 ized trading arrangements. They offer a number of practical suggestions on how
566 to reduce and manage these costs.

567 As they make these proposals, Stiglitz and Charlton adopt a pragmatic posture.
568 Although they work to find principled justifications for the rules and policies they
569 propose, they demonstrate their own conviction that justice is often found in the
570 impact of detailed rules and practices on actual outcomes. A just and fair system
571 of international trade, while based upon universal principles and arrived at through
572 fair procedures, should also produce results that can be judged to be fair. Producing
573 these results often requires directing attention to assessing likely impact of pro-
574 posed changes, effects of alternative institutional arrangements, and consequences
575 of overlooked details.

576

577

578 ***9.3.3 Questions, Criticisms, and Dissent from Non-liberal*** 579 ***Perspectives***

580

581 Beginning in the late 1990s, a large number of North American labour and civil
582 society groups came together in a loosely organized anti-globalization movement
583 in opposition to the Multilateral Agreement on Investment (MAI) proposed by the
584 OECD. Canadian groups had been energized by the protracted debate over the
585 signing of CUSFTA, which had been a central issue in the 1988 Canadian federal

586 election. The movement's success in derailing the MAI led to them next targeting
587 the WTO. With slogans such as "No New Round: Turn Around," the WTO was
588 described by its opponents as a vehicle promoting the interests of large, multina-
589 tional business enterprises. Led by Global Trade Watch in the United States and
590 the Council of Canadians in Canada, hundreds of civil society organizations and
591 trade unions organized protests at the third ministerial meetings of the WTO in
592 Seattle in 1999. More than 1500 organizations world-wide endorsed a statement
593 entitled "Shrink or Sink" opposing trade liberalization (often simply equated with
594 globalization) and calling for a trimmed-down WTO. The protests, sometimes vio-
595 lent, succeeded in shutting down the WTO talks. The failed Seattle talks meant that
596 trade discussions would occur "in an increasingly competitive environment where
597 newly emboldened developing states would seek greater concessions from wealthy
598 states, while civil society group agitated to bring their agenda of accountability,
599 transparency, legitimacy, equity, and representation to the bargaining tables" (Ayres
600 and Macdonald, 2007: 27). In 2000 more than 100 civil society groups met in Boston
601 over four days to map out next steps in the anti-globalization movement. Led in part
602 by North American groups, the movement staged protests in Genoa, Prague, and
603 Quebec City over the next couple of years. Consistent with the long tradition of
604 protectionist thinking in North America, the anti-globalization movement warned
605 of the destruction of local and national economies by unfettered trade between high
606 and low wage states. This movement also was energized by the view that trade liber-
607 alization initiatives downplayed a wide range of environmental issues as well as the
608 plight of developing countries, and put economic efficiency ahead of basic needs,
609 social justice, and communitarian values.¹

610 These critics raised serious questions about current patterns of international
611 trade and investment. For example, there is a deep and wide-spread suspicion
612 that current systems of global trade are designed primarily for the benefit of large
613 corporations. These systems, many North Americans argue, put the economic inter-
614 ests of large businesses ahead of human needs, varied cultural values, and even
615 citizen's rights. These critics maintain that the current international trade arrange-
616 ments favor the copyright entitlements of pharmaceutical companies over health
617 needs of AIDS patients in developing countries, support economic growth over
618 democratic involvement, and work to advance the success of businesses over en-
619 vironmental concerns (McMurtry, 1998; Saul, 2005; Daly and Cobb, 1989; Korton,
620 1996). These critics point to the ways trade and investment policies tend to reflect
621 very much the successful influence-playing of large, powerful, organized business
622 groups to the disadvantage of civil society and trade labor movements (Gawande
623 and Hockman, 2006).

624 Other North Americans especially interested in the condition of the working
625 classes have opposed the liberalization of trade in products and services because
626 they believe that these liberalizing moves have directly and unfairly aggravated
627

628
629 ¹This description of the loosely-organized oppositional movement to economic globalization is
630 from Alain Roy (2010).

631 domestic unemployment and reduced the real wages of thousands of workers.
632 Certainly the steady growth in the number of workers hired conditionally on part
633 time and/or temporary contracts has taken place during the eighties and nineties as
634 international trade has steadily grown. Additionally, large numbers of Canadians and
635 Mexicans have been especially suspicious of the role played by the United States
636 both within NAFTA and the WTO unfairly to further its interests to the disadvantage
637 of its neighboring trading partners.

638 This deeply-rooted divergence of views with respect to fairness in international
639 trade is not likely to diminish if left to its own devices. Any proposals regarding
640 fairness in international trade are likely to meet with challenges if not opposition.
641 This fact makes it very difficult to arrive at a common position within or among the
642 nations of North America. Comparable differences of view exist among the other
643 nations and peoples of other continents.

644

645

646 **9.4 Open Political Processes and Fundamental Considerations**

647

648 Given the asymmetrical relations among these countries, decidedly different views
649 regarding the importance of international trade, and different assumptions regard-
650 ing fairness in trade, it is not likely that we can identify a set of first principles that
651 will provide common reference points for transcending these differences. However,
652 it may be possible to move forward towards more common trading arrangements
653 by first acknowledging these differences and then considering their implications.
654 Ultimately, this may lead to consensus about several elements that need to be con-
655 sidered as basic and fundamental as people think about current international trade
656 patterns and ways to reform them.

657 In the paragraphs that follow, we discuss five considerations that are relevant to
658 the ongoing highly value-laden – and typically ideologically informed – debates
659 over international trade, debates that variously invoke the values of fair play, dis-
660 tributive justice, and respect for local interests, civil society, and the environment.
661 We do not argue that these five basic considerations will overcome differences in
662 normative views. Rather, we do contend that these considerations can gain assent
663 from opponents as well as proponents and, further, that they can serve as mediating
664 values to foster possible compromises regarding fair trading relations. We discuss
665 four of these considerations in this part of the essay and the fifth consideration in
666 the last part of this essay.

667 One: Any workable approach to establishing greater fairness in international
668 trade needs to be flexible and respectful of local traditions and institutions. Dani
669 Rodrik, a Harvard economist, makes a strong economic argument for this point.
670 He notes that national economies have developed using quite different policies.
671 Countries that have been able to develop have done so because they have found ways
672 to marshal their own energies, utilize their own institutions, and draw upon their own
673 resources in effective ways (Rodrik, 2007, Chapters 1, 2, 3, and 8). The WTO, there-
674 fore, ought to utilize its energies not to harmonize these differing policies of trading
675 countries but to facilitate negotiations and exchanges between countries that will

676 inevitably approach trade and development in different terms. The efforts to create
677 what fair play liberals refer to as a level playing field operate to ignore, under-value,
678 and/or treat these national cultural and institutional differences as problems to be
679 overcome rather than assets to be respected.

680 An equivalent argument can be made in more strictly ethical terms. Humans have
681 crafted and followed diverse ethical traditions associated with their religions, eth-
682 nic traditions, political beliefs, legal practices, and cultural values. They are most
683 likely to arrive at common moral understandings as they seek to address specific
684 historically contingent issues – such as, banning land mines or managing intractable
685 debts of the least developed countries—and as they explore ways of fostering civil,
686 reciprocating, communications across these differences (Bird, 1996).

687 Two: Any viable system of fair international trade must be articulated in terms
688 of institutions that make markets possible as well as market principles themselves.
689 Fair play liberalism tends to take these institutions for granted focusing attention
690 instead on procedures and principles. Dani Rodrik addresses this point as well, while
691 defending liberal economic ideas as basically sound. In order for markets to work
692 effectively, he argues, governments and civil societies need to establish and maintain
693 a range of political, legal, economic, and social institutions that provide a variety of
694 infrastructural supports for markets. These include not only the identification and
695 protection of property, the definition and enforcement of contracts, and the delin-
696 eation and maintenance of rules of competition, but also establishing and protecting
697 systems of credit as well as currency exchanges.

698 In addition, markets are unable to operate freely and effectively when govern-
699 ments are not able to provide public order and security. Markets work best where
700 governments are also able to support educational systems that help prepare citizens
701 to take places in the work force and to provide social insurance safety nets to assist
702 workers in managing the economic insecurity associated with economic cycles and
703 volatile labor markets (Rodrik, 2007, Chapters 4, 5, and 6). Dan Finn, an American
704 theologian and economist, has made a comparable argument in ethical terms, call-
705 ing attention to what he refers to as “The Moral Ecology of Markets.” (Finn, 2006,
706 Chapters 6, 7, and 8). The freedom of markets, he explains, is made possible by sets
707 of fences that protect markets from diverse threats. Liberals and conservatives dis-
708 agree about the number and nature of these threats and how the protective fencing
709 ought to be best established. Although they often presume their existence, liberals
710 and conservatives don’t disagree on the need for some kinds of institutions and reg-
711 ulations to establish and protect markets. With these observations in mind, we can
712 correspondingly argue that international trade regimes should minimally operate in
713 ways that do not undermine the capacity of national governments to provide the
714 requisite infrastructural and institutional supports for effective market operations.

715 Three: In a fair system of international trade each country should be able to exer-
716 cise basic bargaining power on its own behalf. As we observed above, Stiglitz and
717 Charlton have directed attention to this point. The WTO was established as a multi-
718 party arena in which countries would negotiate with each other to establish rules
719 for international trade, would develop particular trading arrangements, and would
720 raise and settle disputes about trade. Inevitably, some countries exercise more power

721 in these negotiations because they control access to certain vital resources (oil or
722 certain manufactured goods, for example, or certain valued currencies), they have
723 larger economies, their economies are less dependent on foreign trade, and/or they
724 can variously influence the positions other countries take. For all of these reasons,
725 the United States, for example, wields disproportionate power compared, for example,
726 to Mexico or Canada. These variations in effective power are, in large part,
727 inevitable outgrowths of historical developments. However, in spite of these differences,
728 each country should be well-equipped and empowered to represent its
729 vital interests. That means, at a minimum, that each country should have access
730 to accountants, economists, and lawyers to represent and defend its interests adequately.
731 Most of the less and least developed countries have not been in position to
732 well-represent their own interests by means of effectively prepared lawyers, accountants,
733 and fact-finders in many trade negotiations and dispute resolution sessions. At
734 a minimum, a fair system of international trade should move to reduce this basic
735 inequality.

736 The rationale for this position is well-articulated by the basic ethical standards
737 associated with commutative justice. This approach to justice, articulated traditionally
738 by both Aristotle and Aquinas, has not recently received as much attention
739 as the several well known and widely discussed efforts to define and defend standards
740 for distributive justice and procedural justice. Ideas of commutative justice
741 call for fair exchanges based on free choice, full disclosure of all relevant information,
742 and adequate support for the systems of institutions and rules that make these exchanges
743 possible. Commutative justice is associated with reciprocal but not necessarily equal
744 and symmetrical relations. It is possible to develop and to sustain reciprocating,
745 mutually satisfactory, but unequal relationships between parents and children,
746 masters and servants, public officials and citizens, professionals and their clients,
747 as well as employers and employees. Although asymmetrical, these relationships
748 remain reciprocal and fair so long as both parties can initiate interactions and
749 help set agendas; both remain responsive to the voiced interests of the other; and
750 both agree to end negotiations only when both consent. Ideas of commutative justice,
751 rightly and broadly understood, have considerable relevance for international
752 trade.

753 These ideas indicate how countries should approach and engage in negotiations,
754 that is: on the basis of full disclosure, with neither party being forced to take positions
755 to which they do not freely consent. Further, trading relationships should support
756 and not undermine the institutions that make these trading relationships possible.
757 Correspondingly, these relationships should support and not undermine the administrative
758 capacity of national governments to establish the rules and institutions that make
759 international trade possible. Most importantly, from the perspective of commutative
760 justice, each party engaging in exchanges judged to be fair should be equivalently
761 able to state its cases, bargain, raises complaints, and make appeals. Negatively
762 expressed, a party unable to exercise this minimum level of capacity lacks the
763 corresponding ability to state and choose positions based on full access to relevant
764 information. Many of the standards associated with commutative justice accord
765 well with the focus of fair play liberalism on free choice, reciprocity, and

766 full disclosure. Commutative justice, however, calls for greater efforts to insure that
767 those engaged in negotiating exchanges can do so with basic capabilities to state
768 and defend their positions (Bird, 2006).

769 Four: A fair system of international trade ought to be well integrated with
770 national and regional and local systems of trade: that is, it should support and
771 not undermine less distant patterns of commerce in so far as the latter are effective
772 and efficient. Fairness calls for a fitting balance between local and distant
773 trade. Ordinarily, trade initially develops locally. Within specific locales, districts,
774 provinces, countries, and regions, trade and commerce grow. Most trade is not in the
775 beginning distant. Local trade in turn fosters local economic development as well
776 as the development of local infrastructures. These include not only physical infras-
777 tructures like roads, canals, water systems, sewage systems, and electrical systems
778 but also the economic, social, and legal infrastructures that occasion, support, and
779 protect the development of local markets. Local trade in turn helps to develop webs
780 of interactions between individuals, enterprises, and communities involved. People
781 enter into exchanges, which in turn are seen as being in the interests both of each
782 and all who participate in these exchanges.

783 In a number of places the emphasis on the value placed on local trade has been
784 expressed in WTO documents. Thus, the document on intellectual property rights
785 allows countries to override patent laws in order to protect the health and security
786 of their population. Moreover, as part of the final efforts to arrive at an agreement
787 with respect to the Doha round of negotiation, trade ministers agreed in Hong Kong
788 (CRS, 2006) countries could act to restrain international trade in order to protect the
789 food security, the livelihoods of workers, and the rural economies of their people
790 (CRS, 2008).

791 Countries often engage in distant trade in order to enhance local trade. They
792 seek out items not available locally – technologies, fuels, minerals, spices, produce,
793 skilled workers, low-cost supplies, etc. They seek to sell items in order to obtain
794 foreign exchange values, with which they can purchase items otherwise not available
795 locally. Within reasonable measures, it has been acceptable for countries to institute
796 tariffs in order to protect infant industries and local trade against the threat posed
797 by international businesses and trade. Most of the industrialized countries protected
798 their industries as they were developing. The fastest growing Asian countries all
799 protected their infant industries. For the most part the African and South American
800 economies more clearly grew as they followed import substitution policies in the
801 sixties and seventies than when they later abandoned these policies (Rodrik, 2007,
802 Chapter 1; Chang, 2007, Chapters 2, 3; Wade, 1990).

803 Anti-dumping regulations have been instituted in part to protect local trading
804 arrangements from being undermined by foreign enterprises selling products at
805 costs below normal market value. By WTO rules countries may judge that fore-
806 ign products are being sold at “dumping” prices” if they can demonstrate that
807 products sold at these prices meet the following criteria: One, foreign products
808 sold at these prices put their own domestic industry at risk and, two, the foreign
809 firms are selling at below market value. Countries, which judge that they have been
810 harmed by sales at “dumping” prices, can then impose anti-dumping fees in order

811 to protect and compensate domestic firms. For the most part, anti-dumping rules
812 have been used without any clear pattern by some of the larger economies – the
813 USA, India, the EU, Argentina and South Africa—against other large economies –
814 China, the EU, the USA, and Japan—as well as some smaller countries like Taiwan
815 and South Korea. Potentially, developing countries might make much greater use of
816 anti-dumping rules, especially to protect their local agricultural industries in foods
817 and agricultural by-products.²

818
819

820 **9.5 Fairness and Transfer Pricing**

821

822 A fair system of international trade should especially work to counter and limit a set
823 of questionable, deceptive, and often illegal trading practices – including corrup-
824 tion, abusive transfer pricing, and false pricing – that utilize public trading systems
825 for private advantage. While we contend that all three warrant attention from the
826 WTO, we choose to highlight abusive transfer pricing of internationally traded
827 goods and services for several reasons. One, developing countries probably lose
828 as much or more by these practices than by the skewed rules with respect to inter-
829 national trade in agriculture goods and by-products. Two, the continued poverty of
830 the least developing countries, reinforced by these practices, occasions and under-
831 girds political instability in these areas (Collier, 2007). Three, these practices result
832 in market distortions with corresponding miss-information about actual supplies
833 of, and demand for, items in question. Finally, these practices help to accentuate
834 the excessive and politically unaccountable influence of off-shore financial centers
835 (Baker, 2005; Ramos, 2007).

836 *What is a transfer price?* As firms become decentralized in operation, transac-
837 tions occur between segments as well as with external entities. Transactions between
838 a given segment of a firm and a party outside the firm are readily priced by the
839 prevailing market forces of supply and demand. However, transactions between
840 autonomous segments within a firm are more difficult to manage and are often sub-
841 ject to significant distortion by firm management (see Desai et al., 2006; Kozlow and
842 Abaroa, 2006). The amount charged in these within-firm transactions is referred to
843 as the transfer price (Garrison et al., 2006).

844 The transfer price directly affects the allocation of profit to the segments; a higher
845 transfer price results in greater costs for the purchasing segment, reducing income
846 for that segment. For a firm operating internationally, the incentives and a mecha-
847 nism (i.e. transfer pricing) are in place for firm managers to shift income to low tax
848

849

850 ²Anti-dumping rules will remain controversial because of the difficulties and disagreements asso-
851 ciated with standards and processes used to determine “normal market value.” Market values
852 clearly vary. It seems illegitimate to use market prices in other industrialized countries to determine
853 whether or not firms in developing countries are selling products at “dumping” prices. Nonetheless,
854 industrialized countries have invoked these kinds of standards. It would seem to be much fairer if
855 dumping prices were determined in relation to the actual local costs of production (Stiglitz, 2007,
2006).

856 **Scenario One – 100 units at \$10 per unit**

857

	Segment A	Segment B	Corporate
858 Revenue	\$-	\$1,000.00	\$1,000.00
859 Costs	\$1,000.00	\$-	\$1,000.00
860 Effect on Income	\$(1,000.00)	\$1,000.00	\$-
861 Tax Rate	20%	30%	
862 Effect on Taxes	\$(200.00)	\$300.00	\$100.00

863

864

865 **Scenario Two – 100 units at \$1 per unit**

866

	Segment A	Segment B	Corporate
867 Revenue	\$-	\$100.00	\$100.00
868 Costs	\$100.00	\$-	\$100.00
869 Effect on Income	\$(100.00)	\$100.00	\$-
870 Tax Rate	20%	30%	
871 Effect on Taxes	\$(20.00)	\$30.00	\$10.00

872

873 **Fig. 9.1** Transfer price illustration

874 regimes, thereby avoiding tax obligations in a high tax regime (see Dean et al., 2008, Kuschnik, 2008). This is illustrated in Fig. 9.1 where Segment A buys from Segment B at different prices in the two scenarios. All else equal, because the tax rate is higher where Segment B operates, a lower transfer price yields a reduced tax burden for the corporation (i.e. \$10 versus \$100). Empirical evidence presented in the accounting and tax literatures is consistent with this occurring in practice (e.g. Swenson, 2001; Clausing, 2006).

875 *A global issue.* There is significant evidence that transfer pricing is a global issue of importance to business managers, accounting firms, governments and advocacy groups. Neighbor and Owen (2002) report that in 2001, 60 percent of world manufacturing trade was comprised of transactions involving transfer pricing. All four major accounting firms (Deloitte, Ernst & Young, PricewaterhouseCoopers and KPMG) have significant operations dedicated directly to transfer pricing activities and several publish strategy guides (Deloitte, 2007; PricewaterhouseCoopers, 2006; KPMG International, 2008).

Ernst & Young publish a biennial survey of multinational enterprises focusing on transfer pricing. In the 2007–2008 edition, 850 firms were surveyed and nearly 40 percent of respondents reported that transfer pricing was the single largest tax issue to be faced (Ernst & Young, 2008). In addition, 75 percent believe that transfer pricing will be “absolutely critical” or “very important” in the next two years and over half have been subjected to review by a revenue authority since 2003 (Ernst & Young, 2008). Finally, over half of those audited were subjected to a transfer price adjustment as a result of the review, suggesting either broad confusion around complying with transfer pricing regulation or deliberate manipulation. In addition to management concerns, various inter-government organizations around the globe are involved with the orchestration of international trade. All of these organizations, to greater or lesser degree, take a position or advocate policy on transfer pricing – World Customs Organization (WCO), Organization for Economic Cooperation and Development (OECD), WTO, United Nations (UN), United Nations Conference on Trade and Development (UNCTAD), World Bank, European Commission and many others. Taken together, these results suggest that transfer pricing is an especially important global issue.

North American perspectives. Exposure to transfer pricing as a significant issue is, of course, correlated with the prevalence of trade conducted by multinational firms in the home country. As a result, for North American firms, those in the United States and Canada have a disproportionate interest in transfer pricing policy relative to Mexico. This is supported by the Ernst & Young survey findings (2008). Managers in Canada and the US report that transfer pricing is critical or very important at 96 percent and 73 percent, respectively. Just 56 percent of Mexican firm managers respond similarly.

More than 80 percent of Canadian and US firm managers reported being subject to an audit by a revenue agency since 2003. Just 8 percent of Mexican managers responded similarly. The global average was 52 percent, suggesting that within the North American region, the experiences with respect to transfer pricing are extreme. A recent survey on North American transfer pricing issues published by PricewaterhouseCoopers (2006) observes that the transfer pricing situation in North America is relatively stable, as compared to the rest of the world. This is reflective of the fact that US law has incorporated transfer pricing policy in some form since 1928 (Kuschnik, 2008). In contrast, in many developing countries the transfer pricing rules are less than a decade old (O’Brien and Oates, 2008). The overall complexity of the transfer pricing problem is increasing in North America, as in the rest of the world (see PricewaterhouseCoopers, 2006; Taylor, 2008; Dean et al., 2008).

Conditions are similar in Canada and the US. Both countries have seen regulatory changes in the mid-1990s to address various issues such as pricing of services and intangibles as well as an increase in audit frequency and intensity (O’Brien and Oates, 2008; PricewaterhouseCoopers, 2006). This is consistent with the Ernst & Young survey data, which reports that 84 and 92 percent of Canadian and US respondents expect to be audited again within two years (2008). As of 2003, the US requires contemporaneous data from both sides of each transaction, increasing

946 the need for, and benefit from, greater multinational coordination and information
947 sharing.

948 Mexico is unique among North American countries at this point. Transfer policy
949 is relatively new (PricewaterhouseCoopers, 2006) and is being developed in a man-
950 ner consistent with OECD policy (as opposed to US and Canadian policy, the origin
951 of which predates the OECD Guidelines). The Ernst & Young survey results are
952 consistent with a system that is under development and is moving toward the global
953 position (2008). For instance, few respondents report being audited (8 percent),
954 however, nearly half expect to be audited within the next two years and over half
955 consider transfer pricing to be an issue of significant importance (Ernst & Young,
956 2008). The first legal challenges to transfer pricing audit decisions and adjustments
957 are beginning to reach the courts in Mexico (PricewaterhouseCoopers, 2006), so an
958 increase in litigation and legislation is likely on the horizon.

959 *Ethical dimension.* The majority of the writings on transfer pricing are centered
960 on whether it occurs (see Clausing, 2006; Desai et al., 2004), the mechanics of
961 complying with the legal requirements (see O'Brien and Oates, 2008), and on the
962 wisdom of tax avoidance as a business practice (see Dean et al., 2008). However,
963 evidence supports the assertion that transfer pricing has resulted in enormous trans-
964 fers of wealth from developing to industrialized countries. Baker estimates that the
965 amount of taxes correspondingly lost to developing countries per year amounts to
966 tens of billions of dollars (Baker, 2005). Abusive transfer pricing practices without
967 question violate standards associated with distributive, commutative, and procedu-
968 ral justice, yet very little discussion of the ethical components of the behavior is to
969 be found.

970 One notable exception is Hansen et al. (1992) who directly address the ques-
971 tion of whether transfer pricing is an ethical dilemma. They begin by making the
972 case that tax avoidance is appropriate and is consistent with existing regulations.
973 As a result, firm managers making internal decisions that do not violate existing
974 law are simply being smart managers minimizing costs. Further, maximizing profits
975 is a morally defensible policy that is the ultimate social responsibility of the firm
976 (Friedman, 1970). This position is consistent with the perspective (often tacitly)
977 championed in the existing literatures. The authors then present the "moral ethical
978 view" to contrast the "tax ethical" view that dominates the discourse:

979 This common principal, which is the heart of ethical action, is the willingness to sacrifice
980 one's self interest for the well-being of others. This ethical principle does not preclude the
981 pursuit of profits by an organization. In planning, controlling, and making decisions, how-
982 ever, managers should always consider the impact of their actions on others, both within
983 the organization and without. Thus, the objective of profit maximization should be con-
984 strained by the requirement that profits are achieved through ethical means. (Hansen et al.,
985 1992: 684).

986 The authors then make a key distinction: profit maximization and tax avoidance
987 are certainly acceptable; however, altering the transfer pricing arrangement from
988 what it "normally" would have been to avoid paying taxes that would have been
989 due is ethically untenable. In other words, they conclude that "tax avoidance does
990 not provide an exemption from ethical behavior" and that there needs to be more

991 concern with “what is right than with technical compliance with the law” (Hansen
992 et al., 1992). That is, the pursuit of profit must be tempered by accountability to a
993 more general standard of well-being.

994 The fact that transfer pricing practices within a firm can have far-reaching effects,
995 including shifts in government tax receipts, is certainly not disputed. The notion of
996 tax avoidance simply being appropriate business practice dominates the discourse.
997 The necessary consequence of this practice – the ability or inability of the revenue
998 agencies to provide funds to support the well-being of the community represented
999 by that government – is rarely directly addressed.

1000 *The role of the WTO.* This global concern and the involvement of myriad parties
1001 are leading to tremendous complexity in transfer pricing policy. OECD Guidelines,
1002 including the position that an arm’s length standard – the price that would have been
1003 negotiated had the buyer and seller been independent entities – should be applied,
1004 currently dominate (Wundisch, 2007; Dean et al., 2008; van Hilten, 2002); how-
1005 ever, there is disagreement about the scope and applicability of the Guidelines (van
1006 Hilten, 2002). Further, the proscription that an arm’s length transaction approach be
1007 applied does not suit a great many transactions where an arm’s length price cannot
1008 be determined, leaving open the question of what firm management should do in
1009 these instances (Kuschnik, 2008).

1010 In a piece designed to prompt debate around the political strategies related to
1011 transfer pricing, Wundisch (2007) argues that the variation in policy, and the uni-
1012 lateral action taken by individual governments, is costly to economic trade by
1013 creating confusion and increasing risk. Kuschnik (2008) asserts that cooperative
1014 work environment among nations would be of great assistance in addressing trans-
1015 fer pricing challenges. The common thread is that in a matter of global concern,
1016 global cooperation as opposed to unilateral action is the key to resolving these
1017 issues.

1018 Taken together, the overall picture of transfer pricing is one of global signifi-
1019 cance, ethical considerations and complexity. As such, it may be that the WTO is in
1020 a relatively unique position to weigh in on future transfer pricing policy; however,
1021 the Organization for Economic Cooperation and Development (OECD) currently
1022 sets the global tone in terms of transfer pricing standards (Kuschnik, 2008) while
1023 the WTO is largely silent on the issue. The OECD has 30 members, dominated
1024 by developed nations in Europe, but “shares expertise” with more than 100 addi-
1025 tional nations (OECD, 2008). By contrast, the WTO has 152 members, including
1026 significant numbers of developing economies. Given the need for broad international
1027 membership as well as international cooperation, it would seem that the WTO would
1028 be a natural body to take a forceful role in shaping transfer pricing policy going for-
1029 ward. Raymond Baker argues that the WTO should “place honest pricing firmly on
1030 its agenda, because false pricing distorts free and fair trade and moves more illicit
1031 money across borders than any other single mechanism.” (Baker, 2005: 349).

1032 A number of people have urged the WTO to become the champion for human
1033 rights and environmental concerns – issues already covered by other global institu-
1034 tions, like the International Labor Organization and varied international associations
1035 working for sustainable development, climate controls, and bio-diversity. Given its

1036 current difficulties, the WTO may or may not have the ability to take up these con-
1037 cerns. In the meantime, it remains both the special and central mandate of the WTO
1038 to work to foster and facilitate the international trading relationships and, therefore,
1039 to identify and limit trading activities that directly undermine transparent rule-
1040 regulated trading like the practice of abusive transfer pricing. Further, the parties
1041 involved and the tax structures implicated make this one of the most daunting issues
1042 facing international trade. It is this very degree of complication, combined with the
1043 potential economic significance of transfer pricing policy, that make the topic appropri-
1044 ate for inclusion when discussing the WTO and the ethics of international trade,
1045 regardless of the region of the globe under consideration.

1047 **9.6 Conclusion**

1049 Many people and countries have benefitted as international trade has expanded
1050 during the second half of the twentieth century. After surveying the history of inter-
1051 national trade since primitive times, William Bernstein concludes that this post
1052 Second World War expansion of trade has often worked especially to the advan-
1053 tage of poor households, both as consumers and producers. The proportion of the
1054 world population that was impoverished declined during these years, especially
1055 in the sixties and seventies (Bernstein, 2008, chapter 14). Moreover, those coun-
1056 tries least connected with these systems of international trade remained the most
1057 poverty-stricken (Group of Lisbon, 1995; Legrain, 2003). However, internationally,
1058 regionally, nationally, and locally, all systems of trade produce winners and losers.
1059 As the often-cited essay by Stolper and Samuelson make clear, at any particular
1060 point in time and in ways likely to change over time, the benefits of expanding trade
1061 are likely to extend to certain but not all sectors of any one society. At varying times
1062 and in different countries, they argue, some but not all of those whose incomes
1063 and wealth derive from land, capital, and/or labor are likely to benefit (Stolper and
1064 Samuelson, 1941). Any system of trade is, therefore, likely to seem unfair to some.
1065 While NAFTA and the WTO have probably helped to occasion some plant closures
1066 and job losses, these trading arrangements have also in modest ways helped to nudge
1067 up the average levels of employment and wages in all three countries. Nonetheless,
1068 for complex reasons, related in large part to domestic taxation policies and salary
1069 practices, the overall levels of benefits have been decidedly skewed in all three coun-
1070 tries with the well-to do gaining proportionately and decidedly much more in terms
1071 of opportunities, wealth, and income.

1073 North Americans have correspondingly adopted a range of positions with respect
1074 to international trade. Because of the asymmetrical relations between them, Mexico,
1075 Canada, and the United States have developed different views of fairness in inter-
1076 national trade. Additionally, within each country, citizens have supported varied
1077 positions regarding foreign trade. Protectionist sentiments have been fueled both
1078 by economic nationalists and by those who in the name of environmental con-
1079 cerns and human rights have opposed economic globalism. In so far as they seek

1081 to enhance international trade, many citizens, industry representatives, and politi-
1082 cians have favored bi-lateral or regional trade agreements as being both more easily
1083 established and maintained. As the Doha round of multilateral negotiations faltered,
1084 North American governments at the same time were taking steps at establishing varied
1085 bi-lateral and regional agreements with other Western Hemisphere countries as
1086 well as with countries in Europe and Asia. Nonetheless, at the same time the govern-
1087 ments of these countries have generally supported efforts to expand and liberalize
1088 international trade through the WTO.

1089 As they have argued for and against expanding and liberalizing the rules govern-
1090 ing multilateral trade, North Americans have readily invoked ideas of self-interest
1091 as well as ideas of justice, which they have in turn variously formulated in relation
1092 to concerns for fair procedures, fair distributions, and/or fair exchanges. Notions of
1093 fairness have correspondingly been invoked to stress the importance of rules, trans-
1094 parency, proportionality, equity, absence of corruption, absence of discrimination,
1095 and due process. Ideas of fairness have been referred to in order to call for both the
1096 fitting balance between rewards, risks, efforts, and investments as well as impartial
1097 and impersonal deliberations and adjudications. While some have called for poli-
1098 cies for equalizing opportunities – placing emphasis on fair procedures – others
1099 have called for greater attention to outcomes that can reasonably be called just –
1100 placing emphasis on whether the results of these processes seemed fair.

1101 There is little likelihood of resolving this debate once and for all. There are too
1102 many parties with different interests, even in an area as delimited and as closely
1103 linked by international trade as North America. Politics within nations in good mea-
1104 sure involves continuing argumentation over these and other issues and continuing
1105 efforts to respond to, address, and balance the interests of diverse parties. The funda-
1106 mental argument is that fairness exists within political systems if the various major
1107 social formations believe, however begrudgingly, that the balancing of procedural,
1108 distributive, and commutative perspectives is acceptable.

1109 At the same time, as these political debates continue, we have argued that it
1110 would be useful to identify and acknowledge several considerations that might well
1111 serve as common points of reference. These include not only the need for flexibility
1112 and the importance of supporting both national and international trade supporting
1113 institutions. They also include the need to develop arrangements so that each coun-
1114 try has the basic capacity to bargain for its own interests. They include as well the
1115 recognition that international trade ideally should act to support, complement, and
1116 extend local, national, and regional trade and that the possibility to debate how to
1117 balance these interests must remain open. Finally, we have argued that international
1118 system of trade will remain both fundamentally flawed and unjust until more con-
1119 cert efforts are made to address the way the practices of abusive transfer pricing
1120 and false pricing distort international trading relations.

1121

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1125

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01 **Chapter 10**

02 **Fairness in International Trade: The Case**
03 **of Economic Partnership Agreements**
04
05
06

07 **Geoff Moore**
08
09
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13 *Any attempt to define fairness in global trade relations should*
14 *teach humility. Brown & Stern (2007: 316)*
15

16 **10.1 Introduction**
17

18 There are, perhaps, three reasons why humility is both required and will be learned
19 from studying fairness in international trade. The first is due to the inherent com-
20 plexity of international trade relations, which makes any attempt to grasp them
21 difficult and the danger of over-simplification rife. The second is that, if it were
22 possible to adequately summarise even a particular aspect of such relations, the
23 application of fairness principles is by no means straightforward. While there have
24 been numerous attempts to apply such principles, so that in one sense the ground
25 is well-trodden, the judgements that emerge do not necessarily bring the kind of
26 clarity that might be desired – in other words, judgments that such and such a prac-
27 tice is unfair and should be changed, or otherwise, are few and far between. Brown
28 & Stern, cited above, continue: “even if we could transcend the self-serving bias
29 inherent in the judgment of all interested parties, there is still no conclusive and
30 incontrovertible way of assessing fairness” (2007: 316). And this leads to the third
31 reason why humility will be required and learned, which is that fairness judgements
32 on particular aspects of international trade relations, even if they were to be clear
33 and unequivocal, may not lead to any change by those deemed to have infringed fair-
34 ness towards those who are on the receiving end of such acts. Humility is involved
35 in finding that one’s work may lead to nothing substantive by way of change “on the
36 ground” – where it really matters.
37

38 Despite these three reasons, any one of which might seem to be enough to per-
39 suade one not to embark on this particular journey, this chapter sets out to explore the
40 case of Economic Partnership Agreements (EPAs). These are bilateral trade agree-
41 ments between the European Commission (EC) and various groupings of African,
42

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Caribbean and Pacific (ACP) countries, which have been the subject of intense negotiations leading up to and beyond the deadline of 31 December 2007 by which all such agreements were due to be set in place. The case of EPAs, therefore, provides both a timely and an excellent test case for exploring the fairness or otherwise of trade relations between developed and developing countries.

The chapter begins by setting out the background to international trade relations between the EC and developing countries before turning to look at EPAs themselves in more detail and the effects that have been predicted on the developing countries if EPAs were to be introduced in the way envisaged, together with a number of associated issues related to the introduction of EPAs. The chapter then comments briefly on a “Stop EPAs” campaign that has been run by NGOs for a number of years, before presenting and commenting on the current position showing which EPAs have been signed. The literature on fairness in international trade is then reviewed and, to some extent, extended and applied to the case of EPAs. Conclusions which, as might already be predicted, are somewhat tentative, but do raise some new issues are then drawn.

10.2 The Background to EU–ACP International Trade Relations

When the European Communities, as they were originally known, were founded in 1957 by the Treaty of Rome they rapidly established preferential relations with the ACP countries that had recently gained independence from their former colonial masters (Lang 2006: 1). From 1975 until 2001 trade relations between what became the European Union (EU) and the ACP countries were governed by the four Lomé Conventions. These represented a form of the EU’s Generalized System of Preferences (GSP) which “put ACP countries at the top of the pyramid of preferences granted by the EU to developing countries” (Ochieng 2007: 367). These have provided ACP countries with “a very favourable trade regime, a substantial aid budget, and a set of joint institutions” which has meant that “ACP exporters have generally enjoyed a tax advantage over some of their competitors when selling products facing tariffs into the European market” (Stevens 2006: 442). These trade relations have been non-reciprocal in the sense that ACP countries have not been required to assume corresponding obligations to allow tax advantages to imports originating in EU countries (Ochieng 2007: 367).¹

¹Such preferential treatment is allowable under what is known as the “Enabling Clause”, but is officially the “Decision on differential and more favourable treatment, reciprocity and fuller participation of developing countries” that was adopted by the General Agreement on Tariffs and Trade (GATT) in 1979. The Enabling Clause provides the legal basis for the World Trade Organisation’s (WTO) GSP by which developed countries offer non-reciprocal preferential treatment (e.g. zero or low duties on imports) to products which originate in developing countries. Preference-giving countries can unilaterally decide which countries and which products to include. See www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm, accessed 12/12/08.

91 However, such non-reciprocal arrangements have become increasingly open to
92 challenge in the World Trade Organisation (WTO) because they were seen to dis-
93 criminate against other developing countries (Powell 2007: 8). There is, therefore,
94 immediately an issue of fairness between one set of developing countries and
95 another set, as well as the possibility that such other developing countries might
96 mount a legal challenge based on the General Agreement on Tariffs and Trade
97 (GATT) Article XXIV (see further below). Indeed Peter Mandelson, the former
98 European Commissioner for Trade since 2004, has claimed that “other developing
99 countries are watching these final stages of our negotiations [over EPAs] like hawks”
100 (Mandelson 2007), precisely to ensure fair treatment between all parties and the end
101 of preferential treatment to ACPs. Despite this, there are a number of “special and
102 differential treatment” (SDT) provisions, most notably the notion of non-reciprocity,
103 that are enshrined in GATT articles and the Enabling Clause (Ochieng 2007: 391 and
104 see Ochieng 2007: 367 and Footnote 1) which might allow more flexibility.

105 The successor to the Lomé Conventions between the EU and ACP countries
106 was the Cotonou Agreement which was signed in 2000 for a period of 20 years.
107 This Agreement “aims to promote economic growth and development as well
108 as the smooth and gradual integration of ACP states into the world economy”
109 (Borrmann & Busse 2007: 403). Although a 20 year Agreement, from a trade per-
110 spective the time period is shorter because of the WTO-compatibility issue identified
111 above. Thus, at the WTO Doha conference in November 2001 a temporary waiver
112 was granted giving a deadline by which WTO-compatible reciprocal trade agree-
113 ments had to be signed of 31 December 2007. It has been the prospect of the end
114 of this temporary waiver that has led to the negotiation of the EPAs which are the
115 subject of this chapter.

116 The Cotonou Agreement placed these new arrangements under the jurisdiction of
117 GATT Article XXIV whereas previously under the Lomé Conventions the arrange-
118 ments were under the jurisdiction of the Enabling Clause. Article XXIV governs
119 Free Trade Agreements (FTAs) between states or groupings of states, and includes
120 the requirement that FTAs must eliminate tariff barriers on “substantially all trade”
121 (SAT) within a “reasonable length of time” (see Lang 2006, Ochieng 2007, Powell
122 2007). Article XXIV defines the time period stating that it should exceed 10 years
123 only in exceptional cases, such exceptions requiring specific justification. The exact
124 definition of “substantially all trade”, however, is not provided for within the Article
125 but is usually taken to mean a minimum of 80% (Busse & Grossmann 2007: 808)
126 allowing flexibility both over which 20% is omitted and whether this is divided
127 equally. Lang (2006: 12–13), however, states that the EU has traditionally argued
128 that liberalisation should extend to 90% of existing trade, but that this might be split
129 unevenly so that, for example, the EU could accept full liberalisation of 100% with
130 ACP countries committing to 80%. We will return to both these issues – of how
131 much liberalisation and over what period – when considering EPAs in more detail
132 below.

133 Despite the requirement to negotiate revised and reciprocal trade agreements,
134 the Cotonou Agreement, as noted above, is more broadly based and includes spe-
135 cific provisions for development strategies and priority for the objective of poverty

reduction, and a special focus on the Millennium Development Goals.² There is also a provision for a transitional period of up to at least 12 years on the new trade agreements, apparently in contradiction of the 10 year maximum under Article XXIV,³ although the U.K.'s Department for International Development (DFID) suggests such periods may be as much as 25 years.⁴ Both Powell (2007: 8) and Ochieng (2007: 382–3) draw attention to the objective of EPAs within the Cotonou Agreement as follows: “Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP states into the world economy, with due regard for their political choices and development priorities, thereby promoting sustainable development and contributing to poverty eradication in the ACP countries”.

This leads us on to consider two other aspects of the context within which EPAs have been negotiated. The first is the WTO itself which has become the subject of bitter dispute and anti-globalization protests such as those at Seattle (Elsig 2007: 75). While providing, as we have seen, the overall legal context within which trade agreements such as FTAs are to be negotiated by those countries which have chosen to become WTO members (such that GATT Article XXIV, for example, forms part of WTO Law – Ochieng 2007: 365), there remains a dispute over whether the WTO is a trade rather than development organisation, and so whether it should or should not “be burdened by broad development concerns of which it has no comparative institutional advantage” (Ochieng 2007: 383). Not surprisingly the EU takes a pro-trade stance in which trade liberalisation, greater integration of the world economy, the increasing role of the market and a correspondingly diminishing role of the state all form key elements. However, “ACP countries and a number of scholars object to this conception of the objects and purposes of both EPAs and the WTO” (*ibid.*: 384, and see also Griffith & Powell 2007: 7–11).

The Doha Development Round of the WTO which began in 2001, was suspended in July 2006 and resumed in February 2007, had, as its name suggests, a fundamental focus on the needs of developing countries and has foundered on the issues of market access and agricultural subsidies (IDC 2007: 10). Negotiations may, however, now be moving towards some form of resolution.⁵ The point in relation to EPAs, however, is that their WTO-compatibility, while not in dispute in itself and, indeed, part of the Cotonou Agreement (Lang 2006: 2), is subject to disagreement over what precisely such compatibility entails. Ochieng, for example, argues that the

²See http://ec.europa.eu/development/geographical/cotonouintro_en.cfm?CFID=2311138&CFTOKEN=de5549ec566e53bc-44BE1EAC-BCAD-6AE3-85FE869240E498A7&jsessionid=243062fb88384a375d62, accessed 12/12/08.

³See http://ec.europa.eu/development/geographical/cotonouintro_en.cfm?CFID=2311138&CFTOKEN=de5549ec566e53bc-44BE1EAC-BCAD-6AE3-85FE869240E498A7&jsessionid=243062fb88384a375d62, accessed 12/12/08.

⁴See, www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements.asp, accessed 12/12/08.

⁵See http://www.wto.org/english/tratop_e/dda_e/dda_e.htm, accessed 12/12/08.

181 EU takes a literal (textual) approach to the interpretation of WTO laws, an approach
182 described as “legally problematic and relatively developmentally restrictive compared
183 to the ACP’s teleological approach to interpretation – a holistic examination
184 involving textual, contextual and case law analyses of specific WTO Agreements,
185 and assessment of the objects and purposes of the WTO” (Ochieng 2007: 364).
186 Thus, not only are specific issues such as GATT Article XXIV open to renegotiation
187 (Lang 2006), but the purpose of the WTO itself continues to be the subject of
188 contention.

189 The final contextual issue that we need to take account of is the economic situation
190 and trade objectives of the ACP countries. In 1976, just after the first Lomé
191 Convention was introduced, the ACP states accounted for 6.7% of the EU market,
192 while by 2005 it accounted for only 3% (see Borrmann & Busse 2007: 403). ACP’s
193 trade with the rest of the world has also fallen over the same period (Ochieng 2007:
194 377–8). In addition, about 68% of total ACP exports to the EU consists of agricultural
195 goods and raw materials, with ten products accounting for some 74% of this
196 (Borrmann & Busse 2007: 404). This is, of course, despite the trade preferences that
197 the ACP countries have enjoyed over many decades. Thus, while trade with the EU
198 continues to be important to ACP countries, there is evidence that it is in decline,
199 at least proportionately, and that primary commodities continue to form a substantial
200 part with little apparent progression to added value processed goods. Additional
201 preferences on market access are, therefore, unlikely to benefit ACP countries in the
202 future (*ibid.*: 404).

203 Perhaps associated with the decline in international trade, the African countries
204 within the ACP have long held the view that regional integration leading eventually
205 to full continental integration is a desirable objective (see Powell 2007: 18–23).
206 Thus, there have been various regional groupings involving more than 20 economic
207 co-operation arrangements and, while the success of these groupings is not
208 proven and their considerable overlapping membership remain problematic (Powell
209 2007: 22, Stevens 2006: 445), the vision of regional integration remains and has
210 recently been reinforced by the establishment of the African Union (succeeding the
211 Organisation of African Unity) and the founding of the New Partnership for Africa’s
212 Development (NEPAD) (Powell 2007: 23).

213 Associated with this, the negotiations between the EC and ACP countries have
214 been conducted not on a country-by-country basis, but between the EC and six
215 regional groupings – four in Africa and one each in the Caribbean and Pacific.
216 The groupings and countries within each group are shown in Appendix 1. Within
217 each of these groupings it will be noted that there is a mixture of Least Developed
218 Countries (LDCs) and others generally known as developing countries. While the
219 United Nations maintains a precise definition and listing of the 50 LDCs in the
220 world,⁶ no official definition and listing of developing countries exists. In relation
221 to EPAs the fact that each grouping contains a mixture is important, for under WTO
222

223
224 ⁶See www.un.org/special-rep/ohrlls/ldc/list.htm, accessed 12/12/08.

226 rules developed countries can give non-reciprocal access to only two groups – either
 227 to LDCs only or to all developing countries.⁷ Thus, it would be possible to negoti-
 228 ate different agreements with the two different types of countries within a regional
 229 grouping but potentially problematic to negotiate one overall regional agreement –
 230 a point to which we will return.

231 Given that negotiations were always likely, and have proven, to be problematic,
 232 one obvious question has to do with the fall-back position should such negotiations
 233 fail. Here, a further reason for difficulties associated with combinations of LDC
 234 and other developing countries within one regional grouping emerges. For LDCs a
 235 system known as “Everything But Arms” (EBA) exists. This was adopted by the
 236 EC in February 2001, granting duty-free access to imports of all products from all
 237 LDCs without any quantitative restrictions, except to arms and munitions. The EBA
 238 Regulation foresees that the special arrangements for LDCs should be maintained
 239 for an unlimited period of time and not be subject to the periodic renewal of the
 240 EC’s scheme of generalised preferences.⁸

241 However, for non-LDCs a more restrictive GSP+ scheme, approved in June 2005,
 242 exists. To qualify for this a large number of good governance and economic con-
 243 ventions have to be implemented, which most ACP countries have not ratified,⁹
 244 and even then “this would mean less-favourable access to the EU market than the
 245 one granted under . . . the Cotonou Agreement and thus a decline in their export
 246 earnings from the EU market” (Busse & Grossman 2007: 788). For this reason non-
 247 LDCs have been keener to sign up to EPAs than their LDC regional partners which
 248 have less to lose – a source of tension within some of the regional groups (see
 249 Borrmann & Busse 2007: 408). An illustration of the effects on non-LDCs is given
 250 in Ross (2007) citing the case of a Ghanaian pineapple producer with a turnover
 251 around \$50 million supplying to the U.K. supermarket chain Marks and Spencer.
 252 Once the tariff-free status is removed, the juice products would become immedi-
 253 ately unviable. If prices with European supermarkets could not be renegotiated, the
 254 company might be forced to consider relocating – presumably to a LDC where the
 255 tariff-free status would remain.

258 **10.3 Economic Partnership Agreements and Their Predicted** 259 **Effects and Associated Issues**

261 With this as background, we are now in a position to look in more detail at EPAs
 262 themselves, their predicted effects and a number of associated issues. Given the
 263 requirement to have new trade agreements in place by the end of 2007, negotiations
 264

266 ⁷See, for example, [www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements.](http://www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements.asp)
 267 [asp](http://www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements.asp), accessed 12/12/08.

268 ⁸See http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm, accessed 12/12/08.

269 ⁹See www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements-myths.asp, ac-
 270 [cessed 12/12/08.](http://www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements-myths.asp)

271 started in September 2002 but, as might be expected from the discussion above,
272 have not progressed smoothly. This is despite the fact that, at least according to
273 DFID, EPAs “are intended to be instruments for development, as opposed to stan-
274 dard trade agreements” with the aim being that ACPs “gradually build their capacity
275 to compete in world markets”.¹⁰ This was expected to be a three-stage process first
276 with regional integration within ACP regions, then with integration with the EU so
277 that the EU market is slowly opened up, and finally integration as a whole with
278 the world economy. At first sight, therefore, EPAs seem to be simple replacements
279 for the WTO-incompatible agreements and to be beneficial to ACP countries, pre-
280 serving the preferential treatment that has long been afforded to these countries and
281 leading to regional and world integration.

282 What, then, are the concerns that have meant that EPAs have become the subject
283 of such concern within ACP countries themselves and have led to a campaign by
284 various NGOs against the EC? The main point of concern, as we noted above, is that
285 these new agreements must be reciprocal if they are to be WTO-compatible, and
286 this therefore involves liberalising substantially all trade and within a reasonable
287 period. But, while such liberalisation has been the main source of concern, there
288 have been a number of other associated issues. All in all, we can identify five such
289 issues.

290 The first is the effects of EPAs on regional integration which, as we saw above,
291 is a key objective particularly of African countries. There is a potentially nega-
292 tive effect on African regional integration with regional groups splintering between
293 those countries which are willing to liberalise and those which are not (Stevens
294 2006: 446). This could cause regional realignments and, because of the possibil-
295 ity of differential liberalisation schedules, make regional partners reluctant to open
296 their borders to trade with each other – making smuggling across borders a possi-
297 bility (*ibid.*: 451). Powell (2007: 5–6) cites United Nations research estimating that
298 West African countries would experience net trade diversion amounting to US\$365
299 million of which US\$35.6 million represents foregone exports from the Economic
300 Community of West African States (ECOWAS) to the rest of the region. Stevens
301 concludes, “All in all, the outlook for EPAs to support regional integration is not
302 good” (2006: 455).

303 The second issue is an associated argument against EPAs put forward by
304 Borrmann & Busse (2007). Their concern is with the quality of institutions and in
305 particular market entry regulations for starting a business, the efficiency of the tax
306 system and labour market regulation (Borrmann & Busse 2007: 406). Where these
307 are in place and not excessive there is a positive relationship between trade liberali-
308 sation and growth, whereas the opposite is true where the institutional arrangements
309 are poor. Analysing the ACP countries on this basis they find that there is lim-
310 ited concern in the Caribbean and Pacific countries due to the stage of institutional
311 development already achieved. For the four African regions, however, the story is

313
314 ¹⁰See www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements.asp, accessed
315 12/12/08.

316 very different: “the large majority of African countries [33 out of 46]¹¹ . . . are not
 317 likely to benefit from an increase in trade due to EPAs” (*ibid.*: 407). Hence, they
 318 argue that “reform of the institutional frameworks should be an important topic on
 319 the EPA agenda” (*ibid.*: 407), but are not convinced that even then, and even with
 320 appropriate aid assistance, sufficient time exists for such reforms to be introduced –
 321 a further point in relation to the “within a reasonable length of time” issue noted
 322 above. Borrmann & Busse (2007: 414) also note that larger or more powerful coun-
 323 tries with good institutions may then force weaker countries into EPAs when the
 324 effects on the weaker countries may be for them to suffer rather than benefit. The
 325 alternative is the undermining of regional integration if they opt out of the EPA
 326 process – as we have already noted above.

327 The third issue, which follows from the first two, is the trade and fiscal impact of
 328 EPAs. As might be expected, various assessments of such effects have been made.
 329 Lang (2006: 13) compares the impact of EPAs under three scenarios – full reciprocal
 330 liberalisation; asymmetrical liberalisation (EU 100%, ACP 80%, SAT = 90%) under
 331 the EU’s classic interpretation; and a larger degree of asymmetry (EU 100%, ACP
 332 60%, SAT = 80%). The most favourable, of course, is the last scenario and only
 333 here does GDP increase for ACP countries though there are still fiscal losses due
 334 to reduced tariff income. The effect of reciprocity on the consequent reduction in
 335 revenues from tariffs is illustrated by the case of Zambia which would lose \$15.8 m
 336 per year – the equivalent of its annual HIV/Aids budget (Bunting 2007).

337 Busse & Grossmann (2007) look specifically at the trade and fiscal impact on
 338 West African countries. While the detailed results that they present are beyond the
 339 scope of this chapter, their conclusions are instructive. Assuming complete tariff
 340 liberalisation, trade creation would exceed trade diversion in all West African coun-
 341 tries, with total imports from EU countries also increasing in all countries (*ibid.*:
 342 795). The effect on government revenues, however, is a decline of between 4% and
 343 9% in most West African countries, although Cape Verde and Gambia would be
 344 more seriously affected (*ibid.*: 808). Since full liberalisation is unlikely the actual
 345 effects would be smaller, but nonetheless Busse & Grossman conclude that since
 346 “tariff revenue is a significant source of financing government expenditures in most
 347 of the West African countries . . . the most urgent task . . . will be to take measures
 348 to offset the decline. . .” (*ibid.*: 809), though they note the difficulties inherent in
 349 replacing this funding with domestic taxation. “To sum up”, they say, “negotiations
 350 on EPAs pose a major challenge to West African countries. While there is little
 351 doubt that West African countries would benefit from improved or more secure
 352 access to EU markets, it is not clear whether it is in the interest of West African
 353 countries to eliminate customs duties for almost all EU products by 2020” and they
 354 call for the well-designed opening up of domestic markets “with specific attention
 355 given to country specifics and capabilities” (*ibid.*: 809). This echoes the call by
 356 Borrmann & Busse (2007: 414) for a high degree of flexibility in the EPA process
 357 if pro-development outcomes are to be achieved.

358
 359
 360 ¹¹Countries included in the analysis differ very slightly from those in Appendix 1.

361 Anderson & van der Mensbrugge (2007) studied the specific case of Uganda.
 362 They compare full mutual liberalisation (including the removal of developed countries'
 363 agricultural subsidies) with two alternative scenarios. The first is a multilateral
 364 partial reform under the WTO's Doha round and the second is under EPAs. Again,
 365 the details of the findings need not concern us, but the conclusions are that "Uganda
 366 is not likely to gain a lot – and may even lose very slightly – from further reducing
 367 its tariffs, and likewise from the EU waiving the remaining tariffs on imports from
 368 Uganda and other ACP countries" (*ibid.*: 548). They stress that this does not mean
 369 that there is no need for Uganda and its ACP partners to undertake further trade
 370 reform, but again it seems that the conditions need to be right for Uganda to benefit
 371 significantly from trade liberalisation.

372 More anecdotal evidence from NGOs indicates the actual effects of rapid trade
 373 liberalisation "on the ground". A Traidcraft report showed that Jamaica's dairy market
 374 liberalisation "decimated small farmers, left local milk production with barely a
 375 tenth of the market, and led to the EU supplying two-thirds of the island's milk
 376 powder", while a "Christian Aid assessment of tomato liberalisation in Senegal
 377 showed that the local price halved, while imports of EU paste increased twenty-fold"
 378 (Cobham & Powell: 2007). These may be anecdotal but the effects on actual people
 379 in ACP countries reminds us that statistics ultimately mean people and communities.

380 This collection of evidence then, albeit based mainly and necessarily on a forecasting
 381 of the effects, indicates that ACP countries are unlikely to benefit directly
 382 from EPAs. Nor should this surprise us, given the evidence that exists generally on
 383 trade liberalisation. Ochieng (2007: 377–8) summarises this well:

384
 385 The relationship between trade and growth has been shown to be complex, if not ambiguous ... there is little evidence that trade liberalization is correlated with economic growth, poverty reduction, or economic development. Whilst no country has developed successfully by turning its back on international trade, none has developed by simply liberalizing its trade. The critical balance lies in each country adopting its own trade and investment policies and strategies, in line with its development needs ... [A]nalysis of trade, economic growth and poverty reduction needs to go beyond trade liberalization to include *inter alia*: the relationships between trade and inequality, trade and employment, bargaining power in global production chains and the distribution of gains from trade, the effects of trends in, and variability of terms of trade on poverty, the effects of primary commodity dependence, and the relationship between export and import instability and vulnerability.

394
 395 Again the evidence in favour of the flexibility of individual countries to determine
 396 their own development needs is clear.

397 This brings us to the fourth issue of concern and one which is also related to the
 398 issue of flexibility. This is that the EC has attempted to include what are known as
 399 the "Singapore Issues" on the agenda within the negotiations on EPAs. These relate
 400 to investment, competition, government procurement and services, and the EC's
 401 position is that these should also be subject to negotiation within EPAs apparently
 402 "in order to achieve ACP development objectives" (Griffith & Powell 2007: 8). ACP
 403 countries, by contrast, have generally indicated that they do not wish these issues to
 404 be part of EPAs negotiations and, apart from services, these issues remain outside
 405 the ambit of the WTO. Within the Cotonou Agreement there is only an agreement

406 to discuss co-operation not to agree binding rules (*ibid.*: 8–9). Again, there seems
 407 to be a lack of flexibility here on the EC’s part, and an unwillingness to allow ACP
 408 countries the flexibility to negotiate on these issues at their choice and speed. This is
 409 exactly the concern of the U.K.’s International Development Committee which has
 410 expressed its view that the EU is abusing its position on this issue (IDC 2007: 14),
 411 and DFID in the U.K. is similarly concerned.¹²

412 The fifth and final issue is to do with aid. Given that there are, as already noted
 413 above, a series of supply side constraints such as poor infrastructure, weak produc-
 414 tion capacity and low levels of human resources (Powell 2007: 4) that need to be
 415 addressed in any case to enable development in ACP countries, together with the
 416 adjustment costs that EPAs themselves would entail, aid has always been a part of
 417 the negotiations (Griffiths & Powell 2007: 19). The core funding for supply side
 418 issues comes from the European Development Fund (EDF) but there is evidence
 419 that the tenth EDF, from which such funds would come, is both under-funded and
 420 will suffer a delayed start in 2010 leaving a 2 year gap between it and the ninth EDF
 421 (Powell 2007: 45). The EU has also promised further aid targeted specifically as “aid
 422 for trade”, planned to reach €2 billion by 2010.¹³ However, the issue of contention
 423 has been the extent to which such aid is being made conditional on signing EPAs.
 424 Not surprisingly, the two sides differ – DFID is explicit in stating that the EC’s posi-
 425 tion is that “aid for trade is not conditional on EPAs”,¹⁴ while those reporting the
 426 ACP position are equally unequivocal in stating that, “aid is clearly being offered
 427 on condition of commitments made in EPAs” (Powell 2007: 45).

428 Whatever the rights and wrongs of this particular issue, there remains the fact
 429 that negotiations over EPAs have become highly contentious and politicised. The
 430 effects on regional integration, the need for reform in institutional frameworks, the
 431 estimated direct trade and fiscal effects of EPAs, together with the introduction or
 432 otherwise of the Singapore issues and the amount and conditionality of aid, all make
 433 for a complex situation where any assessments of fairness or unfairness are clearly
 434 not straightforward. However, NGOs have traditionally seen their role as cutting
 435 through the complexities and running campaigns to highlight what they perceive to
 436 be gross injustices. Before turning to issues of fairness, a brief look at the campaign
 437 against EPAs is worthwhile.

438 439 **10.4 The “Stop EPAs” Campaign**

440
441 Once negotiations on EPAs had begun in September 2002 African organisations
 442 became concerned at the potential effects of these new agreements and contacted
 443

444
445 ¹²See www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements-myths.asp, ac-
 446 cessed 12/12/08.

447 ¹³See <http://europa.eu/scadplus/leg/en/lvb/r13002.htm>, accessed 12/12/08.

448 ¹⁴See www.dfid.gov.uk/aboutdfid/organisation/economic-partnership-agreements-myths.asp, ac-
 449 cessed 12/12/08.

451 European charities to help. In 2004, after 2 years of detailed analysis, the “Stop
452 EPAs” campaign was born (Traidcraft 2008). Since then an orchestrated campaign
453 involving many organisations linked to the Trade Justice Movement (TJM),¹⁵ has
454 attempted at the very least to ensure that “fair” EPAs were negotiated or that
455 alternatives such as EBAs and GSP+ were introduced to allow more time for the
456 negotiations over EPAs themselves. It is not clear that the campaign ever had
457 the objective or thought that it might actually “stop EPAs” from occurring, but in
458 the nature of NGOs and campaigning a snappy title is more important than accuracy.
459 Similarly, the content of some of the campaigning material expresses the enormous
460 complexity of the issue in rather more bite-sized language. A briefing for U.K. MP’s
461 by the TJM issued in September 2007, for example, stated that “If [EPAs] are not
462 changed dramatically in the next few months, they will threaten the futures of up
463 to 750 million people” – quite what “threaten the futures” means in practice is far
464 from clear.

465 This is not to say that the campaign has not had the intellectual weight behind
466 it that such campaigns deserve – two extensive reports (Griffiths & Powell 2007,
467 Powell 2007) have already been cited from above. One of these reports had as
468 its focus not so much the content of the EPA negotiations but the manner in
469 which they have been conducted – an approach that is described as “undermin-
470 ing partnership” (Griffiths & Powell 2007: 13). The claim is that in the dismissive
471 approach to ACP proposals, the disregard for ACP institutions and processes, the
472 forcing of negotiation on the Singapore issues, the manipulation of the prospect
473 of aid, the threat of loss of market access, the refusal to consider alternatives,
474 the exclusion of dissenting voices and the imposition of deadlines before devel-
475 opment, the EC’s conduct has been far from exemplary. This is an interesting and
476 unusual “process” report which ends by placing the onus on EU states “to rein in
477 the [European] Commission and insist upon a fundamentally different approach,
478 based on non-reciprocity” (*ibid.*: 31). The issue of process is one that we will return
479 to below.

482 10.5 EPAs – The Current Situation

484 The situation with regard to which EPAs had been signed was, of course, changing
485 rapidly as the 31 December 2007 deadline came and passed. The position as of the
486 date of writing in December 2008 (1 year after the supposed deadline), is shown in
487 Appendix 2 where it may be seen that 35 countries in total out of 76 (46%) have
488 signed EPAs. Of these, however, only 9 out of 39 (23%) are LDCs, whereas 26 out
489 of 37 (70%) non-LDCs have signed. Given the option for LDCs to use EBA, making
490 essentially no difference to their previous position under the Cotonou Agreement,
491 it is not surprising that many have opted not to sign. Equally predictable is the

493
494 ¹⁵See <http://www.tjm.org.uk>, accessed 12/12/08.

496 number of non-LDCs which have signed given that their alternative GSP+ gives
 497 less favourable access to the EU market and would thus lead to a decline in their
 498 export earnings. In terms of regional groupings, only the Caribbean has signed in its
 499 entirety, but given the presence of only one LDC (Haiti) in a group of 15 countries
 500 this is equally not surprising.

501 As noted in Appendix 2, the regional groupings that have signed EPAs are
 502 slightly different from the original groupings with which the EC was negoti-
 503 ating. Thus, seven EPAs have been signed in total.¹⁶ Of these, only one –
 504 the Caribbean EPA – is considered to be a full or comprehensive EPA by the
 505 EC. The Caribbean EPA includes not just provisions for trade in goods, which
 506 were, of course, essential to comply with WTO rules, but services, investment,
 507 competition and public procurement aspects – in other words the contentious
 508 “Singapore” issues. The remaining six EPAs are regarded as “interim” in that
 509 they focus on goods only, but mostly include clauses to allow negotiations to
 510 continue on these other areas.¹⁷ These Interim EPAs (IEPAs) have only been
 511 initialled rather than signed – an important difference since although the negoti-
 512 ations have come to a conclusion there is still a formal ratification process to be
 513 undertaken.

514 In a recent assessment of the legal texts of the EPAs that have been signed
 515 or initialled (Oxfam 2008), it is claimed that these are not development friendly.
 516 While the actual impact on those countries which have not signed EPAs at present
 517 has been small (*ibid.*: 8), the projected effects of EPAs themselves are gener-
 518 ally felt to be against the interests of ACP countries. The liberalisation of goods
 519 is higher than Europe originally proposed, at between 67% and 83% of trade,
 520 although the timescales vary between 0 and 25 years (*ibid.*: 14). Regional disinte-
 521 gration is predicted (*ibid.*: 17), and ACP countries will be left worse off financially
 522 with a need for significant aid to upgrade basic infrastructure (*ibid.*: 19). The
 523 conclusion is that the initialled EPA deals “fail the ‘development test’. Far from
 524 restructuring economic relationships to stimulate development, they risk locking
 525 ACP countries into current patterns of inequality and marginalisation, and further
 526 bias the multilateral trading system against the interests of developing countries”
 527 (*ibid.*: 34). While much of this is familiar from the earlier discussions, it is of
 528 note that Oxfam calls for “renegotiation of any aspect of the initialled EPAs . . .
 529 to reduce the deals to the minimum needed for WTO compliance” (*ibid.*: 38).
 530 Despite the 31 December 2007 deadline, the initialling process seems to have
 531

532
 533 ¹⁶The seven are: West Africa (Ghana, Ivory Coast); Central African Economic and Monetary
 534 Community (Cameroon); East African Community (Burundi, Kenya, Rwanda, Tanzania and
 535 Uganda); East and Southern Africa (Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe);
 536 Southern African Development Community (Botswana, Lesotho, Mozambique, Namibia and
 537 Swaziland); Caribbean (all countries – see Appendix 1); Pacific (Fiji and Papua New Guinea),
 www.dfid.gov.uk/aboutdfid/organisation/epas-progress-update.asp, accessed 12/12/08.

538 ¹⁷See www.dfid.gov.uk/aboutdfid/organisation/epas-progress-update.asp, accessed 12/12/08. An
 539 alternative web-site for regular up-dates can be found at www.acp-eu-trade.org. See also
 540 http://ec.europa.eu/trade/issues/bilateral/regions/acp/regneg_en.htm.

bought time with the WTO, and may now allow the opportunity for further negotiations.

10.6 Assessing Fairness in International Trade

As noted at the outset, the inherent complexity of the situation described above rules out any simplistic application of fairness principles. So, we begin by looking at fairness principles themselves to see what light might be shed by such a review, before turning to their application. And while fairness has, of course, been the subject of much philosophical debate in general, it has also been the subject of discussion specifically in relation to international trade (Brown & Stern 2007, Davidson et al. 2006, de Jasay 2006, Franck 1995, Maseland & de Vaal 2002, 2003, Narlikar 2006, Ochieng 2007, Suranovic 2000). Much of this originates in the economics literature, from which three points are worth noting immediately. The first is that economists frequently “dismiss notions of rights, justice and fairness as, at best, muddled, and more likely welfare worsening” and that the most characteristic normative method adopted by economists is “straightforward individualistic utilitarian consequentialism” (Davidson *et al.* 2006: 989). This ‘free market’ position, of course, lends strong support to trade liberalisation and opposes protectionism in all its forms. And protectionism is the second point worthy of note, for ‘fair trade’ is often contrasted with ‘free trade’ to denote protectionism which seeks to mitigate the effects of international competitors on domestic industries (see, for example, Bhagwati 1995, Maseland & de Vaal 2002, Howse & Trebilcock 1996). This understanding of fair trade gives rise to the view that fair traders are “charlatans (protectionists masquerading as moralists)” (Howse & Trebilcock 1996: 61).

However, while we can dismiss this particular use of the term fairness, it is clear that issues of fairness do play “a non-trivial role in the politics of trade policy” (Davidson *et al.* 2006: 990) so that questions such as, “Is it fair for all countries to be held to the same set of standards when these countries are at different levels of economic development?”, or “What are fair responses to the imminent changes in world trading patterns?” (Suranovic 2000: 283), or of direct relevance to this chapter, “Are EPAs fair?”, are entirely legitimate. And the third point to note stems from this. As Franck (1995) has observed, for any discourse on fairness to take place, two preconditions must exist. The first is moderate scarcity: “Discussion about fairness . . . is most likely to be productive when the allocation of rights and duties occurs in circumstances which make allocation both necessary and possible. This circumstance . . . John Rawls has aptly called a condition of ‘moderate scarcity’” (*ibid.*: 9). The second precondition is community: “It is only in community that the bedrock of shared values and developed principles necessary to any assessment of fairness is found” (*ibid.*: 10). And in Franck’s view “we are witnessing the dawn of a new era, defined both by moderate scarcity and by an emerging sense of global community” (*ibid.*: 11). In other words, the preconditions are now

586 met and the time is right for substantive discussion about fairness in international
587 trade.

588 With this as background, we can turn to fairness principles themselves. And we
589 find, not surprisingly, that these divide into the conventional distinction between
590 procedural and distributive fairness – although “justice” is often used instead of
591 fairness, a point to which we will return. That fairness has two dimensions – the
592 process by which outcomes are derived and the outcomes themselves – is, of course,
593 a common-place, but it is worth exploring some of the nuances that emerge within
594 this distinction.

595 On the procedural side, Suranovic (2000), amongst the seven fairness principles
596 that he derives,¹⁸ gives four that relate to procedural fairness. These are non-
597 discrimination fairness (where, if one group is allowed to take some action, then all
598 other groups deemed to be equal should be similarly allowed – *ibid.*: 288); Golden
599 Rule fairness (based on Kant’s categorical imperative, where an agent should take
600 some action which has an effect on another only if that agent is willing to have
601 another agent take a comparable action with the identical effect on himself – *ibid.*:
602 291); and positive and negative reciprocity fairness (where agents exchange either
603 positive “you scratch my back and I’ll scratch yours”, or negative “tit for tat”
604 actions – *ibid.*: 295, 299). Brown & Stern (2007: 299–302) also discuss reciprocity
605 noting that, understood as “rough equivalence”, it remains an important criterion for
606 negotiations in international trade.

607 Maseland & de Vaal (2002) make a distinction of fairness along deontological
608 versus consequentialist grounds, the latter of which we will return to under dis-
609 tributive fairness, but the former of which is worth noting now. Essentially it is to
610 do with the “conditions under which trade, and the production of traded goods,
611 should minimally take place” (*ibid.*: 254). In a later paper they refer to this as
612 “principle” fairness (Maseland & de Vaal 2003) and identify it as being trade
613 conducted in compliance with designated basic prohibitions such as the absence
614 of child labour or environmentally harmful production methods. They note that,
615 while free trade can lead to the absence of such conditions, for instance because it
616 raises incomes, it lacks a self-regulating mechanism to ensure such conditions are
617 met. It therefore seems appropriate to categorise it here, under procedural fairness,
618 because of the procedural requirements to enforce such compliance and because
619 the overall outcome that follows may not necessarily be efficient – a distributive
620 matter.

621 Legitimacy fairness is another way of describing procedural fairness (Franck
622 1995: 7–8, Narlikar 2006: 1007–8), a point that Elsig (2007: 81) using the term
623 “input legitimacy” makes in relation to the WTO, and to which we will also
624

625
626 ¹⁸Suranovic (2000) divides these seven into two categories: equality fairness and reciprocity fair-
627 ness. I will cover six of the seven here, the seventh being privacy fairness – “an agent should be
628 free to take any action which has effects only on himself” (*ibid.*: 301)

631 return. Meanwhile, Brown & Stern refer to “equality of opportunity” as a proce-
632 dural issue noting, however, that they do not advance it as a high moral principle
633 but merely an “instrumental criterion to be valued for its consequences, namely
634 that it facilitates the reaching of inter-governmental agreements that protect and
635 enhance the mutually advantageous trading system” (2007: 295). This relationship
636 between the two forms of fairness is also something to which we will need to
637 return.

638 On the distributive side many of the authors already cited note the importance
639 of outcomes for fairness assessments (Brown & Stern 2007, Maseland & de Vaal
640 2002, 2003, Narlikar 2006, Ochieng 2007, Suranovic 2000) and it is in relation to
641 this discussion that economists refer to the concepts of welfare efficiency and Pareto
642 optimality:

643 “For many economists – borrowing from welfare theory – a practically acceptable cri-
644 terion of fairness would be that the trade negotiations result in a more efficient global
645 economy. Greater efficiency is defined as a movement towards Pareto optimality and, in
646 the context of international trade, such a state would be reached when no country can
647 be made better off without some other country being made worse off” (Brown & Stern
648 2007: 296).

649 An alternative expression of this is to refer to “maximum benefit fairness”
650 (Suranovic 2000: 302–4), in which the utilitarian rhetorical device of “the greatest
651 good for the greatest number” is, in effect, applied irrespective of the consequences
652 for affected minorities.

653 However, another distributional principle that is included in the literature is per-
654 haps best termed “poverty alleviation fairness” (Maseland & de Vaal 2003) and
655 is one in which “beneficial consequences for the poorest groups in the world”
656 (Maseland & de Vaal 2002: 256) are to be taken into account. As Maseland & de
657 Vaal note, this concept draws on Rawlsian thinking and attempts to combine Pareto
658 optimality with the idea that “the only inequality a rational individual would accept
659 is the minimum inequality necessary to improve the situation of the least well off in
660 society” (*ibid.*: 256). Franck refers to this as the ‘maximin’ principle (1995: 18–19)
661 and notes that it is a neo-egalitarian principle of distributive fairness. In relation to
662 the fairness of EPAs this will clearly be an important concept, but is also one that
663 acknowledges the “unequal starting positions” (Maseland & de Vaal 2003) of differ-
664 ent countries. While a Nozickian approach would ignore such inequalities, it would
665 seem to be very much to the point that they be included in any consideration of
666 the fairness of international trade. This is not to argue for a socialist redistribution
667 of input factors (even were that to be possible), but for negative consequences of
668 inequalities to be at least taken into account (see Maseland & de Vaal 2002: 255–6).

669 An attempt at resolving the terminological issue that we noted above between
670 fairness and justice is made by de Jasay (2006). He argues, in effect, that justice
671 refers to procedural issues, while fairness refers to outcomes. On this basis (one
672 that is by no means universal) he is able to argue that trade made fair by regula-
673 tion violates freedom of contract and as such is an injustice (*ibid.*: 175–6). In other
674

676 words, fair is not, or is not necessarily, just (and *vice-versa*). While we do not partic-
 677 ularly need to follow the terminology here, the point is important – that procedural
 678 and distributive fairness do not necessarily follow one another with one leading
 679 automatically to the other, but are different aspects of fairness which may not coin-
 680 cide (Franck 1995: 22). Franck makes the further point that they may not even pull
 681 in the same direction, since distributive fairness is likely to lead to change, whereas
 682 procedural fairness tends towards stability (*ibid.*: 7).

683 However, it is often the case that both forms of fairness are needed if true fairness
 684 is to result – Elsig (2007), for example, refers to the need to balance what he calls
 685 input and output legitimacy in the WTO. Stiglitz & Charlton’s set of principles (cited
 686 in Brown & Stern 2007: 312–3), in relation to the Doha Development round of
 687 the WTO, provide a further example. It is clear that the first two are to do with
 688 distributive fairness while the last two are procedural in nature:

689

- 690 1. Any agreement should be assessed in terms of its impact on development; items
 691 with a negative effect on development should not be on the agenda;
- 692 2. Any agreement should be fair (i.e. that the outcome should provide a larger share
 693 of aggregate benefits to the poorer countries);
- 694 3. Any agreement should be fairly arrived at;
- 695 4. Any agreement should be limited in scope (i.e. preventing unwarranted intru-
 696 sions into national sovereignty).

697

698

699 While this completes a brief summary of fairness principles as covered in the
 700 relevant literature, there is one further and important area that we need to consider
 701 before we turn to an assessment of the fairness of EPAs. In some ways this takes
 702 us back to one of the two preconditions that Franck identified – that it is “only
 703 in community that the bedrock of shared values and developed principles neces-
 704 sary to any assessment of fairness is found” (Franck 1995: 10). The question that
 705 this raises is really an Aristotelian one, and so differs from the Enlightenment con-
 706 cepts of fairness discussed so far, and over which perhaps limited agreement can be
 707 reached.

708

709

710 The Aristotelian question is always to do with what makes for the flourishing
 711 of life as a whole both individually and in community. It therefore asks questions
 712 of purpose and relationship and is, in that sense, essentially *teleological*. Modern
 713 work on virtue ethics, as it is known (MacIntyre 2007), and as applied at the level of
 714 business organisations rather than trade *per se* (Moore & Beadle 2006, Moore 2009)
 715 focuses on such a teleological approach and encourages the pursuit of excellence
 716 rather than the “levelling tendency” that deontological ethics has been charged with
 717 (Koehn 1995: 537). In terms of something essentially practical like the negotiation
 718 of EPAs this will encourage us to ask what the purpose of such agreements are, how
 719 they support and benefit community both within developing countries and between
 720 developing and developed countries, and what excellence means in this context. It
 is probably apparent that questions such as these take us beyond the conventional
 approaches to ethics via the fairness discourse, but also that they have something

721 in common with the teleological approach to interpretation of WTO laws taken by
722 ACP countries, as noted above.

725 10.7 An Assessment of the Fairness of EPAs

726
727 From all that has been said above, it will come as no surprise that the fairness
728 assessments that can be made are somewhat tentative. But the reasons for such
729 tentativeness will become clearer as we proceed, so we begin by considering
730 issues of procedural fairness. The most extensive consideration of this is given in
731 Griffith & Powell (2007), covered above in the “Stop EPAs” section. In “under-
732 mining partnership” through the eight procedural issues that were identified, in all
733 of which the EC was regarded as being at fault, procedural fairness seems to have
734 been compromised by the EC. That, at first sight, might seem a straightforward and
735 incontrovertible judgment.

736 However, in considering WTO negotiations in general (of which EPAs can be
737 viewed in this context as a separate but inter-related part), the situation becomes
738 less clear-cut. Narlikar (2006: 1009) argues that the WTO has, in general, paid
739 limited homage to the fairness discourse but “particularly its distributive justice
740 component”. In other words, the WTO, where it has included fairness consider-
741 ations, has focused on procedural fairness, and has done so partly because any
742 notion of *redistributive* justice through global trade has sat uneasily with “more
743 liberal trade principles” and “with the national interests of already institutionalised
744 countries” (Ochieng 2007: 389). Narlikar reinforces this point: “even if provisions
745 in the WTO on distributional fairness are few, . . . its dedication to fair process,
746 order and legitimacy is borne out in its rules of non-discrimination and reciprocity”
747 (2006: 1009). The concerns of the EC in ensuring that EPAs were WTO-compatible,
748 and awareness of the procedural unfairness associated with the fact that such non-
749 reciprocal agreements discriminated against non-ACP states, are further evidence of
750 this approach.

751 Ochieng notes that even by the early 1990s “developing countries had been
752 forced to change tack, toning down on the notion of *fairness of outcomes* and
753 moving towards accommodating the *fairness of process* concept (even whilst com-
754 plaining that WTO processes were not fair to them)” (Ochieng 2007: 389, emphasis
755 in original). It seems, therefore, that developing countries might have been better
756 prepared for negotiating on EPAs, having accepted that this would be the focus of
757 the EC in such negotiations. Being better prepared might have helped the ACP coun-
758 tries to negotiate more forcefully and within the reasonable time periods laid down
759 in the Cotonou Agreement.

760 Accepting that ACP countries might have expected the EC to focus on procedu-
761 ral issues does not, however, mean that they would or should have abandoned their
762 interest in distributive fairness. Narlikar (2006: 1028), indeed, suggests that develop-
763 ing countries generally have had some success in maintaining a focus on distributive
764 fairness and that this may lead to the reintroduction of the fairness-as-equity
765 discourse into the WTO, with the Doha *Development Agenda* as an indicator of this.

766 Elsig, however, recognises the link between the two forms of fairness arguing that
 767 “the input side should not be neglected as the belief in fair processes potentially
 768 increases the rate of compliance with negotiated treaties, thus increasing output
 769 legitimacy” (2007: 89).

770 However, allowing for the continuing asymmetries in the WTO and the contin-
 771 uing complaints of the developing countries over equity of process (Narlikar 2006:
 772 1024–5), and therefore their likely extension into negotiations over EPAs, it seems
 773 probable that procedural fairness has been compromised during the process. The
 774 attempt (and success with the Caribbean grouping) to bring the Singapore issues
 775 onto the agenda, and the attempt to introduce conditionality on aid strengthens the
 776 suspicion that EPAs have not been fairly negotiated.

777 What, then, of distributive fairness? While, of course, the judgment in this case
 778 has to be tentative until actual outcomes are known, the evidence cited above in
 779 relation to the likely negative impact on regional integration especially in Africa; on
 780 the timing of the introduction of EPAs in relation to the poor institutional quality
 781 which is likely to mean, again, that African countries are not in a position to benefit
 782 from trade liberalisation; and the more general trade and fiscal effects, all suggest
 783 that the distributive outcomes will not benefit ACP countries.

784 The counter argument to this, however, is the potential distributive unfairness
 785 that non-ACP, non-LDC countries have been experiencing (following the procedu-
 786 ral unfairness noted above) – and hence the reason that they have been watching
 787 the EPA negotiations “like hawks” (Mandelson 2007, cited above) and might mount
 788 a legal challenge under Article XXIV. The EU countries, and on their behalf the
 789 EC, have, they would argue, been negotiating on EPAs in order to ensure that a
 790 WTO-compatible legal basis on which continuing preferential treatment of ACP
 791 countries could be provided. It is not their fault, they can argue, that the WTO
 792 requires reciprocity on substantially all trade within a reasonable period. In addi-
 793 tion, the extended time periods (at least 10 years and possibly up to 25 – see above)
 794 allowable within EPAs for SAT to be realised would, the EU states might well argue,
 795 give both sufficient time and incentive to resolve the institutional development and
 796 other issues.

797 That it is in both the developing and developed countries’ interests ultimately to
 798 make significant progress on trade liberalisation is something both sides can prob-
 799 ably agree on. That EPAs are necessary in this is something developing countries,
 800 with the exception of the Caribbean grouping, are clearly more reluctant to agree
 801 on. That EPAs are likely to lead to appropriate and substantive development, and
 802 therefore to distributive fairness, is something that the two sides are, again with the
 803 possible exception of the Caribbean grouping, at odds over and only time will tell
 804 which side is right.

805 Within this debate, however, the issues of community and purpose, the
 806 Aristotelian questions, seem rarely to get asked, with sides being taken and per-
 807 sonal advantage being sought. This takes us back to the different interpretations of
 808 WTO laws discussed in the background section above. Here, it would seem that
 809 the ACP’s teleological approach is the more appropriate. The ACP states see the

811 WTO as developmentally oriented while the EC and other developed countries see
812 it as solely a trade organisation. Although not explicit, it could be argued that the
813 ACP countries see the “dawn of a new era” characterised by “an emerging sense of
814 global community” (Franck 1995: 11, cited above), and would argue for notions of
815 excellence in international trade to emerge. Such excellence might well include the
816 flexibility necessary to recognise the different starting positions and speed of devel-
817 opment that developing countries in general, and LDCs in particular, are capable
818 of, and to design processes that would allow such flexibility – a key point of con-
819 cern noted on a number of occasions above. To achieve this flexibility, while still
820 enabling regional integration, is obviously no simple task, but one that excellent
821 trade negotiations and outcomes ought to seek.

822 Perhaps, a more genuine attempt by the EC to take a developing country perspec-
823 tive, to seek to realise the purpose of EPAs and the Doha Development Round more
824 generally as to do with sustainable development as we try to learn to live together on
825 one earth, and to effect that through more community-minded initiatives that extend,
826 if necessary, to other non-ACP countries, might have led not only to a process that
827 was more acceptable to ACP countries but one in which the outcomes are more
828 likely to be developmentally good. The opportunity for further negotiations may yet
829 lead to such an outcome.

830

831

832 **10.8 Conclusion**

833

834 I indicated at the outset that the conclusions that could be drawn would necessar-
835 ily be somewhat tentative. It is difficult to be conclusive in such a fast-moving and
836 complex area. However, while the evidence is generally against the EC and, behind
837 it, the EU states, it does seem that both “sides” may have lessons to learn from EPAs
838 over both the process of negotiating and the outcomes that are sought, even though
839 the actual outcomes may in some cases be many years away from being realised.
840 The existing conceptualisations of fairness, based on Enlightenment principles, pro-
841 vide a basic mechanism by which such fairness claims can be examined, but they
842 do not take sufficient account of the purposive and community aspects of interna-
843 tional trade negotiations. Perhaps here, as EPAs continue to be negotiated and these
844 agreements are implemented, there is a chance for something developmentally ben-
845 efcial to emerge. This will require the EC to focus more on distributive fairness,
846 and accept the changes that will necessarily accompany this, rather than rely upon
847 the stability that arises from procedural fairness considerations.

848 Within this, there is a potential knock-on effect on the WTO itself. As Ochieng
849 concludes, “development-oriented EPAs will require not only innovations in their
850 design and scope but also innovative interpretation of existing WTO rules or inno-
851 vations to some of the existing WTO rules, most notably, Article XXIV and a wide
852 array of other SDT provisions” (2007: 395). Hence, one of the benefits of EPAs may
853 be to challenge the WTO and the EU’s conservative interpretation of its purpose, and
854 lead to international trade that is, indeed, not just procedurally fair in its negotiation

855

and distributively fair in its implementation, but also genuinely develops the global community.

Appendix 1

ACP countries by regional groupings

	ECOWAS	CEMAC	ESA	SADC	Caribbean	Pacific
1	<i>Benin</i>	Cameroon	<i>Burundi</i>	<i>Angola</i>	Antigua & Barbuda	Cook Is.
2	<i>Burkina Faso</i>	<i>Central African Republic</i>	<i>Comoros</i>	Botswana	Bahamas	Fed. Micron.
3	<i>Cape Verde</i>	<i>Chad</i>	<i>Djibouti</i>	<i>Lesotho</i>	Barbados	Fiji
4	<i>Gambia</i>	Congo (Brazzaville)	<i>Eritrea</i>	<i>Mozambique</i>	Belize	<i>Kiribati</i>
5	Ghana	<i>Congo (Dem. Rep.-Kinshasa)</i>	<i>Ethiopia</i>	Namibia	Dominica	Marshall Is.
6	<i>Guinea</i>	<i>Equatorial Guinea</i>	Kenya	Swaziland	Dominican Rep.	Nauru
7	<i>Guinea-Bissau</i>	Gabon	<i>Malawi</i>	<i>Tanzania</i>	Grenada	Niue
8	Ivory Coast	<i>Sao Tome & Principe</i>	Mauritius	South Africa	Guyana	Palau
9	<i>Liberia</i>		<i>Madagascar</i>		<i>Haiti</i>	Papua New Guinea
10	<i>Mali</i>		<i>Rwanda</i>		Jamaica	<i>Samoa</i>
11	<i>Mauritania</i>		Seychelles		St. Kitts & Nevis	<i>Solomon Is.</i>
12	<i>Niger</i>		<i>Sudan</i>		St Lucia	Tonga
13	Nigeria		<i>Uganda</i>		St Vincent & the Grenadines	<i>Tuvalu</i>
14	<i>Senegal</i>		<i>Zambia</i>		Surinam	<i>Vanuatu</i>
15	<i>Sierra Leone</i>		Zimbabwe		Trinidad & Tobago	
16	<i>Togo</i>					
No. LDCs	13	5	11	4	1	5

Sources: http://ec.europa.eu/trade/issues/bilateral/regions/acp/plcg_en.htm, accessed 12/12/08; www.dfid.gov.uk/aboutdfid/organisation/epas-progress-update.asp, accessed 12/12/08, and Lang 2006: 36–38

Note: Countries in italics are Least Developed Countries (LDCs) – 39 out of a total of 76
Key:

- ECOWAS Economic Community of West African States
- CEMAC Economic and Monetary Community of Central Africa
- ESA Eastern and Southern Africa
- SADC Southern African Development Community

Appendix 2

Signatories to economic partnership agreements

	ECOWAS	CEMAC	ESA	SADC	Caribbean	Pacific
1	Ghana	Cameroon	<i>Burundi</i>	Botswana	Antigua & Barbuda	Fiji
2	Ivory Coast		<i>Comoros</i>	<i>Lesotho</i>	Bahamas	Papua New Guinea
3			Kenya	<i>Mozambique</i>	Barbados	
4			Mauritius	Namibia	Belize	
5			<i>Madagascar</i>	Swaziland	Dominica	
6			<i>Rwanda</i>	<i>Tanzania</i>	Dominican Rep.	
7			Seychelles		Grenada	
8			<i>Uganda</i>		Guyana	
9			Zimbabwe		<i>Haiti</i>	
10					Jamaica	
11					St Kitts & Nevis	
12					St Lucia	
13					St Vincent & the Grenadines	
14					Surinam	
15					Trinidad & Tobago	
16						
No. LDCs	0	0	5	3	1	0

Source: http://ec.europa.eu/trade/issues/bilateral/regions/acp/regneg_en.htm, accessed 12/12/08. The web-site gives slightly different groupings from those shown in Appendix 1. For ease of comparison, the same groupings are maintained

Note: Countries in italics are Least Developed Countries (LDCs). Only 9 from a possible 39 LDCs have signed EPAs; for non-LDCs the number is 26 from 37

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