

Corporate Responsibility and the Future of the International Trade and Investment Agendas

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Many critics of economic globalisation argue that corporate interests drive trade and investment policy, not citizen views expressed by government negotiators. It would be hard for anyone to refute the argument that commercial interests shape the rules that govern international trade and investment. The links were already a focus of NGO attention at the time of the World Trade Organization (WTO)'s Seattle Ministerial in 1999, as tension began to mount over intellectual property rights and trade in services. And even before the creation of the WTO, dispute settlement under the General Agreement on Tariffs and Trade (GATT) had revealed the influence of big business. In the banana dispute which began in the closing stages of the Uruguay Round, the US intervened in dispute settlement proceedings to protect the interests of US-based multinationals with stakes in the so-called 'dollar banana' countries of Central America.

The influence of business on economic policy is one core theme in the relationship between business and the international trade and investment agendas. A second core theme is corporate responsibility. Events surrounding the collapse of talks towards a Multilateral Agreement on Investment (MAI) and of negotiations at the Seattle Ministerial accelerated civil society understanding and business action around the 'corporate social responsibility' (CSR) or 'corporate responsibility' (CR) agenda. These two terms

(used interchangeably, with the latter increasingly favoured) describe a debate on the relationship between 'business' and 'society' – the aim being to minimise negative impacts whilst enhancing the positive contribution of business to societal goals such as sustainable development and poverty reduction. In the CR agenda, the focus is often on the voluntary efforts of businesses, working in partnership with non-governmental organisations (NGOs) and governments in pursuit of a variety of social and environmental goals.

What is needed is to build understanding on these themes – and the relationship between them. It is rapidly becoming clear that corporate responsibility and accountability are set to play an increasingly influential role in the future evolution of trade and investment policy. With the renewed attention that is likely to be paid to bilateral trade and investment agreements post-Cancún, the institutional settings in which the relationship will emerge are shifting. Already, bilateral deals – such as a textile trade agreement recently concluded between the governments of the US and Vietnam – are beginning to incorporate provisions to encourage business uptake of 'voluntary' CR codes. And there is also increasing interest in demonstrating the links between national competitiveness and promotion of CR by public sector agencies.

If CR is to be integrated into trade and investment negotiations, two principal

KEY POINTS:

- Discussion on congruence and conflict between the trade, investment and corporate responsibility agendas is set to intensify
- There are already areas where the agendas are pulling in different directions
- The potential negative market access implications of the corporate responsibility agenda urgently need to be addressed, with a new focus on equity, accountability, stakeholder empowerment and poverty reduction
- Businesses need to ensure coherence between their approaches to corporate responsibility and to advocacy around the international economic policy agenda



concerns need to be addressed. The first is a concern that while it is business lobbying that generates the trade and investment rules that underpin inequity in the impacts of economic globalisation, it is then those same businesses who proclaim their efforts to put a 'human face' on the global economy through cutting edge voluntary CR practices. At the same time, the dogma is that trade and investment liberalisation will bring overall benefits *if* the right policies are in place at domestic level to ensure that it does so. But business lobbying often undermines efforts in developing countries to strengthen social or environmental protection, and it is businesses (though not necessarily the same ones) that provide the financial resources for the corruption that undermines efforts to improve democratic governance in many parts of the world.

Second is a worry that CR could become associated with the tendency to crude 'North-South' polarisation demonstrated by the older WTO trade and environment negotiations, and their association with protectionism and neo-colonialism. The dominant CR agenda has largely been shaped by Northern stakeholders – the challenge is to ensure that it fully absorbs the relevance of southern perspectives and preferences too.

Tackling mismatches between trade, investment and CR

An agenda on 'CR and trade and investment rules' will need to deliver integrated thinking across the full range of areas where the multilateral trade agenda and the CR agenda currently pull in different directions. Two in particular stand out.

Performance requirements. On the trade side, the WTO's Agreement on Trade-Related Investment Measures (TRIMs) supports the view that performance requirements – such as those requiring foreign businesses to source from local suppliers – are an inefficient and ineffective way of delivering development benefits at national level. In contrast, the CR agenda's 'business linkages' theme encourages multinationals to contribute to local development processes through a range of voluntary partnerships with local suppliers.

Non product-related Process and Production Methods (PPMs). A key plank in the 'business case' for CR is the idea that voluntary consumer preferences for 'ethical' goods and services – facilitated by labelling and certification schemes – drive positive changes in supply chains. For producers on the receiving end of environmental or social conditions in international trade, it matters little whether the source of the condition is a regulation in an importing country, or an NGO-led certification or labelling scheme. The range of impacts is potentially similar. Informal discussions have already taken place within the WTO's Committee on Trade and Environment on the negative market access implications of NGO-led certification of cut flowers, even though there is little that the WTO can currently do – for better or worse – to tackle badly designed schemes. A Belgian social labelling scheme has also led to questions within the WTO's committee structure. The well-established polarisation of the longstanding debate on whether to incorporate a 'social

clause' within the international trade framework as a condition of access to markets now has the potential to play out in discussion on voluntary instruments that impose minimum labour standards through business to business trading relationships.

Both voluntary and mandatory environmental and social supply chain requirements point to a need to address market access implications, particularly for those players who are mostly standards takers, not standards makers. The principles of the WTO's Agreement on Technical Barriers to Trade (TBT Agreement) do not do this job well enough, because they mostly focus on principles of non-discrimination and the notion of 'least trade-restrictiveness', not alternative complementary principles such as broad-based participation of stakeholders (as distinct from governments) or capacity-building for vulnerable suppliers. ISEAL Alliance, a formal grouping of voluntary certification organisations, is showing the way forward. ISEAL has recently begun to develop guidelines on good practice in standard-setting procedures. The ongoing effort goes much further than the TBT Agreement in guidelines that call for standards setters to proactively seek the input of the full range of interested parties, and consider how the influence of disadvantaged groups could be increased. WTO Members would do well to absorb the potential for this equity-based CR approach to minimise the likelihood of trade tensions arising from voluntary labelling and certification schemes.

In each of these areas (PPMs and performance requirements) it is ironic that the WTO's disapproval of government-led regulation is accompanied by positive encouragement – by the governments of many WTO Members – of broadly similar action by citizens and non-governmental actors as part of the CR agenda.

Enhancing coherence between trade, investment and CR

Beyond these examples of tensions between corporate responsibility, trade and investment, there are other areas where CR can be understood as a positive catalyst for change within the WTO. The 2002 Kimberley Process Certification Scheme emerged from discussion on the role of the international diamond trade in funding violent conflict. An innovative mix of industry self-regulation and national legislation, set within a multilaterally negotiated framework, the Scheme nonetheless had the potential to generate conflicts within the WTO as a result of the differential treatment of diamonds from signatories and non-signatories. In this case, the WTO's processes proved themselves capable of delivering coherence in the face of powerful evidence and political momentum: an application for a waiver from the usual application of WTO rules was successful.

Aiming for coherence between CR, trade and investment could also lead to a focus on the potential for business advocacy to play a *positive* role in tackling the downsides of economic globalisation. Transnational corporations, unlike governments, are not bound to national electorates or notions of territorial sovereignty. Those that

operate in many regions of the world have the potential to emerge as supporters of a new internationalism. For example, an integrated 'CR and trade' agenda should attempt to address the negative developmental impacts of low commodity prices – exacerbated by rapid changes in production patterns, with all the subsequent social upheaval that ensues. The support of transnational big business for efforts to roll back agricultural subsidies in rich countries could be a big help – and has already begun to emerge.

The development problems of low commodity prices cannot of course be placed entirely at the door of the international trade architecture. Voluntary CR practices have a role to play in addressing the challenges too. And it is heartening that from an earlier CR focus on voluntary ethical and fair trade initiatives and certification schemes, new experiments are emerging. For example, some big corporate players are now concluding longer-term contracts that deliver greater livelihood security for farmers.

An integrated trade, investment and CR agenda should also seek to incorporate the ways in which the corporate accountability agenda has evolved in the time since Seattle and the collapse of the MAI. This has significant implications for progress under the General Agreement on Trade in Services (GATS). And it seems clear that if the so-called Singapore Issues, including competition and investment, are ever to resurface as negotiations in the WTO and secure the support of developing countries, it will be important that their backers provide some assurances on the incorporation of meaningful corporate accountability provisions.

In the investment context, there are concerns about the extent to which established principles of investment law favour business interests at the expense of broader public policy goals in host countries. Any robust agreement would have to incorporate meaningful 'investor responsibility and accountability' provisions.

Already, legal disputes connected to investor rights have generated CR dilemmas. The multinational pharmaceutical companies who sued the government of South Africa, along with then President Nelson Mandela and a number of other senior officials, over sales of generic HIV and Aids treatment drugs in the late 1990s learned this when they were forced to pull out of their action after public pressure. CR aficionados may need for the future to assess the significance of these kinds of cases in terms of their implications for trade and investment frameworks – be it at multilateral, regional or bilateral levels.

In the ongoing agenda on liberalisation of trade in services under GATS, discussions on liberalisation have not been accompanied by analysis of lessons learned from the

questionable behaviour of some management consultancy and accountancy firms during the boom years of the 80s. The collapses of Enron and Worldcom have triggered a rethink on corporate governance within key service sectors such as accountancy, but their implications for the multilateral trade negotiation agenda have yet to be assessed. Elsewhere, integration is hampered by the lack of any formal institutional setting for agreeing action on flanking measures to accompany liberalisation. This is a particularly stark gap in service sectors that are key to addressing poverty reduction, such as the key utilities. Public governance challenges in liberalising countries could generate a misplaced emphasis on the role of voluntary corporate social responsibility in tackling the potential downsides of liberalisation.

Linking the right agendas

There are many unresolved issues over the extent to which an understanding of trade and investment policy *should* or even *may* inform the evolution of CR. For the time being, what dominates is a paradigm of enhancing competitiveness through liberalisation and deregulation whilst addressing environmental and social issues through a 'voluntarist' CR agenda.

An alternative CR and trade agenda would focus more on notions of equity, accountability and poverty reduction. As commentators and analysts think through the implications of opposition at Cancún to discussion of investment and competition policy, and as discussions on the future shape of the TRIPs Agreement and the GATS negotiations evolve, this agenda will need to receive much deeper attention. The challenge to businesses is to embrace this alternative CR agenda and to ensure that whatever they lobby for in the trade and investment policy arenas is directly supportive of it. Unless tough links between corporate responsibility and corporate lobbying in the international economic policy agenda are made, both endeavours will continue to be stymied by accusations of whitewash and institutional capture. It is not in anyone's interests for that to happen. ●

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