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Sylvie Loriaux* and Alexia Herwig

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International Trade, Fairness, and Labour Migration

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Abstract: This paper aims to show that fairness in trade calls for relaxing existing WTO rules to include a greater liberalisation of labour migration. After having addressed several objections to global egalitarianism, it will argue, first, that the world's rich and the world's poor participate in a same multilateral trading system whose point is primarily to reduce trade barriers and hence to establish global economic competitions, in order to raise their standards of living; second, that these competitions are subject to requirements of formal and substantive fairness; and, third, that the substantive fairness of the competitions that are taking place in the field of trade in goods is likely to require a greater liberalisation of labour migration, especially low-skilled labour from developing countries.

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This paper is interested in the question of whether fairness in trade¹ calls for expanding the current multilateral trade rules under the auspices of the World

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¹ The phrase “fairness in trade” as we employ it in this paper should not be confused with the usage of the term “fair trade” in literature and social movements. Like proponents of the so-called “Fair Trade” movement, we believe that considerations of fairness call for improving the living and working conditions of disadvantaged producers and workers in an effort to promote capacity building and to ensure better trading conditions. But while “Fair Trade” initiatives often revolve around a willingness to transform the nature of cross-border economic exchanges and hence to propose an alternative conception of international trade – by focusing on ethical consumption and by bringing to the fore civic and relational values, for instance (Raynolds 2012) – our paper is premised on the existing practice of international trade as it is conventionally understood, that is, with reference to production efficiency and cross-border competition,

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Q2

Trade Organization (WTO) to include a greater liberalisation of labour migration.² In order to appreciate the relevance of this question, it may be useful to start by noticing the existence of a certain discrepancy within the WTO. On the one hand, we are witnessing a significant liberalisation of trade in (non-agricultural) goods³: the WTO has not only bound and reduced tariffs on goods to generally low levels, it has also prohibited members from imposing quantitative restrictions on imports of goods at the border and from discriminating against those imports in favour of domestic products with respect to taxes and regulations imposed behind the border (GATT, Articles I, II, III, XI). On the other hand, however, we are observing a much weaker liberalisation of trade in services, certainly in one of its modes of supply, namely, through the presence of natural persons in the territory of another WTO member. To be sure, an international legal instrument does exist which specifically addresses the movement of service suppliers from one country to another: it is the *General Agreement on Trade in Services* through its Mode 4 (GATS, Art. I: 2(d)). Moreover, insofar as the migration of workers is an incidental effect of the liberalisation of trade in services, this instrument has the potential for becoming a multilateral labour migration agreement (GATS, Annex on Movement of Natural Persons Supplying Services under the Agreement). However, its impact on labour mobility is still heavily circumscribed. To begin with, the GATS Mode 4 concerns only service providers and offers therefore no right of access to the unemployed or to workers engaged in the manufacturing of goods. Further, it entails only a right to temporary stay in the territory of another WTO member in order to provide a service and does therefore not concern persons seeking to obtain a permanent job or a right to permanent stay in a foreign country. Finally, and most importantly, it leaves WTO members free to decide whether or not to accept foreign service providers on their market and to treat them less favourably than domestic service suppliers post-entry (GATS, Articles XVI, and XVII).

Put briefly: trade barriers are much greater in the market for labour than in the market for goods. Yet, labour – especially low-skilled labour – is the factor of production that developing countries supply in relative abundance and in which they enjoy a comparative advantage (UNDP 2005: 136; World Bank 2006:

and engages in a philosophical reflection on the conditions a practice of this kind must satisfy in order to be considered fair. In so doing, it also underlines the need to address issues of fair trade in international regulations and organisation.

² We will use the expression “labour migration” to refer to the “migration of workers”, but it must be noted that it can also be taken to encompass the “migration of jobs” through, for instance, firm relocation or tasks outsourcing. On this distinction, see: World Bank (2013: 232–42).

³ As is well-known, trade in agricultural goods is an area where trade barriers persist, in particular in the form of high tariffs and subsidies.

208–10). If we add to this that returns to labour remain, for the time being, much 1
higher in developed than in developing countries, it appears that the benefits
that workers from developing countries could draw from a removal of barriers to
labour migration to developed countries are likely to be significant, probably
much more significant than those resulting from the already more liberalised 5
trade in goods (Hamilton and Whalley 1984; Hatton 2007; UNDP 2005; Winters
2008; World Bank 2013: 234–6). This explains that developing countries,
although initially reluctant to liberalise their services sector, have come to
realise their potential as exporters of services and to ask for increased interna-
tional mobility of labour (UNDP 2005: 136). 10

This discrepancy within the WTO raises important questions of justice. What
are we to think of the various restrictions placed by developed countries on the
migration of low-skilled workers to their labour market? Is the current system of
multilateral trade not arbitrarily favouring the interests of some of its partici-
pants, and this, at the expense of its most vulnerable participants? Is it not, by 15
the same token, perpetuating or even creating profound global inequalities? And
how should these inequalities be morally assessed? Can they be justified from
the perspective of justice? Or even more fundamentally: Does justice demand
that they be justifiable?

This paper develops a particular associational account of justice to show 20
that principles of egalitarian justice properly apply to the existing multilateral
trading system and call for expanding the rules of this system to include a
greater liberalisation of labour migration, especially low-skilled labour from
developing countries. The argument will proceed in three steps. Section 1 will
start by bringing into light some of the weaknesses of mainstream associational 25
accounts of egalitarian justice: against “non-voluntarist” accounts, it will ques-
tion not only the practicability but also the relevance of the “voluntariness/non-
voluntariness” distinction; against “narrow cooperation-based” accounts, it will
question the emphasis placed on the “nature” of the goods provided by an
association. It will then show that assessing the fairness of the existing multi- 30
lateral trading system requires not only assessing the fairness of the distribution
of the gains from international trade but also assessing the fairness of the
competitions that make these gains possible in the first place. More specifically,
it will argue that, as any other competitions, the global economic competitions
that the WTO institutes are inherently subject to requirements of “*competitive* 35
equality of opportunity” and hence to requirements of egalitarian justice: not
only must their rules be defined so as to select qualified competitors (*formal*
fairness), but competitors must also stand a fair chance of acquiring the relevant
qualifications (*substantive fairness*). Sections 2 and 3 will apply the principle of
“competitive equality of opportunity” to the specific question of labour 40

migration within the WTO. Section 2 will focus on the requirement of “formal 1 fairness” and show that while it subjects the rules of existing job competitions to important constraints of non-discrimination, it is agnostic as to the question of whether labour migration should or should not be liberalised. Section 3 will focus on the requirement of “substantive fairness” and show that its application 5 to the ongoing liberalisation of trade in goods has important implications for the liberalisation of labour migration, especially low-skilled labour from developing countries.

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1 The existing multilateral trading system as a subject of Egalitarian justice

“Associational” accounts of egalitarian justice maintain that duties of egalitarian 15 justice, and with them concerns about how people fare relative to each other, are “special” moral duties: they are owed to persons not merely in virtue of their being human but also in virtue of their standing in a “certain” normatively relevant contingent set of social relationships, and more specifically, in virtue of their forming an association that meets “certain” normatively relevant condi- 20 tions. From an “associational” perspective, deciding whether a given international organisation can be considered a proper subject of egalitarian justice thus requires addressing two critical issues: first, identifying what features of an association can be said to generate duties of egalitarian justice between its members; second, determining whether or not these features can be said to 25 obtain in the international organisation under consideration.

Q4 Having said this, it should come as no surprise that associational arguments *against* the cross-border application of principles of egalitarian justice have been as common, if not more common, than those in its favour. So one of the most influential arguments – which can take and has taken different forms – regards 30 the non-voluntary character of an association as a necessary condition of egalitarian justice, but denies that this condition is met at the world level (Blake 2001; Nagel 2005; Reidy 2007). It is because certain associations are “non-voluntary” – that is, because non-participation would be excessively costly (because these associations are, for instance, necessary to the satisfaction of the 35 basic needs of their members) or because participation has not really been consented to (because their members are required, independently of their will, to obey or even to endorse the rules that govern them) – that they must satisfy stricter requirements of justice, in this case requirements of egalitarian justice. Yet, the argument goes, it is doubtful that membership of an international 40

organisation like the WTO can be considered non-voluntary in this sense. 1
Although they might have preferred to have different options open to them,
states have freely consented to the terms of the WTO and must therefore be
regarded as having also voluntarily accepted their potential distributive effects.

Q5 Scepticism towards global egalitarianism is also shared by certain “cooperation- 5
based” accounts of egalitarian justice (Freeman 2007: chap. 8; Sangiovanni 2007;
Sangiovanni 2012). A noteworthy example is Andrea Sangiovanni’s account, which
conceives of requirements of egalitarian justice as requirements of “fair return” or
“reciprocity” in the mutual provision of basic public goods (Sangiovanni 2007). It is
because members of certain associations cooperate to provide each other with those 10
basic goods that are necessary for them to develop and act on a plan of life that they
owe each other stricter duties of reciprocity, in this case, duties of egalitarian justice.
Yet, Sangiovanni adds, since for the time being it is states, and not international
organisations, that provide these goods, duties of egalitarian justice arise only
between fellow citizens and residents – that is, between those who together con- 15
tribute to sustaining the state – not between states or between members of different
states (Sangiovanni 2007: 19–20).

These two lines of argument are vulnerable to several kinds of criticism,
however. One of the difficulties faced by “non-voluntarist” arguments is that –
according to their criteria – a same international organisation could be volun- 20
tary for some of its members but non-voluntary for others, or that it could be
voluntary to different degrees. It may well be that WTO membership of a country
like Belgium can hardly be considered non-voluntary: however beneficial it may
otherwise be, it may not be indispensable to the satisfaction of the basic needs
of its citizens; and insofar as Belgium is a democratic country, it may also be 25
difficult to maintain that the Belgians have not, in one way or another, con-
sented to be part of the WTO. But these criteria are more difficult to apply to a
country like Niger which, according to many contemporary observers, has no
real alternative path to development – it simply could not afford remaining on
the fringes of the WTO – and whose people remain largely excluded from 30
political decision-making. Assuming then that a same association – in this
case, the WTO – can be regarded as largely voluntary for some of its members,
but much less for others: how are we to decide whether or not it qualifies as a
proper subject of egalitarian justice? Should we acknowledge more stringent
obligations between poor and undemocratic countries and exempt rich liberal 35
democracies on the ground that the latter’s participation in the WTO, but not the
former’s, can be regarded as “voluntary”? And assuming that the costs of non-
participation can be different for different member countries, should they then
be mapped onto differentiated obligations? (Sangiovanni 2007: 18–19). If so:
How could the voluntariness/non-voluntariness distinction ever be put into 40

practice? More radically, one might even question the very relevance of the “voluntariness/non-voluntariness” distinction for delimiting proper subjects of egalitarian justice.⁴ Why would the fact that agents voluntarily joined and can still reasonably leave an association that arbitrarily discriminates between them make this discriminatory treatment less arbitrary and hence less unjust (Sangiovanni 2012: 107–9)? Take the example of a voluntary system of cooperation: four relatively well-off persons agree on a set of rules to be followed in order to coordinate their actions in search of a treasure buried in a small island. Why should the fact that non-participation in this venture is not excessively costly for any of them entail that inequalities of treatment between them – e.g. a distribution of the booty “according to their height” – deserve no special justification?⁵

These considerations lead us back to “cooperation-based” accounts of egalitarian justice. As we have seen, Sangiovanni’s focus is not so much on the idea that states are necessary to the provision of basic public goods (or that state membership is non-voluntary) as on the idea that members of a state contribute to the mutual provision of these goods and are therefore entitled to a “fair return” on their contribution. Still, it might be wondered why requirements of “fair return” or “reciprocity” should be egalitarian only in the context of an association providing basic public goods. Even if we accept that distributive equality captures the fair return owed to those who, through their compliance with domestic law, make it possible for us to develop and act on a plan of life, it does still not follow that equality as a demand of justice arises only in those circumstances. The obvious alternative would be to support a “broad cooperation-based” account and to argue that egalitarian requirements are triggered whenever

⁴ By saying this, we do not mean to deny that the “voluntariness/non-voluntariness” distinction, and with it a concern with human agency, can have a significant role to play within a theory of justice.

⁵ Certainly, participants in this cooperative venture may explicitly have agreed to distribute the booty “according to their height”, in which case they do not seem to be in a position to complain afterwards for having been treated “unfairly”. But our objection to “non-voluntarist” accounts bears on a different dimension of their “voluntariness”: the fact that non-participation in a cooperative venture would not be excessively costly does not preclude this venture being subject to egalitarian requirements. As will appear later, our view is that cooperators’ equal standing as cooperators generates a “presumption” in favour of an equal distribution of the fruit of their cooperation – a “presumption” in the sense that any inequality that their cooperative venture creates between them will have to be justifiable to them. To take the example of the existing practice of international trade, which is the focus of this article, we believe that inequalities arising from differences in skills may be regarded as presumptively fair, while those arising from differences in access to these skills must be regarded as presumptively unfair, and we take this view to be justifiable in the light of the “point” of this practice.

agents are jointly contributing, in some rule-regulated manner, to the creation of a cooperative product, whatever the nature of that product. 1

We believe that Aaron James' account of "governable social practices" is a good case in point (James 2005, 2012). In James' view, international trade constitutes a system of cooperation (i) whose rules are subject to human control, 5 (ii) which is undertaken for the purpose of mutual national gains, (iii) which involves the coordination of actions in the form of international market reliance, and (iv) which provides a distinct subject of moral assessment, over and above particular economic transactions. As such, James argues, it raises special concerns having to do with the way participants in a group organised as a practice 10 treat all those affected by the practice. More particularly, James identifies several principles of equity that should govern international trade, and among them is an egalitarian principle which he calls "Fair Distribution" (James 2005: 543), or more recently, "International Relative Gains" (2012: 221–6). At the heart of this principle is the idea that all those who participate in international trade have, in 15 virtue of both their moral equality as such participants and the symmetry of their interest in greater than smaller shares of the gains of international trade, a presumptively equal claim to the gains of international trade. Equality is to be regarded as the "benchmark" or "moral default" in the sense that any inequalities in the distribution of the gains of international trade will have to meet a 20 burden of justification (2012: 165–201).

This, of course, raises the question of which inequalities will precisely be justifiable, or what kind of factors will be authorised to affect how much trading partners will gain from international trade. And it is here that James introduces an important limitation, since he emphasises that the egalitarian requirements 25 of his principle apply only to the "surplus" of cooperation, not to what agents could achieve by acting alone. More precisely, James emphasises the relevance or non-arbitrariness of countries' "background endowments" such as their population, natural resources, economic organisation, cultural identity, productive structures or level of technological development (2012: 180–1). What this 30 concretely means is that, in his view, any inequality in the distribution of the gains of international trade that emerges among trading partners that share roughly similar background endowments will have to be considered "presumptively unfair" (James 2012: 180); by contrast, any inequality that can be traced back to differences in background endowments will have to be considered 35 "presumptively fair" (James 2012: 182).

James supports this "endowment sensitivity" by referring to what he takes to be the "point" of international trade (James 2012: 222, 243). The reason it is not arbitrary to allow countries' shares of the gains of international trade to depend on their background endowments is that international trade aims precisely to 40

take advantage of the differences in costs of production that arise from differential background endowments (2012: 180–1). That is, international trade finds its *raison d'être* in the national income gains that can be created by allowing a more efficient international allocation of productive resources (2012: 197). In order to be fair, it need therefore not equalise trading partners' positions by redistributing their endowments or their benefits; given its aim, such an equalisation might even prove to be inconsistent (James 2005: 546).

Now, we agree with James that the distribution of the gains of a cooperative venture must be determined by relevant or non-arbitrary factors. We also agree that non-arbitrary factors are not necessarily “deserved” factors – that is, factors for which cooperators can be held responsible –, but are first and foremost factors that are of relevance given the “point” of the cooperative venture under consideration. Some of the factors James mentions – such as climate or quality of land – are largely attributable to brute luck and we see *a priori* no reason why they could not have a significant role to play in the distribution of the gains from international trade.

Where we disagree is with the view that the “limited aim” of international trade could justify the distributive effects of *all* factors that equally existed or would equally have existed in the absence of international trade. We believe, on the contrary, that while inequalities in background endowments may not be morally problematic *per se*, some of them are likely to become so once members of different societies – some socially better endowed than others – have to compete for the same social and economic advantages.

Admittedly, the WTO is not properly seen as a charity or as a development agency: it has not been established simply in order to relieve suffering or to alleviate poverty by redistributing resources across borders. To be sure, the WTO does make a number of claims with regard to world poverty reduction. As the *Preamble* to the *Marrakesh Agreement Establishing the World Trade Organization* indicates, trade is to be “conducted with a view to raising standards of living”, while “ensur[ing] that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development”.⁶ But the same *Preamble* also specifies that this objective is to be pursued in a well-defined way, namely “by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade”. The “point” of the WTO can, in other words, be seen as comprising two components: an

⁶ It is widely accepted that a treaty's preamble is evidence of the treaty's object and purpose and that this *telos* is in turn relevant for ascertaining the legal meaning of the treaty (Lowe 2007; Van den Bossche and Zdouc 2013: 82–3; Vienna Convention on the Law of Treaties: Article 31(1)).

increase of standards of living (as one of its main objectives)⁷ and a reduction of trade barriers (as a means to achieve this objective).

Now, saying that the WTO primarily aims to raise standards of living by way of a reduction of trade barriers is another way of saying that it primarily aims to establish and to take advantage of global economic competitions. Even if we admit that international trade is itself a cooperative, rather than a competitive, relationship in the sense that it essentially entails different countries deciding to coordinate their actions for the purpose of mutual economic benefits (Heath 2009: 99), the fact remains that by maintaining open markets this international cooperative venture also and inevitably generates cross-border economic competitions. While countries, as trading partners, may not properly be regarded as competitors⁸; firms and workers from different countries are for their part made to compete with each other – whether for market shares, for incomes, or for jobs. These cross-border economic competitions are moreover not to be considered a mere incidental or unintended effect of trade liberalisation. On the contrary, it is important to recognise that it is ultimately these competitions which – by progressively removing globally inefficient behaviours – will determine the form taken by the international division of labour and make the creation of the gains of international trade possible.

Another important point to be considered at this juncture is that, as any other competitions, the competitions which the WTO so institutes also raise special demands of egalitarian justice, in particular demands of “competitive equality of opportunity”. Demands of “competitive equality of opportunity” are triggered by the conjunction of two types of considerations: the one is the empirical observation that some agents are *de facto* engaged in a same rule-regulated competition in order to attain given social and economic advantages; the other is the normative idea that all those who participate in a competition have an equal status as competitors and are therefore entitled to compete on equal terms. More specifically, competitive equality of opportunity makes the fairness of a competition conditional upon the satisfaction of two requirements. The first requirement addresses the formal obstacles that may impede success at a competition such as being judged on the basis of more stringent criteria than

⁷ According to van den Bossche and Zdouc, the ultimate objectives of the WTO derived from the preamble are (i) the increase of standards of living, (ii) the attainment of full employment, (iii) the growth of real income and effective demand, and (iv) the expansion of production of, and trade in, goods and services (Van den Bossche and Zdouc 2013: 83).

⁸ Note however that even countries seem to be concerned with competitiveness as evidenced by their increasingly skill-focused immigration policies or willingness to attract high-educated and high-skilled foreign workers in order to strengthen their economies.

other competitors or being excluded from the competition altogether. It 1
 demands that the rules governing a competition be defined so that success in
 the competition is determined by qualification, in accordance with appropriate
 criteria. This requirement of *formal fairness* incorporates a requirement of non-
 discrimination: not only should all competitors be judged according to criteria 5
 that are relevant given the “nature” of the competition in question, but all
 competitors must also be judged according to the same criteria. The second
 requirement is concerned with the more substantive obstacles that may arise
 from competitors’ social backgrounds. It captures the idea that in order for a
 competition to be fair, it is not enough that competitors be assessed on the basis 10
 of their qualifications; all competitors must also have a fair chance of becoming
 qualified. This requirement of *substantive fairness* insists that success in a
 competition should not be hampered by one’s social position.

Yet, what we see in practice is that many participants in the global economic
 competitions that the WTO institutes lack access to the social and economic 15
 resources that would enable them to develop the skills needed to succeed in
 these competitions. Success in global economic competitions increasingly
 depends on the possession of particularly complex skills (such as oral and
 written fluency in English, mastery of new technologies, fair understanding of
 legal and economic rules, a sense of entrepreneurship, or an innovative mind), 20
 which itself largely depends on the availability of a strong institutional environ-
 ment. But while certain participants enjoy fair access to these institutions and
 skills, others are systematically burdened by competitive disadvantages due to
 poor social and institutional circumstances.⁹ These competitive disadvantages
 are moreover likely to play a critical role in the determination of countries’ 25

⁹ Certainly, the kind and amount of social and economic resources available in a society will be
 a function of this society’s culture and political choices. As David Miller has pointed out, what it
 means “to be educated” will, for instance, vary from one society to another: some will put the
 emphasis on the development of intellectual skills, while others will pay more attention to the 30
 provision of a religious instruction (Miller 2005: 60–4. See also: Brock 2005: 350). This, of
 course, raises the problem of how to compare – and *a fortiori* to equalise – opportunities
 between agents who do not share enough cultural understandings with respect to the meaning
 and relative importance of particular social goods. By focusing on the skills predicting success
 in global economic competitions, our conception of equality of opportunity can to some extent
 avoid this difficulty for it tends to fix the content of the opportunity under consideration and 35
 hence to provide a benchmark for comparison. But the downside is that, by doing so, it cannot
 but privilege one particular understanding of “being educated”, an understanding shared in
 some but not all societies. However deplorable this may sound in terms of respect for cultural
 differences or identities, this seems to some degree unavoidable as the kind of knowledge and
 know-how predicting success in a liberalised global economy does *de facto* tend towards a
 certain homogenisation. 40

comparative advantages or the shape taken by the international division of labour, with richer countries specialising in higher-skilled and usually higher-paying activities, and poorest countries largely stuck in low-skilled labour-intensive activities (such as agriculture, textiles manufacture, etc.), from which relatively less income with more volatility can be gained.¹⁰ As Amartya Sen puts it, “The central issue of contention is not globalization itself, nor is it the use of the market as an institution, but the inequity in the overall balance of institutional arrangements – which produces very unequal sharing of the benefits of

10 A recent German study of per capita GDP gains from globalisation of 42 developed and emerging economies has revealed that developed countries are in the category of countries that have derived the highest gains from globalisation while large emerging economies are in the category of countries having derived the lowest per capita gains from globalisation (Bertelsmann Stiftung, 2014: 6, 33–34). Very similar results obtain for real and purchasing power parity adjusted per capita GDP calculations. Generally speaking, there is currently a tenfold difference in per capita GDP gains between high-gain and low-gain countries, and relative differences in per capita GDP gains have increased over the 1990–2011 reference period. Through regression analysis of the sampled countries, the study also shows that increased access to education results in lower Gini coefficients (and thus inequality) within each country while the number of people employed in the agricultural sector is mildly negatively correlated with the in-country Gini coefficient (Bertelsmann Stiftung 2014: 42–43). The study does not test whether or not these variables might also explain the disparity in relative GDP gains from globalisation between countries. Nevertheless, its results suggest that trade liberalisation has made emerging economies with large, lower skilled populations relatively poorer. Although trade liberalisation encourages specialisation of countries in areas in which they currently enjoy a comparative advantage, it is worth noting that WTO law does not support a “static” conception of comparative advantage that would inhibit states from undergoing reform in order to adjust the field in which they enjoy a comparative advantage. To the contrary, it allows countries to grant generally available subsidies for research and development and thus to incur public expenditure in the hope of adjusting their comparative advantage towards more high tech industries (Agreement on Subsidies and Countervailing Measures, Article 1.2). It also allows developing countries to take trade-restricting measures to promote their economic development and protect infant industries (GATT, XVII). Nevertheless, the ability of countries to finance general research and innovation subsidies or import-substitution policies depends in significant measure on the size of the budget and household income. In both areas, many developing countries face constraints. Insofar as developing countries’ products derive their competitive advantage mainly from lower prices due to less expensive labour input and agricultural products one can expect greater short-term volatility in successful sales and thus income. Agricultural production is subject to price fluctuations due to instable output and commodity price speculation while changes in wage levels between countries are likely to affect product prices immediately. High-technology products, in contrast, also differentiate themselves on the basis of product quality and reputation with two consequences for short-term volatility: first, price changes do not necessarily translate into lost sales and income; and second, change in product quality and reputation is likely to occur on a longer time-horizon due to the length of the research and development process.

globalization” (Sen 2002). While the existing multilateral trading system has been established in order to raise standards of living through a reduction of barriers to trade and hence through the introduction of global economic competitions, its participants cannot all be said to have a fair opportunity to succeed in these competitions.

In conclusion then, we disagree with James’ contention that an unequal distribution of the gains of international trade can be considered “presumptively fair” so long as it reflects differences in countries’ background endowments. Instead, our position is that (1) the fairness of the distribution of the gains of international trade cannot properly be assessed without also considering the fairness of the global economic competitions that make the creation of these gains possible in the first place, and (2) these competitions can hardly be considered fair so long as some participants lack access to the relevant qualifications, even if this lack of access results from their countries’ “background endowments” (such as a low level of technological development, weak trade-related infrastructure, or poor training and educational facilities).

The remainder of this paper will be devoted to examining how the principle of competitive equality of opportunity can be applied to the concrete question of labour migration within the WTO, and to determining whether this principle, and with it considerations of fairness, calls for relaxing current restrictions on the movement of natural persons across countries, be it as service suppliers under Mode 4 of the GATS or as workers seeking employment.

2 Formal fairness in the market for labour

As far as the rules of job competitions are concerned, we can distinguish between at least three questions of fairness: (1) Are the rules defined according to relevant criteria?; (2) Should all jobs be allocated through competitive processes?; (3) Should competitions for jobs be open to all? While the first question applies only to existing competitions, the second and the third questions are also concerned with the appropriateness of establishing competitions for certain jobs and between certain agents. How proponents of competitive equality of opportunity deal with the latter two questions is ambiguous. On the one hand, they tend to regard jobs (together with educational places) as the example *par excellence* of social and economic advantages that should be subject to open competition – no one should be prevented from competing for a job. On the other hand, however, they implicitly tend to restrict the scope of the principle of competitive equality of opportunity to domestic societies. It is, for instance, not ordinarily thought objectionable if jobs in Belgium are not open to Nigerien

workers, and conversely, if jobs in Niger are not open to Belgian workers. Thus 1
 limited in scope, and assuming that job opportunities are for the time being far
 greater in Belgium than in Niger, competitive equality of opportunity would be
 compatible with Belgian and Nigerien workers enjoying very unequal job oppor-
 tunities. We will return later to the question of whether it is desirable to create 5
 competitions in the labour market. As a first step, we will concentrate on the first
 question, that is, the question of non-discrimination in the labour market.

Saying that the rules of job competitions must assess competitors on the basis
 of relevant or non-arbitrary considerations amounts generally to saying that they
 must select applicants on the basis of their qualifications, and more specifically, 10
 on the basis of considerations that predict successful job performance.

We do not believe that this claim is to be grounded in the idea that more
 qualified applicants “deserve” the job more than less qualified ones. In parti-
 cular, we do not deem it necessary to establish that more qualified applicants
 will usually be responsible for the development of their job-related skills – or 15
 that the possession of the skills predicting success in job competitions will
 usually presuppose a certain degree of voluntary choice and effort – and that
 these skills should therefore be considered non-arbitrary and be allowed to
 affect the allocation of jobs.¹¹ Instead, we share with James the view that it is
 for a large part the “point” of an association that indicates what kinds of 20
 considerations are to be judged arbitrary or non-arbitrary, and hence, what
 kinds of inequalities are to be authorised between its members.

When viewed from the perspective of the “point” of the WTO, the non-
 arbitrariness of job-related skills rests on the assumption that it is desirable to
 reduce trade barriers – and as a consequence, to promote cross-border job 25
 competitions and a more efficient allocation of jobs – *because and insofar as*
 doing so promotes higher standards of living. In other words, job-related skills
 are relevant because of their utility or the role they can play in advancing
 human welfare.¹²

This explains why the WTO purports not only to promote job competitions 30
 but also to promote job competitions that are formally fair or, as the *Preamble to*
the WTO Agreement puts it, to “eliminat[e] (...) discriminatory treatment in
 international trade relations”. In other words, the “point” of the WTO comprises
 a third component – besides raising standards of living and a reduction of trade

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¹¹ For alternative desert-based accounts of the idea that qualified, indeed best-qualified, applicants should be appointed for a job, see for instance Miller (1992) and Sher (1988).

¹² This is in line with Norman Daniels’ characterisation of merit claims as deriving not from the fact of having the job-related skills themselves, but from the fact that these skills allow an increase in productivity which it is socially desirable to pursue (Daniels 1978: 210–11).

40

barriers –, which brings into relief the economic benefits that can be generated 1
 when agents are assessed on the basis of their job-related skills, *irrespective of*
their country of origin. This commitment is reflected in its affirmation of two
 principles of non-discrimination. The first is the Most Favoured Nation rule
 (MFN), which stipulates that member countries must treat a good produced in 5
 one member country no less favourably than a like good produced in another
 member country with respect to customs duties, charges on importation and
 export, trade formalities, taxes and domestic regulations (GATT, Art. I.). The
 second principle of non-discrimination is the National Treatment rule (NT),
 which stipulates that member countries must treat foreign goods no less favour- 10
 ably than closely competing domestically produced goods in respect of domestic
 regulation, nor tax them in excess or dissimilarly (GATT, Art. III:2 and III:4).

It goes without saying that the application of these two principles to the
 provision of services through the presence of natural persons in a foreign
 country (GATS Mode 4) would have important implications, since it would entail 15
 that no difference in treatment (e.g. regulatory or tax discrimination) based on
 foreign origin is allowed between competing service suppliers and services. But
 the difficulty faced by this line of reasoning is that WTO member countries *de*
lege retain significant room to manoeuvre. They remain free not to liberalise the
 services sector, to liberalise only certain modes of supplying services – to 20
 liberalise, for instance, commercial presence (equivalent to foreign direct invest-
 ment) but not the presence of natural persons – to grant market access only to
 certain types of service providers (e.g. by placing maximum limits on foreign
 equity participation or requiring the establishment of subsidiaries rather than 25
 branches), to refuse national treatment to foreign service providers or to limit the
 extent to which they grant them national treatment (by requiring them, for
 instance, to pay higher taxes or comply with stricter regulations). As for the
 MFN obligation, it applies regardless of whether a WTO member country has
 made any commitments to liberalise a service sector via market access and
 national treatment. Where a WTO member country makes no market access or 30
 national treatment commitments and does not in fact allow for market access or
 national treatment, the effect of the MFN obligation is simply to require the
 member country to block access to service suppliers of all foreign countries (if
 no market access commitment) or to discriminate equally against all foreign
 service suppliers (if no national treatment commitment). However, at the time 35
 the GATS was negotiated, the negotiating countries were permitted to list
 specific exceptions to the MFN obligation. Such exceptions allow them to dis-
 criminate in favour of service suppliers from a particular foreign country.

What this essentially means is that the legal constraints placed by the WTO
 on domestic labour immigration policies are, for the time being, a function of the 40

commitments that states have voluntarily made with respect to the cross-border 1
movement of natural persons supplying services. And what we see in practice is
that the commitments made by developed countries under GATS Mode 4 have
remained quite modest and not really responsive to the interests of developing 5
countries, since they have been limited to intra-corporate transferees, such as
executives, managers, and technical personnel linked to a commercial presence
in the host country, and business visitors with only little market opening to
independent foreign professionals (WTO, Movement of Natural Persons).

As a result, addressing the question of labour migration within the WTO
from the perspective of formal fairness does not appear that helpful. As far as 10
the international mobility of workers is concerned, the crucial question has
indeed not to do with the discriminatory or non-discriminatory character of
the rules governing existing competitions, but with the very absence of competi-
tions between certain agents and with respect to certain jobs – in the case that 15
interests us, between members of different countries and with respect to the
provision of services. This brings us back to the two questions related to the
desirability of establishing job competitions (questions 2 and 3 above), and more
particularly, to the question of whether the rules of the existing multilateral
trading system should not be amended so as remove barriers to the cross-border 20
movement of workers and create new competitions in the labour market. The
next and last section will explore this question by considering the other side of
the principle of competitive equality of opportunity, namely, the requirement of
substantive fairness.

3 Substantive fairness in the market for goods 25

From the foregoing, it may seem that the principle of competitive equality of
opportunity is unable to address the question of whether the WTO should tend
towards a greater liberalisation of labour migration. As we have seen, its 30
demands are activated at the global level only because, on the one hand,
members of different societies are *already* competing for the same social and
economic advantages *and* because, on the other hand, those who are engaged in
a same rule-regulated competition must be treated as equal competitors. In other
words, the principle of competitive equality of opportunity applies only to 35
existing competitions. It informs us on what should be done in order for existing
competitions to be fair, but it does not tell us whether the promotion of
competitions is fair in the first place. What we want to show now, however, is
that the former issue can have significant implications for the latter issue. To
this end, we will focus on the ongoing liberalisation of trade in goods. 40

As already indicated, goods are traded across borders subject to require- 1
ments of market access and non-discrimination: imported goods must not be
subject to restrictions other than customs duties and must normally be treated
like domestically produced goods (GATT, Art. XI, and III). Different treatment is
permitted only if based on objective public policy criteria such as differences in 5
health protection needs (GATT, Art. XX, XXI). Through these requirements, the
WTO purports to promote economic growth and rising standards of living.
However, it is important to see that many of the opportunities that the liberal-
isation of trade in goods so generates (especially for high-income generating
jobs) can remain beyond the reach of many participants. Lack of access to the 10
needed skills – or simply too large inequalities of resources – can *de facto*
prevent some participants from seizing these newly opened opportunities.

Whatever our reading of the ideal of equality of opportunity, saying that it
could be achieved in a competition regardless of competitors' differences in 15
terms of their access to the qualifications predicting success in this competition
remains problematic.¹³ Taking advantage of the liberalisation of trade in goods
requires more than open markets and non-discrimination; it also requires a

13 People may doubt whether the principle of competitive equality of opportunity, which is 20
usually applied to the allocation of educational places and jobs, holds for any kind of competi-
tion whatsoever. While most will agree that, say, a 100 meter race cannot be fair unless all
runners are judged according to their speed measured with the same instrument and run on the
same or comparable track, some may deny that it is also subject to requirements of substantive
fairness – that its fairness can, for instance, be undermined by the fact that only some runners
have had access to sophisticated training infrastructures and individualised training pro- 25
grammes. Insofar as runners have unequal access to the resources allowing them to develop
the skills predicting success in a given race, this race strikes us as substantively unfair. This
unfairness does not arise from the fact that disadvantaged runners cannot seriously be said to
have a real chance of winning the race. If competitive equality of opportunity were to be
understood in terms of equal chances of actually winning a competition, then it would demand
the removal of all possible differences between competitors, whether social or natural. We 30
would then lose all connection with the very aim of a sports competition, which is to determine
who is best at performing a given physical activity at a given time. The reason runners'
background inequalities matter from a fairness perspective is that they allow failure in the
race to reflect poorer social circumstances rather than lower physical aptitudes. It is difficult to
compare and rank the physical performance of agents who have had very unequal chances of
developing and exhibiting their physical aptitudes. We conjecture that differences in the fair- 35
ness requirements intuitively considered applicable to sports competitions compared to compe-
titions for jobs have to do with the kinds of advantages that are at stake. Access to jobs can
be considered critical to developing and acting on a plan of life. The same is not true of sports
competitions whose rewards are only contingently valuable and may consequently not justify
the spending of public funds to equalise competitors' starting positions – which is not to say
that they may not be deficient from the perspective of substantive fairness. 40

capacity to respond in an adequate way to non-discriminatory market openings. 1
In other words, it is not enough that the liberalisation of trade in goods proceeds
in a formally fair way; it must also proceed against a background of fair access
to the necessary qualifications.

This is where the requirement of substantive fairness comes into the picture: 5
this requirement is also to be understood in the light of the “point” of the existing
multilateral trading system and its underlying assumption that it is desirable to
create cross-border economic competitions *because and insofar as* this allows
increasing the standards of living of its participants. But while formal fairness
focuses on the non-arbitrariness of the skills predicting success in these competi- 10
tions, substantive fairness focuses on the arbitrariness of the social factors that
make the development of these skills possible. Its leading idea is that some
participants in the existing multilateral trading system may belong to societies
that *de facto* prevent them from acquiring the relevant skills, while they could *in*
principle be able to acquire them, that is, with proper training and education, and 15
regardless of their place of residence. The requirement of substantive fairness can
thus be read as an attempt to make available job-related skills that would be
wasted if only formal fairness was realised (Daniels 1979: 217).
Q6

At this point, it might be objected that the demands of substantive fairness
are inconsistent with the very point of international trade: as Aaron James 20
suggests, international trade is beneficial only because countries are differently
adapted to the production of different goods and services, and their members
differently skilled as a result; there would no longer be any point in undertaking
international trade if its participants were all to be made equal.

In answer to this, it must be emphasised that competitive equality of 25
opportunity need not demand the equalisation of *all* factors that affect success
in a given market competition. On our account, two agents can enjoy competi-
tive equality of opportunity without both having an equal chance of actually
winning the competition, provided they are both free from the same specified
obstacles.¹⁴ A great deal thus depends on the specification of the obstacles that 30
should be overcome and our claim is that socioeconomic disadvantages are to
be counted among these obstacles. We make no claim as to the desirability of

¹⁴ For a similar account, see: Westen (1985). But it must be noted that other proponents of 35
“competitive equality of opportunity” conceive of an opportunity as a guarantee to do or to
have something if one so chooses and find it therefore more appropriate to talk of “equal
competition for scarce opportunities or resources” than of “competitive equality of opportu-
nity”, the reason being that in a competition for scarce resources there can be no equal
guarantee, and in their view therefore no equal opportunity, to enjoy that which is competed
for (Green 1988, 1989; Lloyd-Thomas 1977: 392)

removing “natural” disadvantages.¹⁵ This means that differences in “natural” 1
endowments – such as individuals’ natural talents or countries’ natural
resources – will remain, which will inevitably result in some participants in
international trade doing better than others in certain fields. Equalising access
to the qualifications that predict success in a liberalised global economy will 5
therefore not prevent the exploitation of cross-country differences in factors of
production or make international trade pointless.

A second objection has to do with the costs that would be involved in making
international trade in goods substantively fairer. Mitigating the competitive disad- 10
vantages that unfavourable social circumstances may confer on participants in the
existing multilateral trading system seems to require massive investments in human
development, education and training, trade-related infrastructures, and governance
structures. Yet, if the rationale of international trade is in terms of a more efficient
allocation of productive resources to the benefit of all its participants, then, accord- 15
ing to the very logic of this rationale, it may be appropriate to limit the extent to
which such investments are made. Whether considerations of efficiency are con-
sistent with substantive fairness is indeed an empirical question: it depends on
whether the costs of compensating for social disadvantages are higher or lower than
the income gains that would be so generated (Daniels 1979: 217; Joseph 1980: 395).

This objection is well founded and serious, but not fatal to our argument. 20
Indeed, it is important to notice that the substantive fairness of international

15 By saying this, we do not mean to suggest that “natural” disadvantages are morally unprob-
lematic. In this regard, we believe two points are worth noting. The first is that when talking about
the “naturally” disadvantaged, we mean not simply those who lost from trade liberalisation by 25
becoming unemployed as a result of foreign competition – part of this loss is presumably only
temporary and can be addressed by governments reinvesting the national gains of international
trade in the training and retraining of workers, and hence by considerations of substantive
fairness. Rather, we mean those losers who, although they have been given access to the resources
needed to acquire the relevant skills, remain unable to acquire them and, as a consequence, to
“function” in the increasingly competitive framework generated by trade liberalisation (while they 30
could “function” extremely well in less competitive economic settings). The second point to note is
that even though national governments certainly have the primary responsibility to address the
situation of those who happen to be marginalised by trade liberalisation (the major reason for this
is, in our view, that without redistributive measures an incapacity to participate actively in a
liberalised global economy increasingly risks leading to an incapacity to participate actively in the
social life of a political community), this marginalisation also raises concerns that have to do with 35
the fairness of the existing practice of international trade itself and that participants in this practice
have a collective responsibility to address. There is a presumption of unfairness because by
allowing reductions of trade barriers that lower living standards for some of its participants, this
practice seems to operate against its very “raison d’être”. The same would hold if participants were
allowed to increase or to maintain living standards by erecting new trade barriers or by discrimi-
nating against goods on the basis of their origin. 40

trade in goods can be promoted in different ways, which are not all equally 1
costly in terms of efficiency. In addition to transferring resources to worse-
equipped participants, better-equipped participants could also consent to some
preferential trade agreements¹⁶ or they could facilitate their access to their own
educational system or to their domestic labour market. Studies suggest that the 5
welfare gains that would accrue to both developed and developing countries as
a result of increased access for low-skilled workers to the labour market of
developed countries are likely to be substantial (UNDP 2005: 138). If so, the
international mobility of low-skilled workers would be a particularly appropriate
way of promoting the substantive fairness of international trade in goods since it 10
would not contradict the point of international trade. It also seems to be
particularly promising in terms of achieving substantive fairness. While transfer-
ring resources to poor countries is unlikely to produce long-term socioeconomic
improvements without the presence of people capable of using these resources
in favour of institution building and human development, facilitating the tem- 15
porary movement of low-skilled workers would just allow people from poor
countries to acquire the needed capacities abroad and to come back with
enhanced social, entrepreneurial, financial and human capital.¹⁷

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16 This measure is however a controversial one: however desirable measures akin to positive
discrimination may be in bringing about substantive fairness, the fact that they allow excep-
tions to or deviations from the rules of the competition can indeed be thought to undermine
formal fairness and its requirement that all those who are engaged in a competition must be
treated according to the same relevant criteria.

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17 It is worth emphasising that labour migration is envisaged in this section only as an efficient
means (i.e. a means that does not contradict the point of international trade) of achieving an
end, namely, promoting the substantive fairness of those competitions that are taking place in
the field of trade in goods. At the heart of our argument is therefore not a willingness to improve
the welfare of poor countries or to reduce world poverty as such, but a willingness to ensure
that all participants in global economic competitions have access to the skills predicting success 30
in these competitions (for an argument in favour of unskilled temporary migration that is more
along the lines of a concern for improving the well-being of the less well off, see: Kapur and
McHale (2006)). Having said this, there may still be a sense in which restricting labour
migration to the temporary migration of low-skilled workers arbitrarily discriminates between
workers (most notably, between domestic and foreign workers, or between low-skilled and
high-skilled workers from developing countries). Some variants of the ideal of equality of 35
opportunity might provide a basis for arguments to the effect that fairness in international
trade requires the free movement of persons – with the new job competitions and related
requirements of non-discrimination this would involve. But as we have already pointed out,
“competitive” principles of equality of opportunity lack the resources for directly addressing
this question as they deal only with the way existing competitions must be conducted in order
to be fair, not with the fairness of establishing new competitions. 40

An often heard concern about increased international mobility of workers is that it risks aggravating the “brain drain” from poor countries, that is, the emigration of precisely those high-skilled and high-educated people who are most needed for institutional improvement and poverty alleviation. But it is important to bear in mind that substantive fairness is about enabling disadvantaged workers to acquire a knowledge and know-how that they could not acquire in their own country because of poor social circumstances. In this context, labour migration is targeted not at those who are already most likely to be successful in the global labour market, but rather at low-skilled and low-educated workers.¹⁸

Increased labour migration could also be attained in an indirect way, by allowing weaker participants to strengthen their bargaining skills, that is, their capacity for understanding and analysing the negotiations taking place. Even though all member states are given an equal voice in international trade negotiations, some have difficulties following these negotiations because they lack expertise or simply cannot afford being present at the WTO headquarters in Geneva (World Bank 2006; United Nations Development Programme 2005; Pogge 2005). Now, by facilitating weaker participants’ access to top level education, substantive fairness could also give them the means to defend their interests more efficiently. Substantive fairness could, in other words, increase the extent to which their interest in a greater liberalisation of labour migration is voiced. Of course, the fact that weaker participants experience an improvement of their bargaining skills is no guarantee that their interests will also be heard – some of these interests can indeed entail the reception of benefits that they cannot fully reciprocate. But in the long run, increased substantive fairness can also be expected to affect what participants have to offer in terms of market access and thus the extent to which their interests will be recognised in international trade negotiations (including the extent to which they will obtain liberalisation in the sectors that are most important to them).

If the above arguments are sound, then we must admit that given the magnitude of existing global inequalities, competitive equality of opportunity

18 By saying that our argument is not vulnerable to the charge of brain drain or at least that it cannot be read as encouraging the brain drain phenomenon, we do not mean to suggest that it also offers an answer to the brain drain issue by providing a reason for curbing the migration of high-skilled workers. Our point is that participants in the existing practice of international trade share a collective responsibility for improving the fairness of this practice and that an appropriate way of discharging this responsibility would be for WTO members to amend the very rules of the WTO by entering agreements allowing a greater liberalisation of low-skilled labour migration. We take no position on the question of whether developed or developing countries would be justified in individually prohibiting the migration of high-skilled workers.

requires only the existence of the liberalisation of trade in goods for a greater 1
 liberalisation of labour migration to become a demand of fairness. There is no
 need to establish that the global rich are somehow causally responsible for the
 deterioration of job opportunities in developing countries and that they have
 therefore the obligation to liberalise labour migration. Nor is it necessary to 5
 establish that they are remedially responsible for alleviating world poverty and
 that liberalising labour migration is one of the most efficient ways of achieving
 this end.¹⁹ All that needs to be shown is that: (1) the global rich and the global
 poor are together participating in a same multilateral trading system whose
 “point” is to reduce trade barriers, and hence to institute global economic 10
 competitions, in order to raise their standards of living; (2) those competitions
 are subject to requirements of formal and substantive fairness; and (3) the
 substantive fairness of the competitions that obtain in the field of trade in
 goods is likely to require both an equalisation of social and economic resources,
 and a liberalisation of the migration of labour, especially low-skilled labour 15
 from developing countries.

Q7 4 Conclusions

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This paper is premised on an empirical observation. The WTO as it stands today
 has created cross-border competitions between people for income, jobs, and job-
 related opportunities through large-scale liberalisation of the market for goods.
 In contrast, the market for labour has remained largely closed to the migration 25
 of workers. International competition encourages specialisation of countries in
 the production of those goods in which they enjoy a comparative advantage.
 Developed countries enjoy a comparative advantage in goods whose production
 requires capital, technology, know-how, and highly-skilled personnel whereas
 Q8 developing countries often enjoy a comparative advantage in the production of 30
 low-skilled labour-intensive or land-intensive goods. What this means is that

19 Proponents of the “causal responsibility” approach, according to which developed countries
 have a duty of justice to open their borders to labour migrants because they are significantly
 involved in bringing about the social and economic conditions that generate labour migration, 35
 include Saskia Sassen and Harry van der Linden and Josh Clark (2005; Sassen 1998). The
 difficulties faced by this approach have been widely discussed by Iris Marion Young (2004:
 367–70, 375–8). For an argument holding developed countries “remedially responsible” for
 world poverty and therefore under a duty to liberalise labour migration on the grounds that
 such liberalisation would benefit the world’s poor, see Fernando Tesón and Jonathan Klick
 (2012). 40

high-skilled jobs, which are often more highly paid and offer more long-term job security, are – in virtue of the skills people in developed countries already possess – *de facto* limited in their availability to people in developed countries, but out of reach of people in developing countries. The latter not only have been prevented by socioeconomic obstacles from developing those skills but are also unlikely to be able to do so in the future as their home countries are pushed towards specialisation in the production of low-skilled labour-intensive goods.

We have developed an associational argument that principles of competitive equality of opportunity properly apply to the existing multilateral trading system and call for greater liberalisation of labour migration, especially low-skilled labour from developing countries. Against “non-voluntarist” associational accounts of egalitarian justice, we have argued that the fact that agents have other reasonable options than participating in a given association does not preclude this association being subject to egalitarian requirements. Against “narrow cooperation-based” accounts we have questioned the view that egalitarian requirements apply only to those cooperative ventures that provide basic public goods. Our paper can be regarded as offering an elaboration of Aaron James’s practice-dependent treatment of international trade. Indeed, we share with James the view that the existing multilateral trading system is a system of cooperation whose point is to improve standards of living by reducing trade barriers and that, as such, it is a proper subject of egalitarian requirements. Unlike James, however, we doubt that a distribution of the gains of international trade that reflects differences in countries’ background endowments can be considered “presumptively fair”.

More particularly, we have argued that once a cooperative venture like the WTO institutionalises global economic competitions, it also becomes subject to specific egalitarian constraints related to the way competitions are to be conducted. Whereas formal fairness demands that all competitors be treated according to the same relevant criteria, substantive fairness requires their having a fair access to the skills needed to succeed in those competitions. Yet, what we see in practice is that many participants in international trade still lack the social and economic resources necessary to develop these skills due to their countries’ poor social and institutional background endowments. Temporary low-skilled labour migration from developing countries, we have further argued, would be a particularly appropriate way of addressing the substantive unfairness of international trade. Given the substantial international gains this may be expected to generate, increasing access to the labour market of developed countries is likely to be financially less costly and therefore more in line with the “point” of international trade than, for instance, merely transferring resources to developing countries. There are also good reasons for targeting low-skilled workers and

for favouring temporary migration schemes. We do not deny that the skills 1
 possessed by high-skilled workers in developing countries may still be a long
 shot away from the skills possessed by high-skilled workers in developed
 countries or that “[l]ow-skill jobs in industrial countries are often high-skill 5
 jobs from the perspective of developing countries” (World Bank 2013: 245).
 Still, we believe that the substantive fairness of international trade would be
 realised to a higher degree by prioritising the migration of those people who
 have the least opportunity to access the relevant knowledge and know-how
 within their home countries and by encouraging these migrants to return to
 their home countries and to contribute their newly acquired skills to improving 10
 domestic capacity building.

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