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Fairness in Trade

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1. Introduction

1.1 Standard economic theory teaches that trade benefits all countries involved, at least in the long run.¹ If country A is better at producing cheese than at producing wine, it should obtain wine by specializing in cheese while trading some of it for wine. If the reverse is true for B, B should trade wine for cheese. A has a *comparative advantage* in cheese and B in wine, even if A is better at (has an *absolute advantage* in) producing both. While there are other reasons for trade liberalization, this insight, going back to Ricardo's 1817 *Principles of Political Economy*, continues to underlie international economics. Trade theory supports free trade: barriers such as tariffs and quotas obstruct mutually beneficial transactions, and countries should undo them, even unilaterally. (The best way for A to get wine is by trading cheese, even if B fails to obtain its wine in a parallel manner.)²

Trade also raises fairness questions. First, suppose A trades with B while parts of A's population are oppressed. Do the oppressed in A have a complaint in fairness against

¹ "Trade" means "international trade." Thanks to Robert Lawrence for letting me attend his class on trade, and thanks to him and to Dani Rodrik for conversations about trade. Thanks for Niall Meagher for information on the Advisory Center on WTO Law (ACWL). Thanks to Arthur Applbaum, Judith Goldstein, Malgorzata Kurjanska, Pierre-Olivier Pineau, Chris Robichaud, Leif Wenar, Andrew Williams, Ken Winston and two referees for comments, as well as to audiences at the Universities of Manchester and Bristol, Tulane University, the Pacific APA, the Université de Montréal, University College London, Harvard University, and Stanford University for discussion.

² Cf. Krugman and Obstfeld (2003) for an introduction to international economics; cf. Hoekman and Kostecki (2001) on the trading system, and cf. Trebilcock and Howse (2005) for legal aspects of the regulation of trade. Cf. Stiglitz and Charlton (2006), chapter 2, for difficulties in applying the idea of comparative advantage to economic scenarios (which especially involve transition problems and applications to scenarios with particularly pronounced market failures). Cf. Bhagwati (1993) for objections to free trade. I will not offer an assessment of international economics in general or of comparative advantage in particular. My question is how to think of fairness in trade taking these insights for granted.

B? Should B cease to trade? Second, suppose because of oppression or lower social standards, A's products are cheaper than B's. Can industries in B legitimately insist that their government take measures to help them compete? The Pauper-Labor Argument makes that case, and many economists enjoy dismissing it in undergraduate classes.³ Third, suppose A subsidizes its industries. If this lowers world market prices, does B have a fairness complaint against A? Ought countries to consider how trade policies affect others?

I offer affirmative answers to these questions, but deny that an affirmative answer to the first entails that trade with oppressive regimes should end. I assume the legitimacy of states of varying size and power. Our questions arise only if states are assumed, and become interesting only if states of diverse size and power are legitimate.⁴ Much can be said even under these assumptions, which are stacked against there being much substance to talk of fairness in trade. I cannot emphasize enough that I seek to work through issues in fairness *given* this starting point. Fairness in trade looks different given other starting points. I assess trade policies of governments and the WTO, assuming it is for governments to formulate trade policies that are subject to moral scrutiny. I do not explore how individuals should act, nor do I discuss the so-called Fair Trade movement.⁵

³ Throughout, I talk about "higher" and "lower" labor standards. "Higher" standards are not *ipso facto* morally preferable. I use these terms descriptively, with reference to typical concerns: safety; job security; benefits; right to unionize, etc. Loosely, these issues order standards in terms of "weaker" and "stronger."

⁴ Risse (2005a) argues for the legitimacy of states. This stance does not propose that there are no legitimacy problems about particular countries or boundaries. Yet through this starting point I differ especially from James (2005). James argues that trade amounts to practices to which principles of fairness apply, and that this shows the implausibility of views restricting concerns of socio-economic distribution to states. Following Risse (2005a), I argue the other way around: the legitimacy of states entails that principles of fairness, to the extent that they apply to trade, are constrained by the legitimacy of states.

⁵ Held (2004) develops a global social democratic agenda, taking for granted that there *should* be such an agenda. Pogge (2002) argues against states. Questions of fairness in trade look different on such views. The Fair Trade movement is explored in a follow-up to this project, cf. Kurjanska and Risse (forthcoming).

1.2 Section 2 offers an account of fairness and begins to apply it to trade. Sections 3 and 4 explore the three previous questions by discussing a minimalist view on fairness in trade, the Strong Westphalian View, which claims that trade creates (almost) no morally relevant relationships. Section 3 argues that oppressed people have complaints in fairness against their nation's trading partners, and that industries have claims to protection if competitor benefit from oppression or lower labor standards. Therefore we must replace the Strong View with the Moderate Westphalian View. Yet section 4 argues that the Moderate View must make room for the Weak Westphalian View. Countries should consider how policies affect other countries, which the Moderate View fails to do. When introducing my account of fairness, I explain why I divide my argument like this. I propose the Weak View as a reference point for moral assessments of trade policies. Section 5 addresses whether the WTO satisfies the Weak View. Although it is one of the crucial normative issues about globalization, fairness in trade is philosophically undertheorized. I hope this essay helps to spark more interest in this subject.⁶

Let me add a remark on *exploitation*. Many readers will think of fairness in trade in terms of exploitation. While the moral significance of Marx's notion (taking-away of surplus-value) depends on the labor theory of value, and has suffered accordingly, there is no agreement on an alternative understanding of exploitation. Concerns about exploitation in the context of trade are concerns about unfair advantage-taking of sorts. However, the moral issues underlying these complaints need to be explained more

⁶ Stiglitz and Charlton (2006) is symptomatic: the sophisticated level of discussion is not matched by the normative discussion in chapter 5. Not much philosophical literature would have been helpful.

specifically anyway and are not simply conveyed by the term “exploitation.” Therefore I use that term sparingly. This should entail no loss of substantive engagement.⁷

2. Fairness and Trade

2.1 Some reflections on fairness will set the stage. Discussions about fairness often concern distributions of goods (e.g., inheritances, kidneys) or burdens (e.g., taxes, layoffs), as well as processes governing such distributions. While “fairness in trade” is more abstract than such scenarios, similar issues arise. One could assess such distributions in many ways: one may ask which one maximizes welfare; inflicts the least maximal harm; or best satisfies external goals. Yet fairness evaluates distributions in a special way.⁸

Fairness ensures people receive *what they are owed*. I refer to demands people have because they are owed something as *stringent claims*. Distributions of burdens or benefits are not fair (unfair) *merely* because they meet (violate) any criterion just mentioned. They are unfair only if they fail to deliver what people are owed. Philanthropists are not unfair if they give more to one university while another has bigger needs (neither having a stringent claim). Furthermore, fairness does not aim at satisfying stringent claims per se, but at their proportionate satisfaction. Suppose we are all owed a medication, and the more we take of it, the more we recover. No considerations other

⁷ For a discussion of recent work on exploitation, cf. Sample (2003), who, in addition to making a proposal of her own, assesses especially Wertheimer (1996) and Goodin (1985). While the proposals made in these works differ, and are developed in considerable detail, they all focus on spelling out the idea of unfair advantage-taking (as does Feinberg (1988), chapter 31). For recent papers on exploitation, cf. Reeve (1987). For the view that the labor theory of value is not a suitable basis for the charge of exploitation, and that that charge can be motivated differently in a manner appealing to Marxists, cf. Cohen (1988). I do not claim that this study addresses all possible ways in which trade might be exploitative.

⁸ This account is inspired by Broome (1999), but is more general by allowing for different bases on which stringent claims can rest and for the need to assess how claims made on different bases can be compared.

than medical need enter (disregard ownership, who is more deserving, etc.), and the needs are equal. Suppose there is not enough to restore everybody completely. Nobody can complain that her claim is not fully satisfied if all are satisfied equally.⁹

To develop these ideas, different questions must be answered. First, what are the bases for stringent claims? What are people owed? Second, if stringent claims arise on different bases, how should such bases be compared? Third, what does it mean to satisfy claims made on different bases respectively “in proportion?” Much moral theory and conceptual work is required to answer these questions: Rawls’s idiosyncratic use of fairness in his conception of “justice as fairness” notwithstanding, that notion, speaking figuratively, comes conceptually rather late. To illustrate, consider two sketches of how to answer these questions. Utilitarians may only count well-being as basis for stringent claims; would argue that what is owed to people is maximization of collective well-being; would hold that the only weighing involved is utilitarian aggregation; and would maintain that claims have been satisfied in proportion if each entered the aggregation in its strength. Fairness talk supervenes on talk of aggregate utility.

Deontological views may isolate claims of some urgency as bases of stringent claims, isolating need, desert, and entitlement as such bases; argue that what is owed to people is satisfaction of these claims; would then explain how different sorts of urgent claims are compared (e.g., how needs- and entitlement-based claims are compared, possibly assigning some form of priority to one); and would offer some view of how

⁹ One may say something can be “owed” only to one person. My language remains neutral with regard to that issue. The notion of fairness presupposes that some claims are stringent, and is concerned with balancing them. Extreme versions of this view are that only one party can have such a claim, and then nothing is to be balanced and the issue is to assess who has the claim; or that all claims are equally stringent, which trivializes the concept.

claims on different bases can respectively be satisfied in proportion. Fairness now operates in more complex ways than on the utilitarian picture, and often opposes consequentialist considerations. A full-fledged theory involves *two* accounts of balancing claims: first, an account of how to compare need-, desert-, and entitlement-based claims, and second, how to satisfy claims within each category proportionately. The latter exercise only arises at a rather practical level. Suppose individuals have entitlement-based claims to an indivisible object, and no other bases of claims matter. One way of thinking of proportionality is to hand the object to individuals for time periods proportionate to the strength of their claim. Such issues do not arise in this study because of the relatively abstract nature of our subject.¹⁰

2.2 This is how the notion of fairness operates. This study develops a deontological approach to fairness in trade, along the lines of the second illustration. An inquiry exploring how fairness applies to trade is not the place to defend an account of what is owed to people. Instead, it must assume views on that question. In what follows I will state which view of what is owed I adopt for particular parts of this study. A stronger view is needed to build the transition from the Moderate to the Weak Westphalian View than is needed to build the transition to the Moderate View. I divide this study into

¹⁰ To illustrate further, recall the medication case. Suppose entitlement and desert matter, and not everybody is equally needy. Assuming need, entitlement, and desert are the relevant bases, we would have to assess how to compare claims made on these bases. We may decide that needs-based claims trump all others; or that ownership-based claims cannot be set aside unless need or desert are overwhelmingly strong, etc. As for the third step: suppose we decide only entitlement-based claims count. Proportionate satisfaction might mean to divide up the medication in portions proportionate to the share somebody owns. Alternatively, suppose we decide need is decisive, and each person needs all the medication for it to make any difference. We may decide to give it to the person with the strongest need, or to use a lottery offering everybody ex-ante chances of obtaining the medication proportional to his needs. Situations where different bases need to be compared and where *also* claims based on these respective bases need to be satisfied in proportion could be rather complex.

arguments for these transitions because this method makes it easy to state what is assumed at which stage. Yet it *is* our task to assess how stringent claims regarding trade that arise on different bases should be compared. Fairness applies differently within and across states. Domestic markets are formed against the background of a shared legal corpus, ranging from criminal to tort and administrative law, a corpus that must be justifiable to all it coerces. In particular, there is a body of property law that regulates inheritance, ownership of firms, and generally what to do with holdings. To adopt a Rawlsian formulation, property law must be justifiable to individuals *qua* free and equal citizens in a system of cooperation.¹¹ What must be decided is especially the scope of the property exchanges that are subject to markets, and the methods of market regulation. Such regulation must ensure individuals' stringent claims as free and equal citizens are respected, and is subject to an evaluation in terms of fairness in this sense.

Since trade is an activity that crosses national boundaries, fairness considerations cannot apply in quite the same way. Yet trade not only affects individuals involved in trade, but also others, both within their countries and elsewhere, whose trade is facilitated or impeded by distant measures. To the extent that fairness claims apply to trade, those affected through the distribution of trade-related burdens and benefits have claims *on different bases*. Some have demands on their government since trade worsens their situation vis-à-vis others, possibly undermining their status as free and equal citizens. People elsewhere may have complaints about that country's policies if they deprive them of income. The basis of their claims differs from that utilized by people within that country. An account of fairness in trade needs to illuminate how claims on such different

¹¹ For an introduction, cf. Rawls (2001).

bases can be weighed. Subsection 4.3 addresses that concern. (Until then, I only use a portion of this account: that fairness seeks to give people what is owed to them.)¹²

Let me address a worry that applying fairness to trade is conceptually muddled.¹³ Fairness is often tied to the image of “leveling the playing field,” which suggests a requirement of the equalization of certain conditions, whereas trade thrives on differences. It is because A and B differ in their productive abilities that they trade. So how could ideas about “leveling” apply here? Yet such “leveling” is tied to *equality of opportunity*, not to *fairness*. As Roemer (1998) explains,

[t]wo conceptions of equality of opportunity are prevalent (...). The first says that society should do what it can to (...) level the playing field among individuals during their periods of formation, so that all those with relevant potential will eventually be admissible to pools of candidates competing for positions. The second (...) states that, in the competition for positions in society, all individuals who possess the attributes relevant for the performance of the duties of the position in question be included in the pool of eligible candidates, and that an individual’s possible occupancy of the position be judged only with respect to the relevant attributes. (p 1)

So the “leveling” metaphor states that equality of opportunity cannot merely ensure that relevant attributes guarantee success, but that everybody with potential to develop such attributes can do so. This connection between that metaphor and equality of opportunity shows that the former applies to international trade only if the latter does. Now, either equality of opportunity applies across countries, as a matter of fairness, or it does not. (I do not think it does.) In the first case, applying fairness to trade is not conceptually confused. Instead, more “leveling” is required internationally. In the second case,

¹² For all that has been said so far, what governments owe foreign countries could be more than what they owe citizens. This would be so if Pogge (2002) is right that the global order harms the poor, a fact that would give the poor claims to rectification. For discussion, see Risse (2005b).

¹³ Cf. Burtless et al. (1998), chapter 5.

applying fairness to trade is not conceptually confused because leveling and fairness are not linked as claimed by the objection. Either way, no conceptual confusion arises.

3. The Strong Westphalian View

3.1 We can now explore how fairness applies to trade. The first view articulates a minimalist understanding that reflects the realities of the state system. A view of this sort underwrites much relevant international law and social-science literature. It is therefore a natural starting point whose careful discussion, moreover, allows for an assessment of prominent arguments about fairness in trade.

Strong Westphalian View (SWV): Trade policy is every country's own and exclusive affair. As long as the production processes themselves do not harm other countries,¹⁴ the social costs of producing and the prices of goods from a country should not be subject to external interference, unless such production involves atrocious activities such as slavery. The world market prices of goods from other countries must be accepted in much the same way in which climatic conditions must be accepted: their change cannot be demanded as a requirement of fairness, nor do such prices by themselves give individuals *elsewhere* claims in fairness to governmental protection such as subsidies.¹⁵ Different countries do not stand in a relationship to each other that allows for fairness considerations to arise: they do not owe each other anything as far as the determination of prices is concerned, nor do governments owe anything to their own citizens based merely on what social costs are elsewhere.

To analyze fairness in trade we ignore other morally important relationships between states. I argue first that SWV is implausible because it fails to capture legitimate claims of those who are oppressed against their trading partners. Next (in 3.2), I argue that such claims may not justify terminating their trade. Finally (beginning in 3.3), I

¹⁴ Ruled out is that production processes harm other countries by polluting their rivers, by affecting the ozone layer or in other ways that in causally straightforward ways affect the environment in those countries or the health of their inhabitants.

¹⁵ According to this view, a government can regulate the prices of goods (of any origin) on domestic markets, and thereby indirectly also affect the prices of domestic goods on the world market, but it cannot demand of other countries on behalf of fairness that they regulate the world market prices of their goods.

formulate conditions under which industries have fairness claims against their government if they are harmed by lower prices obtained through oppression or lower social standards elsewhere. Since SWV cannot accommodate such considerations, we have found another reason to reject it. A word on “oppression:” The term describes how a group is kept at a disadvantaged status by unjustifiably arbitrary and often cruel use of power. Oppression may consist of threats and acts of violence, or of more subtle forms of social exclusion. When occurring at the state-level, oppression is typically institutionalized. Since I am concerned to make a plausible transition from SWV to the Moderate View while using a rather restrictive notion of what individuals are owed, what is at stake, at this stage, are violations of rights of physical inviolability.¹⁶

Let me introduce the first problem with SWV. Trade affects domestic income distributions: some gain from overall beneficial arrangements, whereas others lose to competition. People and resources cannot always move from one industry to another, and changes in output also change the demand for factors used in production. Such effects are acceptable if guided by a process justifiable to all, including those who lose out. Yet if parts of the population are oppressed, it cannot be of moral indifference to trading partners. In what follows, I formulate conditions that are *jointly sufficient* for a complaint in fairness that SWV cannot register.¹⁷

¹⁶ Readers influenced by cosmopolitanism, as captured, e.g., by Caney (2005) and Moellendorff (2002), or by views arguing the global order harms the poor (cf. Pogge (2002)) will find SWV obviously implausible. Yet others do not share these starting points; I myself, for one, do not (for reasons explained in Risse (2005a) and (2005b)); moreover, like it or not, SWV is a hugely influential view among policy makers, social scientists, and lawyers. The implausibility of SWV cannot just be assumed, and arguing for it is non-trivial (as the objections to my sufficiency claim below should demonstrate). Also, mustering objections to SWV is a convenient way of engaging many considerations offered in the debates about fairness in trade.

¹⁷ My argument does not require that any of these conditions is *necessary* for a fairness complaint, nor am I here interested in exploring whether some subset of these conditions is by itself sufficient for such a complaint.

To see why such oppression cannot be a matter of indifference to trading partners, note that trade is characterized by the following conditions. First, one-time interactions may not generate complaints in fairness, but trade often is not merely an activity jointly practiced by traders, but a structured and repeated exchange involving markets and bodies of law, domestic and international, that regulate them. Second, this activity is mutually beneficial for the countries as a whole. For both sides, trade involving oppression leads to ill-gotten gains. These conditions do not yet focus on the actual wrong-doing of the trading partners: those partners may not know about the oppression, and their merely being involved in a jointly practiced activity in which *others* commit an injustice is not specific enough to explain what is wrong about *their* conduct. So let us add two conditions. Third, trading partners can reasonably be expected to know about the oppressive practices.¹⁸ Fourth, trade occurs at the expense of the oppressed, in the sense that either (a) their contributions do not make them better off to an extent warranted by their value, or (b) their involvement in the trade has emerged in an oppressive way (e.g., they are coerced into working in the relevant industries), or both.¹⁹ The “to-the-extent” addition in (a) ensures that the oppressed may still have complaints even if they gain from trade. Condition (b) ensures that they may still have a complaint even if their contributions are adequately valued.

¹⁸ It has been objected that adding this condition conflates conditions under which there is a complaint in fairness with conditions under which parties can be *blamed*. However, since I am interested in sufficiency, it makes sense (and can be done with impunity) to add this condition.

¹⁹ What does it mean to make people better off to an extent warranted by the value of their contributions? I have in mind here wages people would be earning, by local or otherwise comparable standards, without the oppression.

These conditions depict a situation in which A is, on an ongoing basis, involved in trade with B, an activity from which both sides benefit, while representatives of B can reasonably be expected to know that parts of the population in A are oppressed, and the gains from trade occur at this subset's expense. These conditions render trade partly constitutive of the oppression and thus are sufficient to give the oppressed a complaint in fairness against trading partners. Such trade is like ongoing trade with stolen goods. One may object that these conditions are insufficient to mount a complaint because of the following possible scenarios. First, B may not benefit *from the oppression*: A would sell its goods for the same price if no oppression occurred, but while it does, certain circles pocket extra-gains. Second, even if B discontinued trade, oppression would continue because there are other buyers. Suppose France considered discontinuing its oil purchases from Nigeria unless Nigeria agreed to reforms. Presumably, Nigeria could sell its oil elsewhere.

Third, a facet of the Apartheid in South Africa was that non-whites were losers in trade. Apartheid was not motivated by gains *from trade*, and would outlast them. In such scenarios, trading partners are not implicated in subjugation in ways that entitle the oppressed to complaints. A fourth point is that granting this complaint would license too many other complaints. For instance, we sometimes hear people say that terrorist attacks are not the exclusive responsibility of terrorists, because the foreign policy decisions of certain countries (often the US) increase the probability of evil-doers' endorsing terrorism. If the four conditions above are sufficient for a complaint in fairness, would this not have the implausible consequence that victims of terrorism have a complaint

against such governments, and would not those governments be partly responsible for the terrorism?

However, the first two scenarios do not threaten sufficiency. Trading partners are subject to this claim not because they benefit from trade *more* under oppression, but because they are involved in the oppression in ways the conditions display. And the fact that demand from elsewhere would uphold the oppression does not exonerate those creating the current demand. Regarding the third point: if trade had played a role in the emergence of oppression, this fact would offer *additional* support for complaints. What remains problematic is that trading partners knowingly receive ill-gotten gains at the expense of those who make the complaint even if the prospect of such gains has not caused the oppression. This Apartheid scenario shows that fairness complaints do not require that trading partners set incentives in the strong sense that, without trade, the oppressed would be *better off*. There is a problem already if, without trade, they would *not be worse off*, for then they do not benefit adequately from their contributions.²⁰

As far as the fourth issue is concerned, I take no stance on the merits of this complaint, but the trade case is different. Trade is a specific and highly structured activity with the well-defined goal of making profits, which leads to complaints if ill-gotten gains are obtained at the expense of some, where also both the gains and the ways in which trade goes at the expense of these people can often be pinned down quite

²⁰ What if in the absence of trade abusive governments would impose an even worse regime? Suppose a population is afforded a decent living only because this boosts its capacities for menial labor. Do they have a complaint? The answer depends on what else trading partners might be able to do about this situation, and whether trade can itself be expected to lead to improvements (through trickling-down effects, or by triggering reforms through increased wealth, etc.) Since this scenario is more controversial than what I need for my argument, I set it aside. Or what if country A trades with B, which is involved in trade with C, which is ruled by an oppressive regime? Suppose goods traded between A and B are refined by parts from C. Can the oppressed in C complain against A? Following the argument above, the answer may well be affirmative (modulo some fixing of the conditions imposed on the situation).

specifically. (Think of oil or diamond trade in which manual laborers are kept barely alive while a dictator pockets the gains.) Perhaps some instances of foreign policy are like this, and if so, similar complaints will hold. But often foreign policy is more complex both in its goals and its effects, and so cannot simply be assessed by way of extending this argument.

SWV is implausible because it cannot acknowledge the above complaints. This refutation places some, though not much, strain on the notion of fairness. My argument will be implausible to libertarians who believe it is wrong intentionally to violate rights, but, insisting perpetrators are autonomous, believe it is not wrong to entice others to violate rights, or to benefit from violations. Such libertarians would refuse to sanction pornographers or hate-speakers because their wrong-doing only amounts to enticing others. Similarly, they would say that, if governments merely receive ill-gotten gains and set incentives for them to continue, they do no wrong. (Note, however, that this rejection of fairness complaints is strained by the repetitive nature of trade.) So the notion of what people are owed needed to for this objection is stronger than what such libertarians endorse. However, my argument should persuade those who agree it is owed to everybody not to engage in activities constitutive of their oppression. This even includes libertarians who care about violations in a consequentialist manner (restraining agents for the sake of minimizing the overall amount of violations). Responses to oppression may be to suspend trade and possibly non-trade-related measures, at least other things being equal. If trade has exacerbated the situation, rectification may be appropriate.

3.2 Yet “other things” may not be equal. Fairness complaints are not always conclusive for assessing whether trading partners should restrict trade or perhaps intervene. Compromising fairness is warranted if sufficiently good and likely consequences outweigh fairness considerations. This may often be the case, since, according to many economists, (a) trade benefits economic growth, and (b) growth is tied to other benefits.

Trade theory recommends liberalizing trade since it benefits countries that do so, even unilaterally. In an often-quoted image, there is no need to hamper one’s trade by throwing rocks into one’s harbor if others obstruct theirs. The nature of the empirical relationship between growth and other development goals, on the one hand, and trade (as well as additional trade liberalization), on the other, remains controversial. Nevertheless, the evidence supports the view that trade is important for growth (where different studies disagree on the precise content of what this means more precisely), and in fact, many economists think trade liberalization is necessary for fast growth – necessary, for if credible policies, enforceable contracts, and other hallmarks of stability are absent, openness cannot trigger sustainable growth.²¹

Yet by itself, the fact that trade is tied to sheer economic improvement fails to show that fairness can be outweighed. Growth may benefit some at the expense of others

²¹ Cf. the survey by USITC (1997). Cf. Wacziarg and Welch (2003) and the discussion of the literature in Anderson (2004), p 343f. See also Panagariya (2004a) and Panagariya (2004b). Winters et al. (2004) find that trade liberalization will be poverty-alleviating in the long run and on average (but do not take this to imply that trade liberalization is always among the most important determinants of poverty reduction). Rodriguez and Rodrik (2000) agree that there is a positive relationship between trade and growth, but question whether it is due to trade policy, rather than transport costs or demand. Contrary to a widespread view, Birdsall, Rodrik, and Subramanian (2005) question the importance of trade liberalization for growth. Instead, they emphasize the importance of domestic reform and argue that other measures, such as a temporary work permit program, would be financially more beneficial for developing countries than trade liberalization. Stiglitz and Charlton (2006), p 35, point out that the relationship between trade and growth is not simple, and chapter 2 of Stiglitz and Charlton (2006) for a discussion of cases where trade liberalization might not be advisable, at least in the short run. Nevertheless, Stiglitz and Charlton consider trade liberalization sufficiently important that the crux of their position proposal is to ask each country to open its markets to any country smaller than itself (in economic terms); cf. p 94.

– as seen in the scenarios envisaged to argue against SWV. So we must ask whether growth is tied to goals whose realization benefits even those currently oppressed. A place to look are the U.N. Millennium Goals, which are to be reached by 2015: to cut in half the proportion of people in extreme poverty; universal primary education and gender equality in education; a three-fourths decline in maternal mortality and a two-thirds decline in mortality among children under five; to reverse the spread of HIV/AIDS and to assist AIDS orphans; to improve the lives of 100 million slum dwellers.²² It is in the nature of these goals that their realization benefits populations broadly. It is generally recognized that growth is necessary to meet the Goals,²³ for two reasons: first, growth directly reduces poverty for many households, and second, it increases government revenue, freeing money for investments in health, education, infrastructure, etc. Growth is necessary for achieving these conditions, but, once again, an appropriate policy environment is required to put growth to work in such a way that the Goals can be reached.²⁴

To the extent that a case can be made that trade has beneficial consequences in the long run, the consequences may outweigh current unfairness if it is sufficiently probable that other measures are taken to elicit those consequences. Cases in point are labor

²² Cf. U.N. site for a progress report: <http://www.un.org/millenniumgoals/index.html>.

²³ Cf. Human Development Report 2003, 2004 World Development Indicators and references therein. Cf. Dollar and Kraay (2002) for the view that “growth is good for the poor.”

²⁴ What about growth and democracy? Londregan and Poole (1996) suggests that, in the short run growth supports whoever is in power, whereas in the long run, increasing income has a small democratizing effect. Przeworski et al. (2002) are more reserved: they do not find that growing income makes democracies more likely to arise, but that democracies, regardless of how they have arisen, are more stable in wealthy countries once in existence (cf. chapter 2).

standards. In a telling discussion, Wolf (2004) assesses efforts to improve working conditions in India,

where a combination of strong trade unions, job protection, reservation of production to small-scale enterprises and prohibition of closure of bankrupt plants has halted growth of employment in modern manufacturing. Today, employment in large-scale manufacturing is about 5 million people, in a country of over a billion. There is little chance of its rising significantly. India's industrialization has been blocked. Indian workers are so well protected from exploitation by industrial bosses that they have no jobs at all. The exact opposite happened in South Korea and Taiwan. Today, the workforces of these countries enjoy wages and conditions Indians can only dream of. The desirable development path goes via rapid growth of output and employment in a profitable modern sector to a tighter overall labor market. (p 187)

In his discussion on eradicating child labor, Wolf claims sanctions are “a way of penalizing [countries] for their poverty while taking away the best ladder out of it” (p 188). As Burtless et al. (1998), p 124, explain, safety/health standards presuppose technology and equipment, and requiring them makes it hard for developing countries to compete.²⁵ Conceivably, realizing beneficial consequences (e.g., the Millennium Goals) is consistent with fairness concerns. Proposals made by Fung et al. (2001) aim to end sweatshops without undermining growth. My concern is not to enter into such debates but to point out that, although SWV fails, the consideration that refute it need not entail that trade should end.

This will be controversial, so let me elaborate. The general issue is whether a deontological account can acknowledge aggregation (“does there exist, for a given violation, an amount of good this violation would bring about so that it would be justifiable?”) Deontologists are committed to rejecting evaluations of actions merely in terms of consequences, but not to disregarding aggregation entirely. It is difficult to say

²⁵ For related views on labor standards, cf. Brown et al. (1996); of labor standards, also see Oxfam (2002), p 196, and Anderson (2004), p 546 (and reference there).

anything satisfactory at the general level about this matter.²⁶ Moreover, in trade policy prospects of future gains for victims may easily provide an excuse for a supportive attitude towards oppressive regimes. In such cases, much depends on what violations are weighed against what benefits (are we facing regimes that systematically violate political rights, but eschew wide-spread violence; or regimes that enslave parts of the population; does analysis suggest that economic progress will prompt reforms, or is it unlikely that increasing prosperity of the country as a whole will benefit the oppressed?). In the end a judgment is required about how to balance these considerations against each other.

Still, within the context of trade it can be plausible that under certain circumstances fairness should indeed be compromised, where then, of course, the pressure to do so is the greater the more important trade actually is for growth and other development goals (which, as we saw, is an empirically contested issue). Note first that what would be condoned is, to stay with that image, *trade* with stolen goods, not the actual *robbery*, which would require concerns of greater urgency. Second, refraining from trade may well not improve the situation of the oppressed, and there may be little *else* that external actors could realistically do for them. Regime change through economic sanctions has been a notoriously unreliable policy instrument. At the same time, if Londregan and Poole (1996) are right, and though in the short run growth supports whoever is in power, increasing income in the long run has at least some democratizing effect, then continued trade may well be beneficial. That is, refraining from trade might simply leave both rights-violations and economic hardships as they are, whereas

²⁶ Cf. Kamm (2000), section VIII, Scanlon (1998), chapter 5.9; cf. Wasserman and Strudler (2003) for the view that attempts to integrate aggregation into deontological frameworks have so far failed.

engaging in trade might well improve the latter and thereby also contribute to the termination of rights violations, at least long-term.²⁷

3.3 Krugman and Obstfeld (2003) discuss “three myths” about trade. An examination of two of them elaborates on what has been said, and offers an additional argument for rejecting SWV. One myth is that “trade exploits a country and makes it worse off if its workers receive much lower wages than workers in other nations” (p 24). As Krugman and Obstfeld say (p 25), wages reflect productivity. The sheer fact that A’s workers receive lower wages than B’s cannot reveal that employers take *unfair* advantage and exploit them. Yet Krugman and Obstfeld respond differently -- that we need to ask if countries would be worse off with or without trade, suggesting the latter. To illustrate, Krugman (1998) argues that trade improved the lives of Indonesian children. Yet this misses the point. The usefulness of the concept of exploitation partly derives from its description of a problematic situation (unfair advantage-taking) that may be an improvement for all over an earlier state. Parallel to what I argued in 3.2., it should be considered whether exploitation is *outweighed* by expected benefits.

²⁷ It has been objected that one may defend SWV as follows: One could appeal to the Rawlsian insight that we should not assess specific institutions or policies in isolation but assess them as they interact with background factors to produce morally desirable or undesirable consequences. Suppose the most effective way to ensure a decent minimum for the poor is to adopt a permissive attitude to trade policy that disregards its impact on oppression, possibly while adopting more restrictive attitudes to other foreign policies (which should be used to protect individuals from the potentially oppressive effects of trade policy). On such grounds one may argue SWV is plausible after all. This view, however, does not strike me as a good account of the moral phenomena. There is still a moral problem about engaging in trade with oppressive governments, and this point can be captured well in my approach: the presence of this problem is not deemed to be conclusive for trade policy, but remains a pro-tanto problem, and its presence is registered as a moral loss. On this alternative approach, it would remain true that certain fairness problems could not be registered as such, which strikes me as implausible.

The most interesting myth is the “Pauper-Labor Argument:” “Foreign competition is unfair and hurts other countries if it is based on low wages” (p 24). Wolf (2004) also discusses this argument. Responding that labor is cheap if unproductive (pp 175-183), he implies no unfairness is inflicted on workers in industrialized countries. While Wolf disputes the argument’s factual assumption, Krugman and Obstfeld try to rebut the fairness complaint directly.²⁸ They say it does not matter what causes lower production costs abroad. What matters for the importing country is that it is cheaper in terms of *its* labor to produce some goods and exchange them for others, rather than to produce everything, regardless of why those are cheaper abroad. What they seem to be saying is that countries trade because production costs differ. As they mean for this to be a rebuttal of fairness complaints, they seem to endorse SWV. How others determine social costs is none of “our” business. We need not be concerned with how others treat their workers, nor can our workers complain on such grounds.

In 3.1 I argued that workers *abroad* have a fairness claim against us if we trade with their country while they are oppressed. Now we ask, reversely, whether *domestic* workers have a claim for compensation from their government if oppression *abroad* harms *them*. Or suppose workers abroad are not oppressed, but subject to less stringent labor legislation. Do domestic workers have a claim to compensation if they are harmed because of less stringent legislation abroad (“social dumping”), a social system (let us suppose) nevertheless justifiable to its participants? A supportive argument cannot *merely* point out that policies to continue trade with nations where workers are oppressed harm

²⁸ For an argument as to why labor standards affect international trade even after one has controlled for productivity, cf. Rodrik (1996). Rodrik shows why Wolf’s attack of the underlying factual assumption is insufficient to address the Pauper-Labor Argument.

some people domestically. Any policy harms some people relative to a suitable baseline. A reason is needed as to why *this specific harm* is unacceptable.

I now explore a consistency-driven argument that offers sufficient conditions under which damage inflicted by foreign competition should be shifted to all taxpayers. Assume legislation for social standards is adopted not merely because it expresses our practices, but for moral reasons. We have a certain view of the person, and the kind of protection to be granted to persons. To avoid setting incentives to treat people badly and out of respect for those who have been treated badly nobody should benefit from so treating people, or from the fact that they are being so treated. This view of the person applies across countries. Our legislation is confined to our country, but our moral commitments give us *pro tanto* reasons to ensure people abroad are not treated badly. These reasons, however, must be weighed against considerations arising from the fact that other people live in different political systems (e.g., “sovereignty should be respected”), or are at other stages of development (e.g., “a country can be held accountable to implement certain standards only at a certain stage of development in order not to thwart growth”).

Nonetheless, we have reasons to avoid setting incentives to treat people badly and to keep others (e.g., foreign competitors) from benefiting from such situations. On this basis domestic industries have claims to compensation from their government: they are disadvantaged because competitors violate moral commitments that motivated our standards. Crucially, while we may *also* have reasons not to interfere with practices abroad, we do have reasons to aid domestic industries harmed through competition from

countries where companies benefit from treating people badly.²⁹ In a nutshell, domestic workers have a claim to compensation if social standards have been accepted for moral reasons and if foreign competition benefits from standards conflicting with those reasons. They have such claims because of what is entailed by the fact that standards are in place for moral reasons.³⁰

3.4 This is a conditional argument: *If* legislation of social standards rests on moral reasons, *then* consistency considerations (considerations exploring what is entailed by the fact that standards hold for moral reasons) deliver the conclusion that domestic industries may deserve compensation. Yet as a factual claim about legislation this view is often false. Consider an excerpt from the 1930 US Tariff Act:³¹

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. (...) [B]ut in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

²⁹ What if people who are made worse off as a result of foreign oppression are much better off than the average members of society? Should they not bear such costs themselves? In response, there may be other things problematic about some people being much better off than their fellow citizens, and such a situation might trigger suitable taxes. Yet my argument would still go through when applied to such people.

³⁰ It has been objected that it does not simply follow from the fact that legislation has been adopted for moral reasons that measures should be taken to keep anybody from benefiting from the fact that people are being treated in ways that conflict with such reasons (to avoid setting incentives to engage in such behavior and out of respect for people who have been mistreated). Suppose this is indeed right. Then the argument above could be reformulated in such a way the moral view envisaged is simply taken to imply this. The question would then be, as I explain in a bit more detail below, whether this sort of moral view (i.e., one that includes that conviction) can be attributed to the relevant legislators, or to the relevant public.

³¹ This is Title 19, U.S. Code, Chapter 4 – Tariff Act of 1930; Subtitle II – Special Provisions, Part I – Miscellaneous, Sec. 1307.

This Act is well-motivated morally, but states its protectionist intentions. Plausibly, in many other cases social standards have arisen for pragmatic reasons. However, if “our” standards have emerged from power struggles, domestic industries cannot complain about unfairness if competitors abroad benefit from different practices. Nothing then would require shifting harm from that industry to everybody. Only if the intent behind social standards is moral is there an argument to that effect. Yet this leads into muddy waters. While intent is easy to track in the Tariff Act, it often is not, and the worries are both pragmatic and conceptual.

Perhaps we should talk about what intent for legislation *should be*, or what legislation should be adopted in the first place. Yet this may be even more difficult to argue. Based on consistency grounds, this argument supports shifting the burden from one industry to all taxpayers. Reasons that political communities *actually had* lend themselves to this end, reasons they *ought to have had* do not. If I should have done X for some reason and if, had I done X for that reason, consistency considerations would entail that I should do Y, it does *not* follow I should do Y anyway. Despite the difficulties with legislative intent, we need an argument that a society as a whole is somehow committed to a moral view in order to hold the government responsible if industries are harmed as previously sketched.³²

³² This discussion is involved, so let me add two remarks: (1) One cannot side-step this discussion about reasons to explore what legislation ought to be in place. We need an exploration of what relevance legislation of country A has for damage inflicted on industries in A because of practices in B. One cannot assess this relevance without investigating the reasons why legislation is or ought to be in place. The mere fact that A has adopted certain social standards does not give industries a claim to compensation if they are harmed by foreign competition – the response to such demands could be that such standards only hold within the boundaries of our country. However, appeals to reasons why such legislation was adopted do substantiate such demands. Appeals to these reasons bridge the gap between the fact that in this country, such and such legislation is in place, and a demand that damage should be redistributed to all tax-payers, damage done because of actions of people not subject to that legislation. (2) Perhaps in the ideal-theory case, these reasons coincide: that is, reasons why one ought to have adopted legislation are reasons why one

As for Western democracies, this is plausible for oppression. Western countries have adopted legislation against oppression in virtue of a moral view of the person (captured, e.g., by the 1789 Declaration of the Rights of Man and of the Citizen, whose Article II lists resistance to oppression as an end of political associations). What if the other country is not oppressive, but has legitimately adopted weaker social standards? Should Sweden protect industries against US competition, or even consider suspending trade with the US? As odd as it may seem, my argument entails that the answer is positive if a case can be made that Sweden's sophisticated labor standards rest on a view of how persons ought to be treated attributable to the Swedish public.³³ The government should then protect industries against competition that benefits from treating workers differently (paying lower wages, worse benefits, etc). Yet as in the discussion about whether oppressed workers elsewhere have complaints against trading partners, we must ask whether justified complaints should entail sanctions. The answer above was that this may not be in the long term interest of the oppressed. A similar answer applies here. To stay with the example, the benefits from trade with the US may override fairness

has done so. (I say "perhaps" because I am unsure that "ideal theory" concerns reasons in this way.) However, if that is not so, one fails to have those obligations generated by one's having the reasons one would have in ideal theory if one does not actually have them. Therefore the line of investigation pursued in the text becomes relevant. If one disagrees that the reasons one would have in ideal theory fail to create obligations in non-ideal theory, my conclusion still follows, i.e., that compensation is owed to those suffering harm because people abroad are oppressed. Then one would come to that conclusion more easily – but one would also replace the burden of assessing conditions under which an appropriate legislative intent can be ascribed to a political community with the burden of exploring what standards would be mandated by the morally most compelling picture of the person. But even in that case exploring the line of argument I have explored is important; for it may be that countries endorse a certain picture of how persons ought to be treated that is more demanding than what they ought to adopt. If so, my argument shows why such countries would have to acknowledge claims to redistribute damages inflicted by foreign competition under a broader range of circumstances than if they were merely guided by reasons they ought to have. Having reasons that are supererogatory by nature still allows for this consistency argument to be made.

³³ For the actual history of labor standards in Scandinavia, cf. Moene and Wallerstein (2003). What matters for this argument is, however, not how such standards have actually arisen, but whether a moral view about them can be ascribed to the public at the present time.

concerns, and since collectively Sweden benefits, the surplus can support those who lose out.

Section 4 revisits these duties because there we will see that they will need to be constrained by duties to the global poor. For now note that this last “myth” (Krugman and Obstfeld) is no myth at all. In 3.1 we encountered considerations that any account of fairness in trade should integrate but which SWV ignored. In 3.4 we encountered other considerations that should be accommodated although they may not be conclusive for trade policy. This confirms that SWV is implausible. However, we now need a slightly stronger notion of what is owed to persons, which assumes governments ought to protect individuals from the consequences of the oppression of others. That is, the notion of what is owed to persons used in the argument in 3.3 is the one used in 3.1 with the additional requirement that the government be responsible for guaranteeing that individuals receive what they are owed.

4. The Moderate and the Weak Westphalian View

4.1 The Moderate Westphalian View is like SWV, except it grants the objections to it:

Moderate Westphalian View (MWV): It is up to each country to determine the social costs of production. However, the production processes themselves must not harm other countries, and the effects of trade must be distributed in such a way that no negative rights are violated. Violations of this latter condition give rise to claims in fairness to the trading partners by those who lose out in the process, and constitute *pro tanto* reasons to suspend or restrict trade, and conceivably also for intervention through non-trade-related measures (for sufficiently severe violations); however, these reasons may not be conclusive. Changes of world market prices of goods from other countries that have been determined without the violation of negative rights cannot be demanded as a requirement of fairness. Still, prices of goods from other countries may, under certain conditions, give individuals claims in fairness to protection from their government if they negatively affect these individuals’ interests and have arisen in ways that are at odds with domestic social standards. However, these claims to

protection would have to be weighed against competing economic interests in free trade and may not be conclusive either.

To think about MWV, assume a world in which no countries violate negative rights, and all have reasonably similar social systems.³⁴ Asking about the plausibility of MWV is equivalent to asking whether, in that world, SWV is satisfactory. A reason for doubt is that country A's policies affect B if they alter world prices (which large economies do) or otherwise prevent B's industries from exporting. Do other countries have fairness complaints if they are harmed because A aids its producers? The general issue is that of protectionism, the question of whether governments have the duty (or prerogative) to protect citizens' commercial interests even if this makes others worse off. The two most commonly discussed forms of protectionism are export subsidies (government payments for export goods) and anti-dumping measures. "Dumping" occurs if goods are sold at less than "normal" (WTO) or "fair" value (US language). Anti-dumping duties make such goods more expensive, thus facilitating trade for domestic industries. These measures are the primary fairness topics covered by WTO regulations (which constrain both), and constitute test cases for MWV. I only discuss subsidies.

Notorious examples are agricultural subsidies, which harm poor countries that otherwise have a comparative advantage in these products. As Wolf (2004) explains,

total assistance to rich country farmers was \$311 billion in 2001, six times as much as all development assistance, indeed more than the GDP of Sub-Saharan Africa. In 2000, the EU provided \$913 for each cow and \$8 to each Sub-Saharan African. The Japanese, more generous still, though only to cows, provided \$2,700 for each one and just \$1.47 to each African. Not to be outdone, the US spent

³⁴ Trade could then still be governed by comparative advantage, because only some differences between countries arise from regulations.

\$10.7 million a day on cotton and \$3.1 million a day on all aid to Sub-Saharan Africa. The priorities shown here are obscene. (p 215)³⁵

4.2 But *are* these priorities obscene? Even if existing inequalities among countries are obscene, subsidies are internal transfers, and it is unclear why they would add *more* obscenity to the overall picture. To assess whether they do, let us first explore what claims to subsidies producers may have because goods elsewhere are sold for less. One argument we *cannot* make is that, without subsidies, some people are harmed in some way. It is the case for any policy that, for most people, there is another policy that makes them better off (not the same policy for everybody), or some baseline with regard to which the policy harms them. One needs to argue that subsidies prevent a kind of harm that ought to be prevented because of people's stringent claims.

Consider the following argument for subsidies. *Qua* free and equal citizens, individuals have a stringent claim that governmental policies be justifiable to them. Economic policies must be devised such that they do not undermine anybody's status as free and equal citizen. Trade liberalization benefits a country's export sectors, but hurts import-oriented sectors relative to those. People cannot always move to another industry, especially if they acquired industry-specific skills – which often they did before anybody could anticipate trade liberalization or certain world market developments. The costs imposed on such people for greater overall benefit are too high to be justifiable to them.

The plausibility of this argument depends on two things. First, it depends on the costs of depriving individuals of specific ways of making a living. The argument is the

³⁵ Cf. Oxfam (2002), chapter 4. Anderson (2004), p 349f, says agricultural subsidies account for 38% of governmental expenditures on subsidies between 1994 and 1998. In developed countries farmers are subsidized; in developing countries prices are kept down to protect consumers. The WTO forbids export subsidies, but allows others, unless they hurt markets elsewhere. Special regulations apply to agricultural subsidies, which were not under the aegis of the original GATT.

stronger the higher the costs imposed, and the more the costs remove them from average economic standing. Watkins and Sul (2002) argue that cotton subsidies mostly benefits large farms that could easily grow other crops. This argument does not support claims of such large adaptable producers. Second, and more importantly, the plausibility of this argument depends on parameters in the country's political economy. Recent work on comparative political economy, especially the Varieties-of-Capitalism approach, emphasizes that different versions of capitalism have arisen across countries. These versions are characterized by institutional complementarities: one set of institutions operates effectively only (or more effectively) if accompanied by other institutions. Two ideal types are liberal market economies (in the US) and coordinated market economies (Germany). What matters for us is that the latter come with rigid labor markets. Such economies encourage employees to invest heavily into specialized skills, rewarding them with job security. Other factors (e.g., labor legislation, social policy) shaping the political economy complement such labor markets. So legislation in coordinated market economies encourages workers (often makes it irrational not) to specialize in ways that make it hard to find alternative employment. Participants in such labor markets have claims to their government that participants in liberal market economies fail to have, where labor legislation was never meant to encourage such investments. On such labor markets, individuals specialize at their own risk.

The kind of risk-taking involved for citizens by specializing heavily (as they do in coordinated market economies), if indeed it occurs in response to the way labor markets are framed, is justifiable to them only if the state is offering guarantees for them if they fail. This is not to say that a government in all cases ought to take on such a

responsibility, but instead that in coordinated market economies it *has* done so. (Notice that this argument, as far as it goes, could not only be used against disruption through international trade, but also because of internal causes.) It is hard to assess how forceful such claims are (under what conditions does this show that individuals in such economies do not merely have strong claims against their government, but can actually claim *specifically* that they ought be allowed to continue in a particular line of work?), even in coordinated economies, but they do have some force – just how much will be explored more below.³⁶ This argument presupposes a stronger notion of what individuals are owed than the notion in section 3: what is owed is a certain status within a system of political equality. This argument succeeds only where a notion of political equality is operative according to which governments should attend to citizens' economic status. Coordinated market economies are cases in point; liberal market economies may well not be.

An objection is that protection harms the economy. It does not only redistribute to producers by keeping prices artificially high; it also causes “deadweight-losses,” distortions arising because restrictions motivate producers to produce more and consumers to consume less than they otherwise would. Irwin (2002), p 55, reports that the US sugar price is twice that of the world market. Producers receive about \$1 billion annually, of which 42% go to 1% of farms. The costs of protection amount to 1.9 billion, .9 billion being deadweight losses. Yet this objection fails: the complaint is precisely that

³⁶ For the Varieties-of-Capitalism approach, cf. Hall and Soskice (2001); for a review of the area, cf. Howell (2003). Notice the following assessment of labor markets in Germany and Japan: “Social constraints and opportunities (...) typically enforced by social institutions, define the legitimate place and the possible range of market transactions and markets in the economy-cum-society in which they take place. By circumscribing and thereby limiting the role of markets, they typically ‘distort’ them, for example by shielding desirable social conditions from market fluctuations” (Streeck and Yamamura (2001), p 2). If workers can argue that they specialized while legislation, along such lines, made it irrational for them not to do so, they have claims against their government if the parameters guiding labor markets are changed.

subsidies are needed to keep the domestic body of laws justifiable to all, possibly at the expense of wealth maximization. Certain costs are so high that they cannot be imposed merely because cost/benefit assessments suggest it. While this does not mean such costs cannot be imposed, it requires more justification than *the mere fact* that cost/benefit calculations recommend imposing them. Yet subsidies also harm international competitors. Do those have a complaint in fairness? Such complaints would have a basis different from that of complaints that regard subsidies.

Before we explore this question, note some complexities. Subsidies benefit domestic producers and harm domestic consumers (by raising prices; there are now fewer goods on the market) as well as third-country producers (by lowering world prices), but benefit consumers elsewhere. Food-subsidies help consumers in net-food importing countries:

In 1999, as many as 45 of the 49 least-developed countries imported more food than they exported. (...) Certainly, if agricultural trade is liberalized and prices rise, some poor countries will become net agricultural exporters, but many will not. (Panagariya (2003), p 22)³⁷

Panagariya adds that the “major beneficiaries of agricultural liberalization would be rich countries, which bear the bulk of the cost of the subsidies and protection, and their domestic consumers.” Since developing countries also protect domestic interests, subsidies are ill-understood as a show-down between rich and poor.³⁸

³⁷ For net-food-importers, see also Hoekman and Kostecki, pp 225 ff.

³⁸ Cf. Panagariya (2003): “On average, poor countries have higher tariff barriers than high-income countries. (...) Even in the textiles and clothing sectors, tariffs in developing nations (21%) are more than double those in rich economies (8%, on average). (...) [D]eveloping countries themselves are often quite zealous in protecting their markets from goods exported by other poor nations. Labor intensive product such textiles, clothing, leather, and footwear, which developing countries also export to each other, attract high duties in countries such as Brazil, Mexico, China, India, Malaysia, and Thailand. (...) India now ranks first in the world in initiating new anti-dumping actions and third (...) in the number of such actions currently in force” (p21). Removing subsidies might also have the peculiar negative consequence that

4.3 Still, there are two considerations that strongly support the termination of subsidies. Both, however, turn on contested empirical matters. First, suppose at least minimal duties of developed towards developing countries must be acknowledged. There are different reasons for endorsing such duties: because needs compel us to meet them; because in a suitable global Rawlsian position such duties would be acknowledged; because humanity jointly owns the earth and must ensure everybody gets their share; because one cannot consistently endorse certain institutional standards for one's country without assisting others to realize them, etc. The more trade does indeed play the sort of essential role for growth and, indirectly, for other valuable goals outlined in 2.3, the more there is pressure on developed countries to liberalize trade and cut subsidies.³⁹

The second consideration is that there is strong economic case for liberalization. Following Anderson (2004), estimated gains from liberalization range from \$254 billion annually (\$108 billion for non-OECD countries, in 1995 dollars), to \$832 billion (\$539 billion for non-OECD countries, 1997 dollars), depending on how the estimates are made. (These are estimates of *full* trade liberalization – not merely by rich countries, which primarily benefits their consumers.) Anderson and Martin (2006b) say that “[f]reeing all merchandise trade and eliminating agricultural subsidies are estimated to boost global welfare by nearly \$300 billion a year by 2015. Additional gains would come

countries that might be better off in the long run exploring other economic options would rely too much on agricultural exports (cf. Stiglitz and Charlton (2006), p 120).

³⁹ What about developing countries? It lies in the logic of this first point that it applies in between two groups of countries such that one group has duties of aid to the other. So it does not apply among the most developed countries, or among the least developed countries. There will be a gray zone where it is less clear what sort of duties countries have, consisting of economies that are neither among the developed nor among the least developed countries. But the most interesting case is what developed countries should do vis-à-vis the least developed countries.

from whatever productivity effects that reform would generate” (p 11). They add that 45% of the global gains would go the developing countries, which would be above their one fifth share of global GDP. However, such estimates vary widely depending on the predictive model used. Hertel and Keeney (2006) estimate that eliminating all agricultural subsidies and complete liberalization of trade in goods and services would lead to an increase of \$151 billion in global welfare, of which around \$34 billion would go to developing countries (cf. Anderson and Martin (2006a), p 22). And as some point out who think that the importance of removing especially agricultural subsidies has been much exaggerated (e.g., Birdsall et al. (2005)), there are other development programs that would produce significantly higher gains (especially a temporary work permit program).

The strength of both of these considerations in support of cutting subsidies, then, depends on empirically contested claims. But even setting aside concerns that we have difficulties assessing the overall strength of these claims, we still need a reason why a duty of aid from developed to developing countries might actually *outweigh* claims to subsidies in the first place. Why not say that, regardless of how strong these considerations could turn out to be, governments have no reason to overrule their duties to their citizens? We must reassess in what ways governments should protect citizens’ interests, a central question being whether governments should enable citizens to continue in acquired professions, or offer assistance if whole branches of industry struggle.⁴⁰ Many views of what governments should do are consistent with duties to

⁴⁰ This question of the extent to which governments should protect citizens’ professional identity matters for social policy. Effective January 1, 2005, Germany introduced social reforms known as “Hartz IV.” Prior to Hartz IV, the unemployed were supported by insurance (up to a limit) until they found something in their profession, and were not expected to seek employment far from home. Now they must accept employment outside their profession, as well as further away. Thereby Germany has effectively taken the attitude that protection of its citizens does not include ensuring they can continue in a certain profession. But the

developing countries, *even* the view that governments should enable citizens to continue in acquired professions, *if and to the extent that* that view is defensible – *except* through trade-distorting measures. Instead, governments may pay those who are affected by competition directly, rather than based on export quantities (so they can stay in business without the market being affected),⁴¹ or by paying them to change professions.

But, again, why should governments not consider their duties to their citizens to include that which is inconsistent with duties to developing countries (constraining those instead)? Fairness, recall from section 2 (and now this becomes relevant), deals with satisfying stringent claims made possibly on different bases. The difficulty in assessing fairness in trade is that it involves individuals having claims on different bases, and the particular difficulty in assessing fairness to trade *as it applies to subsidies* is that the precise implications of claims made on behalf of developing countries depend on empirically controversial points. Reflecting the persistent disagreements on those matters, I suggest the following as a view on the fairness of subsidies: The more it can be made plausible that trade liberalization is essential to development, the more it is plausible, I submit, that constraining the government's duty to protect its citizens as sketched (i.e., to non-trade-distorting measures) is the appropriate way of balancing claims made on these

accompanying debate highlighted how seriously Germany takes claims in fairness generated by its being a coordinated market economy, although in this case the goal of reducing unemployment trumped.

⁴¹ One may wonder whether making direct payments to farmers is not as trade-distorting as export subsidies. However, while paying farmers directly increases supply, it does not increase supply of specific products, and may especially not increase supply of products whose prices are at issue. Therefore direct payments are considered less trade-distorting than subsidies contingent on producing particular products. The key issue is how subsidies affect farmers' willingness to sell at the margin. One may think richer farmers sell for less; however, that may not be true if payments are made directly. In competitive markets, prices reflect marginal costs, not suppliers' average incomes. If such direct payments are indeed trade-distorting, they will have to be suspended, following this reasoning. (Thanks to Robert Lawrence for help with this point.)

different bases. And the higher the gains from liberalization are, the more this consideration supports this view.⁴² If indeed it were the case that trade is essential to development, then, I submit, without any qualification, constraining the government's duty to protect its citizens as sketched would be the appropriate way of balancing the different bases on which claims can be made. What especially must be constrained in this manner are duties governments have to their citizens because their economic interests are harmed because countries elsewhere have adopted lower labor standards (cf. section 3).

Yet as of now, neither consideration in support of terminating subsidies is empirically well enough supported to warrant the conclusion that such reasoning actually makes the termination of subsidies morally mandatory (though the formulation of the view on subsidies is meant to be open to this possibility). To the extent that trade is not crucial to development, or to the extent that its importance remains contested, states would be permitted to discharge their duties to developing countries in some other way (for instance, by issuing temporary work permits, cf. Birdsall et al. (2005)). However, the absence of such alternative measures (which might politically be even harder to realize than trade liberalization, which is in the developed world's own economic interest), the pressure exerted by these considerations in favor of trade liberalization increases correspondingly. Notice that, at any rate, on this account, the duty to reduce subsidies does not arise from considerations drawing on the activity of trading as such (as was the case for the arguments in section 2). Instead, trade policy is constrained in virtue of empirical facts about the importance of trade, and in virtue of duties that, in turn, arise on grounds that have nothing particular to do with trade.

⁴² This proposal is also supported by a Rawlsian concern to ensure that each society reaches some level of decency (cf. Rawls (1999) and Risse (2005a)).

Economic gains from trade liberalization can be used domestically to aid those who lose out, so that governments remain able to meet claims of citizens -- just not through trade-distorting measures. At the same time, care must be taken to make sure that some of the surplus obtained from trade liberalization is used to ensure that consumers in third countries (for instance, and importantly, net-food-importers) do not suffer. Putting this money to such use, however, will cause an enormous political problem because these gains arise in a decentralized manner and thus are not easily *re*-distributed. I do not have a proposal to offer for how to solve this political problem.

4.4 Consider two objections. First, one way of criticizing trade as unfair is to claim that the relative prices of the goods involved arise because of background injustice in the distribution of assets; fairness would be enhanced if this distribution were modified to approach an outcome that would have arisen had assets been justly distributed. This consideration has so far not entered the argument. In response, recall first that in 3.1, I set aside “other morally important relationships between states” to focus on trade, and this objection appeals to some such relationship. But the objection also shows how artificial that assumption is. Second, then, this concern can enter my argument precisely now where the relative strengths of domestic claims to subsidies and claims to aid are compared. Arguably, there could be claims aiming at the rectification of past injustice, made against former colonial powers, or there could be claims to the effect that the global order abuses the poor (cf. Pogge (2002)). Here I cannot discuss the merits of these specific ways of thinking of duties to the poor, but to the extent that they can be defended, they could not merely strengthen the kind of balancing of claims suggested

above but support compensatory payments. (Yet it would be naive to think such payments would automatically boost developing countries' standing in trade, or otherwise benefit their economy; cf. Risse (2005a). The contrary may be the case *even if* past injustice has caused disadvantages.)

Second, what about other governmental measures that can be taken to keep industries competitive (e.g., support for research), or merely to keep workers healthy? Could *all* these measures plausibly be constrained by duties to the poor, and if not, what is special about subsidies (cf. also Stiglitz and Charlton (2006), p 123)? Two points in response. First, what is special about subsidies is that they aid industries beaten by international competition. This feature makes subsidies good candidates for measures to be dropped when duties to citizens and duties to foreigners need to be balanced. The second response is more general. Risse (2005a) argues that developed countries owe developing countries assistance in building institutions, a possibly costly duty. This duty generally must be balanced against duties a government may have to aid its citizens, and in this regard trade is not special. To some extent this balancing must be done by spending money in ways fostering institutional change, which constrains how the government can use its budget. If the empirical argument in section 2.2 regarding the importance of trade succeeds, to some extent this balancing must be done by facilitating trade. Perhaps developed countries must indeed make *additional* changes to accommodate this duty, but eliminating subsidies is a particularly apt way of doing so.

Where does this leave MWV? MWV does not acknowledge duties to developing countries. Since I endorse such duties, I adopt the Weak Westphalian View:⁴³

⁴³ WWV is "weak" relative to the notion of sovereignty central to the Westphalian system.

Weak Wesphalian View (WWV): Every country's trade policy is subject to constraints in fairness that limit how it can determine social costs of production. First, the production processes themselves must not harm other countries. Second, the effects of trade must be distributed in such a way that no negative rights are violated. Violations of this condition on the distribution give rise to claims in fairness by those who lose out in the process to the trading partners, and constitute pro tanto reasons to suspend or restrict trade and conceivably also for interference through non-trade-related measures by the trading partners; however, it is a separate question whether these reasons are conclusive. Third, world market prices of goods from other countries may, under certain conditions, give individuals claims in fairness to protection from their government if they negatively affect these individuals' interests and have arisen in ways that are at odds with domestic social standards. However, these claims to protection would have to be weighed against competing economic interests in free trade and may not be conclusive either. Fourth, trade policies must be devised in such a way as to be consistent with duties to poor countries. Therefore, countries have pro-tanto reasons to determine prices in such a way that they take into account their effects on third parties.

WWV is my proposed account of fairness in trade, and can serve as background to assessments of specific judgments about trade in terms of fairness. MWV's implausibility rests on a view of what we owe to each other that acknowledges at least minimal duties to developing countries. Such a notion was presupposed throughout this section: the justification of subsidies also rests on a stronger notion than used in section 3.⁴⁴

⁴⁴ (1) Adopting such a notion of fairness requires us to revisit those components of WWV we endorsed when rejecting SWV. For while above we modified SWV in such a way that only a restrictive notion of what persons are owed was needed, we have now adopted a stronger notion. We must reconsider the claim that "the effects of trade must be distributed in such a way that no negative rights are violated." Whether we have to endorse a stronger condition on the distribution of the effects of trade depends on the features of the view prompting us to endorse duties to developing countries. My own views on this require no modification. Therefore I refrain from amending WWV. (2) Let me address one related topic. Oxfam (2002), chapter 4 insists that developed countries practice *double standards*: they insist on poor countries' opening their markets, but they subsidize their producers. This seems inconsistent – an inconsistency Wolf (2004) calls a disgrace (p 213). However, there is no inconsistency. According to economic theory, what is forced upon developing countries is good for them, at least in the long run. The reason why liberalization can be demanded is that aid is given to them; in response it is reasonable to ask for measures improving that country's economy. What matters for those countries at this stage is that they make economic progress so that later there is room for social improvements. Developed countries are not *inconsistent* in taking measures that harm their prosperity but are justified on fairness grounds. The problem is that subsidies have effects on other countries, showing insufficient consideration for the poor. That problem is ill-conceived as an inconsistency.

5. The WTO

5.1 Let us look at the WTO from the standpoint of WWV. According to the preamble of the GATT (General Agreement on Tariffs and Trade, part of the WTO treaty), parties are “desirous of contributing to” multiple economic goals

by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.

Fairness is absent. From the standpoint of economic theory, the WTO’s existence is puzzling. Since liberalization is unilaterally beneficial (cf. 1.1), especially talk of “concessions” in agreements seems odd. Yet there is a fairness-based rationale for the WTO. Above we encountered stringent claims individuals have with regard to trade in virtue of being citizens, as well as claims in light of international duties. Yet governments accept claims from citizens more easily than from foreigners. While economically removing trade barriers is no concession, it is one in the sense that claims of citizens make room for claims arising globally. A trade organization facilitates, and may be essential for, the implementation of fairness. To evaluate the actual WTO in terms of fairness, we can ask first to what extent it satisfies WWV, and second, whether its structure is fair given that it is (a) an association of states (b) concerned to foster trade that (c) comes as a “single undertaking” (members must accept all rules) from which it is not viable to stay away.⁴⁵ A thorough treatment of these questions involves more details

⁴⁵ It is true, though, that some countries have been economically successful without being members of the WTO. Vietnam still is not a member of the WTO, and China was economically successful long before it became a member. Still, China did become a member for good reasons, and Vietnam is a WTO observer, which requires it to start ascendancy negotiations in due course. Given that the WTO was only founded in 1995 and given that ascendancy negotiations often take a long time, the claim above should be read as emphasizing that staying away from the WTO will ever less be a reasonable option.

than I can introduce, so this section is sketchy. Its main purpose is to explore how one can bring to bear WWV on the WTO in the first place.

To what extent does the WTO satisfy WWV? Prior to the WTO's founding in 1995, the GATT aimed at reducing barriers across OECD countries. If developing nations were involved, they received "special and differential treatment." They were exempted from many obligations, but their concerns were absent from negotiations, especially regarding agriculture and textiles. The WTO's "single-undertaking" character ended this second-class status. Agriculture and textiles entered the agenda, but exceptions persist. As far as textiles are concerned, the quota system that governed that sector since the 1960s (Multi-Fiber Agreement) was terminated (though tariffs remain). Breakthroughs in agriculture have been less tangible, but negotiations continue.⁴⁶

Still, developing countries now face a higher level of tariff bindings and new obligations concerning procurement, subsidies, anti-dumping, and licensing. Moreover, the agreement on Trade-Related Aspects of Intellectual Property Laws (TRIPs) regulates patents, copyright, etc., across countries. Since most such property originates in developed countries TRIPs is likely to entail net transfers to developed countries, despite flexibility in matters such as public health. TRIPs not only assumes a role so far left to states (determining what counts as property); it also commits developing countries to a

⁴⁶ The termination of the Multi-Fiber Agreement will also produce winners and losers. According to WTO estimates (as published on p 59 of the *Economist* of Oct. 16, 2004), the American clothing market was supposed to see the following changes in market shares: China 50%, up from 16%; India 15%, up from 4%; Mexico 3%, down from 10%; "Other Americas" 5%, down from 16%, and the rest of the world (excluding those countries mentioned as well as Hong Kong and the EU) 21%, down from 40%. As for agriculture: An agreement was made in Geneva on July 31, 2004 to eliminate export subsidies and to restrict other forms of export support (such as credits and state trading organizations), as well as cuts in trade-distorting domestic subsidies. The agricultural negotiations of the Doha round are ongoing, and experienced a serious set-back in Hong Kong in December 2005. The *Economist* referred to that ministerial meeting as "little more than an expensive experiment in sleep deprivation," and thought that "an agreement still seems an awfully long way off" (Dec. 24th, 2005, "The Doha Round is Still Alive, but Hardly Healthy," p 97f).

level of protection of intellectual property that industrialized countries only adopted at a later stage of prosperity (Finger (2000), p 430). Yet TRIPs was the unfortunate price to pay for getting agriculture and textile into the WTO framework.⁴⁷ Offering an evaluation of the WTO treaty, Panagariya (2003) reaches a balanced conclusion, saying that

although the Uruguay Round benefited developed countries more than developing ones, poor nations still gained. First, developing countries liberalized more because they had higher trade barriers to begin with (and remember, in economic terms greater liberalization is a benefit, not a cost). Second, (...) developing countries convinced developed nations to commit to dismantling quotas on imports of textiles and clothing. Third, while the Uruguay Round did not enhance developing countries' access to global agricultural markets, it opened they way for future liberalization in this important area." (p 26)⁴⁸

One may disagree about what is required for the WTO to cohere with WWV. Still, TRIPs and the slowness at which liberalization favorable to developing countries proceeds warrant a complaint in fairness regarding the realization of WWV.

5.2 The WTO is (a) an association of states (b) concerned to foster trade that (c) is a "single undertaking" from which it is no longer viable to stay away.⁴⁹ In light of (a), WTO members have a claim to "equitable treatment." Because of (b), the WTO has a specific purpose (is not a world government under democratic control), and there is

⁴⁷ On TRIPs, also cf. Oxfam, chapter 8. Hoekman and Kostecki (2001), pp 294-99, submit that TRIPs in the long run may lead to more trade; however, they also say the net transfer will be from the South to the North. Bhagwati (2004), pp 184-185 shows that TRIPs was the outcome of lobbying.

⁴⁸ Hoekman and Kostecki (2001), p 400 mention disagreement about whether the WTO treaty was generally favorable; studies disagree on implementation costs and TRIPs. Steinberg (2002) says: "Several computable general equilibrium models have shown that the Uruguay Round results disproportionately benefit developed country GDP's compared to developing countries, and that some developing countries would actually suffer a net GDP loss from the Uruguay Round – at least in the short run" (p 366).

⁴⁹ This is not *quite* correct. The WTO does not require that its members be states. The EU is a member. There is also some discussion about whether non-state transnational actors should be involved in trade negotiations. Yet we can neglect these points.

pressure to think a trade organization should not make its decisions regardless of their respective members' share in trade. Developing countries lack the market share to be taken seriously as partners in reciprocity-based negotiations: the 100 largest developing countries account for 29% of exports, while the US accounts for 10%, and the EU for 15% (according to WTO, International Trade Statistics, 2004).⁵⁰ As Mattoo and Subramanian (2004) point out, integrating poor countries into the WTO is challenging: while such countries have acquired a significant say, they have little to offer by way of reciprocity, often benefit from preferential treatment and therefore have no interest in opening trade. Still, members' current shares in trade should not matter too much since this may frustrate efforts to encourage smaller members to acquire larger shares – pressure reinforced through the fact that staying-away from the WTO is not viable.

So there are conflicting criteria that explicate “equitable treatment.” The WTO’s solution is to make consensus-based decisions, especially in its dispute-settlement system. If one member accuses another of violating rules, and negotiations fail, it can request a panel for adjudication. While prior to 1995, any GATT member, including the offender, could veto panels, WTO rulings can only be rejected unanimously. Especially because of its dispute-settlement system, the WTO has greater authority than the original GATT. Yet the system depends on compliance. If a country is harmed through another’s policies, the WTO may authorize “retaliation.” But retaliation is of no use to countries without impact on world market prices.⁵¹ While many developing countries participate in

⁵⁰ Hoekman and Kostecki (2001), p 10, says that in 1998, South Asia and Sub-Saharan Africa each represented only 1% of trade.

⁵¹ Wolf, p 208: “In practice, dispute-settlement remedies are of little use to small countries, unless the big players voluntarily submit. (...) [T]he WTO is not a system of global government, but rather a way of organizing and disciplining the intrinsically unequal capacity for self-help of member states.”

the dispute-settlement mechanism, others are not represented at the WTO. Especially many African countries remain absent: according to Hoekman and Kostecki (2001), p 395, 15 in 38 Sub-Saharan countries have no representation, most others have small representations. Such countries cannot even participate in negotiations that affect them (but it is also true that many negotiations do not matter to them). Despite the consensus-based system, influence in the WTO parallels economic strength.

The worries that emerge, as also emphasized by Oxfam (2002), p 252/3, are “under-representation of small countries” and “informal power.” Yet as we saw, there are conflicting criteria for setting up WTO decision mechanisms. The consensus-based system makes a reasonable effort at accommodating those criteria (and is more appropriate than a mechanism allotting power through market shares and more appropriate than a majority- or population-based system). Nonetheless one may insist on genuine representation and enforcement that is independent of economic power, and which takes seriously WTO members as sovereigns. Proposals to render enforcement independent of economic power have long been around, especially the proposal to allow *coalitions* of countries to take responsibility for enforcement.⁵² As far as representation is concerned, an Advisory Center of WTO Law, based in Geneva, opened in 2001. This has been a step into the right direction, and it seems that this Center has performed well so far.⁵³

⁵² There is the Uruguay-Brazil plan to award financial compensation for policies that harm a country’s trade (cf. Dam (1970), pp 368-373). Lawrence (2003) makes a different proposal for how to bring about compliance without retaliation, which is intended to address this concern. Cf. Stiglitz and Charlton (2006) for a comprehensive assessment of the WTO.

⁵³ Cf. http://www.acwl.ch/e/tools/doc_e.aspx for a “Report on Operations” and “A Progress Report by the Management Board.”

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