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### **Fairness in Trade**

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# Fairness in Trade

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## 1. Introduction

1.1 In earlier times the concern about free trade was whether it would maximize what a country can make of its resources, knowledge and the resulting trading possibilities.<sup>1</sup> Nowadays among the primary worries are whether free trade is compatible with social and moral agendas, and whether it harms the environment. One major concern is whether free trade is *fair*, a topic not much explored by philosophers.<sup>2</sup> This study explores that subject. We will not try to assess whether there is a “fair price.” Rather, we will be concerned with assessing what, if any, moral considerations apply to the trade policies of countries with different bodies of law whose citizens nevertheless trade with each other.

Based on ideas going back to David Ricardo’s 1817 *Principles of Political Economy*, economic theory recommends specialization in goods in whose production countries have a so-called *comparative advantage*, goods that, compared to their trading partners, they produce more efficiently than other goods. If so, even countries less efficient than others in producing anything gain – in the same way in which somebody

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<sup>1</sup> Unless otherwise specified, “trade” means “international trade.” Thanks to Robert Lawrence for letting me sit in on his class on trade at Harvard’s Kennedy School of Government in fall 2004 as well as for helpful conversations and comments. Thanks also to Sabina Alkire for helpful conversations, as well as to audiences at the Department of Politics at the University of Manchester and the Department of Philosophy at the University of Bristol for helpful discussion when I presented an earlier version of this paper there in January 2005.

<sup>2</sup> Still, the moral dimensions of trade have long been recognized, as a quote from the sophist Libanius from the 4<sup>th</sup> century shows: “God did not bestow all products upon all parts of the earth, but distributed His gifts over different regions, to the end that men might cultivate a social relationship because one would have need of the help of another. And so He called commerce into being, that all men might be able to have common enjoyment of the fruits of the earth, no matter where provided.” (Libanius in *Orations III*; cf. Irwin (1996), p 16, who credits Grotius as the source.)

less efficient than Bill Gates at anything may gain from mowing his lawn because Gates is well-advised to focus on what *he* does best: it will be mutually beneficial if Gates, whose opportunity costs are higher when he spends time on gardening than if he spends it in computers, hires somebody whose opportunity costs are higher when working in computers. Much of international economics develops the idea that trade is almost always beneficial for all parties involved, at least in the long run.<sup>3</sup> Two points stand out about “comparative advantage.” First, it is because countries face different social costs in production that trade thrives, and the more they differ, the more they benefit. Second, trade barriers (tariffs, quotas, voluntary constraints) obstruct mutually beneficial transactions. Trade theory makes a strong case for free trade.

We are used to worries about allegedly “unfair” practices of foreign competitors, to “fair-trade” products in coffee shops, and to assessments of World Trade Organization (WTO) negotiations in terms of fairness. Yet in light of those two points about comparative advantage it is easy to see why concerns about fairness leave champions of free trade puzzled. First, to some, talk about fairness in trade is conceptually muddled. Ideas of fairness seem tied to the image of “leveling the playing field” and thus concerned with equalizing background conditions, whereas trade thrives on differences. So how could ideas about “leveling” apply to trade at all? Second, even if this difficulty can be overcome, one wonders how ideas of “fairness in trade” can do any work. International trade is a voluntary activity in a setting where actors do not share a thick coercive structure (e.g., a body of laws of the sort citizens of a state share) before which

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<sup>3</sup> Cf. Krugman and Obstfeld (2003) for a standard introduction to international economics; cf. Hoekman and Kostecki (2001) for an introduction to the trading system. Cf. Bhagwati (1993) for a discussion of objections that have historically been made to free trade.

worries about fairness are easily motivated. Trade seems like an activity between consenting adults in a setting where few moral demands hold. Third, even if this worry could be put aside as well, we must ask whether fairness concerns conflict with economic progress. Transitory unfairness might be the price to pay for developing countries to beat poverty and eventually to reach a stage where such concerns can be taken more seriously.

Often fairness claims about trade are mere rhetoric. “Nearly all trade practices that adversely affect import-competing industries,” say Cass and Boltuck (1996), “and nearly all policies of other governments linked to such trade practices, are said to constitute sources of unfair competition” (p 351). Burtless et al (1998), p 90f, write that

[f]airness (...) is in the eye of the beholder. What constitutes ‘fair’ and ‘unfair’ has changed over the years. In the 1980s, unfairness was associated with barriers imposed by foreign governments to block market access by US exporters and investors. In addition, unfairness was seen as “industrial policies” that others pursued but the US did not. Japan was the main target of attack. (...) In the 1990s one still hears complaints about closed foreign markets, but since the dispute between the US and Japan over automobiles and parts in 1994 and the meltdown of several Asian economies, the focus of the attack has switched to China, whose state-run economic system is difficult for outsiders to crack and whose political and human rights policies are at odds with some of America’s deepest values.<sup>4</sup>

Such observations illustrate again why many find it hard to see any substance in claims about fairness in trade. Still, it is hard to deny that fairness must apply to trade *somehow*. Trade affects what people have: countries benefit unequally, and domestically trade may well produce winners and losers – matters that cry out for an assessment in terms of fairness. In addition to its importance in an age of globalization this collision of views on the appropriateness of applying fairness talk to trade urges us to gain clarity on the subject of fairness in trade, a subject that also harbors philosophical complexities.

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<sup>4</sup> Cf. Hudec (1990), p 227: “[F]airness is a matter that governments determine unilaterally; there are relatively few international agreements regulating such claims, and there is no recognized tribunal to adjudicate them in common law fashion. Fairness is largely what a government wants to call unfair.”

This study explores how fairness applies to trade, how to account for talk about “fairness in trade,” and does so in a way that accommodates the worries above. This inquiry assumes the legitimacy of states of varying size and power. Questions about fairness in international trade by definition arise only if states are assumed, and become interesting only if states of varying size and power are legitimate. As this study will show, much can be said about fairness in trade even if these assumptions are granted.<sup>5</sup>

1.2 Section 2 offers an account of fairness. While there is nothing conceptually confused about applying fairness to trade, we will see why fairness claims tend to be contested and why it is difficult to apply fairness to trade. Fairness draws on views about what is owed to persons, with different views leading to different accounts of what is fair. Subsequently I will be careful to point out what view of that sort is presupposed – views for which, of course, I cannot argue here. Section 3 introduces some basic trade theory, and thus the domain within which we are investigating how to apply talk about fairness.

Section 4 explores and rejects a minimalist view on fairness in trade (the Strong Westphalian View (SWV)) according to which trade creates (almost) no morally relevant relationships across countries and individuals from different countries that can be captured in terms of fairness. I will reject this view, and the view of what is owed to persons needed for this rebuttal is sufficiently minimal to be appealing even to libertarians. The objections to SWV will be, first, that it cannot acknowledge well-founded fairness complaints against trading partners that people can make who are

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<sup>5</sup> Held (2004) develops a global social democratic agenda, taking for granted that an agenda like that *should* be developed, whereas Pogge (2002) argues against states. Questions of fairness in trade look different from such standpoints. I do not share the negative attitude towards states that both Held and Pogge adopt.

oppressed in a manner constitutive of the trade; and second, that it cannot acknowledge well-founded fairness complaints against their government that industries can make that are negatively affected through competitors benefiting from lower labor standards. This objection involves a discussion and endorsement of the famous “Pauper-Labor-Argument” that many economists reject in their undergraduate classes as a standard fallacy – and it is this discussion that I expect to be most controversial.

Section 5 explores the Moderate Westphalian View (MWV). This view acknowledges the objections made to the stronger view. We must then ask whether there are additional claims that must be accommodated by any plausible view on fairness in trade. There are such claims. According to MWV, provided the objections to the stronger view do not arise, no country has a complaint in fairness *merely* because its market position worsens through others’ trade policies (e.g., subsidies). MWV thus conflicts with duties towards developing countries, duties that, however, one can only acknowledge on a notion of what is owed to individuals stronger than acceptable to libertarians. Since I endorse such duties (cf. Risse (forthcoming)), I reject MWV and end up with the Weak Westphalian View (WWV), which acknowledges, in addition to the objection to SWV, that duties towards developing countries must be considered when trade policy is set up.

The Weak Westphalian View is my proposal for “how to make sense of talk about fairness in trade,” and thus is the main result of this study. While this view is far from delivering a straightforward verdict on every claim about trade in terms of fairness, it offers at least a starting point for and background to such verdicts. The main argumentative work is spent, first, on arguing for the adoption of the Moderate Westphalian View over the Strong Westphalian View, and then for the adoption of the

Weak Westphalian View over the Moderate Westphalian View. Section 6 briefly explores some questions about the WTO in light of the Weak Westphalian (finding the WTO wanting in some aspects) View, and section 7 discusses the “fair-trade” movement (finding its goals wanting as fairness-based goals).<sup>6</sup>

1.3 Let me add some remarks about the GATT/WTO system, which is the background before which our discussion unfolds.<sup>7</sup> Never before has trade been subject to regulation of such scope. The 1944 U.N. Monetary and Financial Conference at Bretton Woods envisioned an International Trade Organization (ITO) that, alongside the World Bank and the International Monetary Fund, was supposed to help prevent wars and contribute to worldwide economic improvement. Yet since the US refused to ratify its charter, the General Agreement on Tariffs and Trade (GATT) became the dominant trade agreement. Its goal was reciprocal trade liberalization captured by the “most-favored-nation rule” (favorable conditions extended to one member must be extended to all) and the “national treatment principle” (conditions applying to domestic products must also apply to products from abroad). In 1995, the WTO succeeded the GATT and became an organization much like the envisaged ITO.

Unlike the GATT, the WTO is both a treaty *and* an institution. The WTO differs from the GATT (which it includes as a treaty) as follows: first, it has a dispute-settlement

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<sup>6</sup> Throughout, I talk about “higher” and “lower” labor standards. I do *not* mean to imply that “higher” labor standards are *ipso facto* morally preferable to lower ones. Instead, these terms are used descriptively, with reference to the usual concerns about labor standards: safety standards; job security; wages and benefits; the right to unionize, etc. I take it that, at least loosely, these issues give rise to an order of labor standards in terms of “weaker” and “stronger.”

<sup>7</sup> See Hoekman and Kostecki (2001) for an introduction to the WTO; for a very short but helpful discussion, cf. Jackson (2001). Irwin (2002), chapter 6, describes the transition from the GATT to WTO and the challenges facing the WTO.

system whose proceedings affected parties cannot veto; second, members must accept all rules unconditionally (the WTO is a “single undertaking”); and third, it covers more areas through agreements on services, investment, agriculture, and intellectual property, among others. The WTO also includes more countries (148 in October 2004), covering the vast majority of world trade. While the GATT focused on border measures, the WTO has more extensive non-border rules covering practices such as subsidies and standards: the GATT merely promoted “shallow integration”, whereas the WTO also promotes “deep integration” by ensuring that regulations within member countries do not obstruct trade.

One principle of the trade system is *reciprocity*. As the GATT’s preamble states, its parties are “desirous of contributing to [the stated] objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade.” Fairness questions arise about how to spell out this notion, especially since now the treaties are a “single undertaking.” I will discuss what WWV entails for an assessment of the WTO, but discussing many issues arising through the actual realization of reciprocity would involve more details than I can introduce. It would also respond to a different question than the one on which we focus. We explore how fairness applies to seemingly voluntary activities among states, while fairness questions about the WTO treaty assess how to develop a “single undertaking” given that its parties are committed to it, that certain principles (e.g., reciprocity) apply, etc.<sup>8</sup>

## 2. Fairness

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<sup>8</sup> Lawrence (2003) is a detailed study of the WTO and its dispute settlement mechanism, in particular questions of retaliation; Barfield (2001) is another in-depth study of many aspects of the WTO treaty.



2.1 Discussions about fairness often are about the distribution of goods (e.g., inheritances, organs for transplantation) or burdens (e.g., taxes, lay-offs), as well as processes governing such distributions. While “fairness in trade” is more abstract than fairness in the distribution of an inheritance, similar issues arise. There are many ways in which one could assess such distributions: one may ask which one maximizes welfare; inflicts the least maximal harm; or is best suited to satisfy external goals. Yet fairness is concerned with such distributions in a special way.<sup>9</sup> First of all, fairness ensures that people receive *what is (at least prima facie) owed to them*. I refer to demands people can make because something is owed to them as *stringent claims*. A distribution of burdens and benefits is not fair (or unfair) merely because it is recommended by (or violates) any of the criteria just mentioned. It is unfair only if it fails to deliver what people are owed. A philanthropist is not unfair if he gives more to one university than to another if both have similar needs. Second, fairness is not concerned with satisfying claims per se, but with their *proportionate* satisfaction. Suppose we are all owed a medication of which there is only a limited quantity. Suppose our health is the better the more we receive. Nobody has a complaint merely because her stringent claim is not entirely satisfied if all such claims are satisfied in proportion.<sup>10</sup>

Different questions arise now. First, what are the bases for stringent claims? What is owed to people? Different moral theories offer different answers. Second, how should these bases for such claims be weighed against each other? If, say, needs and entitlements

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<sup>9</sup> In this I roughly follow Broome (1999).

<sup>10</sup> One may say that something can be “owed” only to one person. My language remains neutral with regard to that issue. As I understand it, the notion of fairness presupposes that some claims are particularly stringent, and fairness is concerned with balancing them. Extreme versions of this view are that only one party can have such a claim, in which case nothing is to be balanced and the interesting issue is to assess who has the claim; or that all claims are equally stringent, which trivializes the concept of fairness.

make for stringent claims, how can they be compared to each other? And third, what does it mean to satisfy such claims “in proportion?” I will not answer any of these questions: much moral theory and conceptual work is required to say anything about them.<sup>11</sup> My concern is to illuminate the concept of fairness. The reason why fairness claims are often contested is that these questions tend to have more than one plausible answer, answers that depend on the nature of the burdens or benefits, the characteristics of the claimants, and on what is customary in situations of that sort.<sup>12</sup>

We can now see why the conceptual muddle mentioned in section 1 does not arise. The concern was that the idea of “fair trade” seemed to force equalization into an activity whose point is undermined thereby. However, the “leveling” metaphor is tied to *equality of opportunity*, rather than *fairness*. As Roemer (1998) explains,

[t]wo conceptions of equality of opportunity are prevalent today (...). 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 conception, which I call the non-discrimination principle, 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)

The “leveling” metaphor thus states that a plausible ideal of equality of opportunity cannot merely make sure that relevant attributes ensure success, but that everybody with the potential to develop such attributes can do so. This connection between that metaphor and equality of opportunity makes clear why the metaphor does not speak to

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<sup>11</sup> The literature on “equity” and “local justice” does some of that work; cf. Elster (1992), Young (1994).

<sup>12</sup> However, it is remarkable that in many cases the number of possible answers is rather limited. As Young (1994) says, “[w]ithin a given distributive context, there are relatively few principles that have persuasive power and credibility. They are the principles in terms of which distributive discussions are conducted and they shape the outcomes that we can expect” (p 162).

*international* trade. The point of applying it to the business context is to express the view that *before the background of shared regulative structures* (as well as supply and demand factors) businesses should have an equal chance to succeed, and that the most meritorious ventures should prevail. Yet across countries there is no such background. So this idea of equality of opportunity, and thus the metaphor, does not apply to trade. However, while satisfying stringent claims in proportion sometimes entails equal treatment of sorts, fairness does not fail to apply to trade merely because equality of opportunity (mediated through that metaphor) is unsuitable to fill in what fairness entails for trade.

2.2 Still, applying fairness to trade does involve a difficulty. The difficulty is that the way fairness applies to domestic markets fails for international markets. Domestic markets occur before the background of a shared corpus of laws, 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 regulating inheritance and bequest, how firms can be owned, and generally what one can do with holdings. Let me adopt a Rawlsian formulation of the requirement that laws be justifiable to all subject to them, and let me develop it in terms of property law. Property law must be justifiable to individuals *qua* free and equal citizens in a system of cooperation.<sup>13</sup> Rawls suggests a four-stage sequence of institutional design through which this claim becomes more concrete. At the level of the original position decisions about the shape of the property regime are made; subsequently, at the constitutional, legislative, and judicial stage, the property regime, including the role of markets, is spelled out in more detail. What must be decided is

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<sup>13</sup> For brief explanations of this terminology, cf. Rawls (1999).

especially what should be subject to markets. Walzer, for instance, suggests a list of items to be excluded from markets.<sup>14</sup> What interaction is left to markets may also have to be regulated, to make sure they are efficient and appropriately constrained, as, for instance, in anti-trust law (and other laws guarding against market failures), minimum wage legislation, and consumer protection such as quality control. Regulation of markets will not always explicitly turn on fairness. Still, such regulation is relevant only because individuals have stringent claims as free and equal citizens, and thus because domestic markets must be assessed in terms of fairness.<sup>15</sup>

International trade, by definition, is an activity across countries. So fairness considerations cannot apply in the same way. Trade affects individuals involved in trade, but also others in their countries as well as third countries whose trade is facilitated or impeded by measures taken elsewhere (cf. section 3). To the extent that fairness claims apply to trade, those affected through the distribution of burdens and benefit engendered by trade would have to make claims *on different bases*. Some would have demands on their own government because trade worsens their situation vis-à-vis others, which may undermine their status as free and equal citizens. (Subsidies may be justified along such lines, cf. section 5.) People elsewhere may have complaints about policies of that first country because they indirectly deprive them of their income, and the basis of such

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<sup>14</sup> Walzer (1983), chapter 4. The list includes human beings; political power and influence; criminal justice; freedom of speech, press, religion, and assembly; marriage and procreation rights; the right to emigrate; exemptions from military service; jury duty and other community-imposed work; political office; basic welfare service (police protection and education); desperate exchanges; prizes and honors; divine grace; love and friendship; and criminal acts.

<sup>15</sup> Walzer puts items on his list if markets would destroy their “social meaning.” As opposed to that, Wolff argues that putting some goods on the market harms society, and that societies benefit from there being a non-market sphere (while it does not matter much what it is). (Cf. Jonathan Wolff, “Are There Moral Limits to the Market?” (unpublished).)

claims would have to be different from the basis on which people who live in the same country make such claims. So what is difficult about applying fairness to trade is not that it leads to a conceptual muddle, but that different people affected by trade may have claims on different grounds. It should now also be clear why it matters for assessing “fairness in trade” what conception of what is owed to people is adopted. In what follows I will indicate just which such understanding is needed.

### 3. Basic Ideas of Trade Theory

3.1 Let me introduce some elementary trade theory to illuminate the area within which we will explore considerations of fairness. Consider a market of cheese and wine. Suppose prices are determined by labor input. In Home it takes one hour to produce a pound of cheese and two per gallon of wine, whereas in Abroad it takes six hours per pound of cheese and three per gallon of wine. So the relative price of cheese in terms of wine in Home is one half, and two in Abroad. In world equilibrium the relative price of cheese in terms of wine must be between those two; let us assume it is one, so a pound of cheese sells for the same as a gallon of wine. Then both countries will specialize. In Home, it takes half as many person-hours to produce a pound of cheese as to produce a gallon of wine, whereas it takes half as many person-hours in Abroad to produce a gallon of wine as a pound of cheese. Trade benefits both, although Home is more efficient than Abroad in producing both goods (has an *absolute* advantage in both goods). Workers in Home are so much better at producing cheese than at making wine that the best way for them to obtain wine is to trade it for cheese: they have a *comparative* advantage at producing cheese, and workers abroad have such an advantage at producing wine.

More generalized models cover more products and more countries, as well as countries' factor endowments. Still, even the most general model, the *standard trade model*, is driven by the major insight captured by the simple model, that differences in social costs of production give rise to trade and render it beneficial. Price differences reflect, on the supply side, technology and factor endowments, and on the demand side tastes and incomes, but also policies: price differences reflect differences in *social costs*. The bigger the differences are, the more beneficial specialization becomes.<sup>16</sup>

3.2 Based on the idea of comparative advantage and other gains from trade, economic theory recommends free trade. It is advantageous to liberate trade even if others do not. In an often-quoted image, there is no point in throwing rocks into your harbor if others throw rocks into theirs. Still, restrictions are common, and their reduction has been the goal of all GATT/WTO trade rounds. As Krugman (1997) puts it, "in practice, countries seem willing to do themselves good only if others promise to do the same" (p 113).

There are several reasons why countries protect. First, there are products for which countries may not want to depend on imports (goods relevant to defense or culture). Second, wealth maximization is not a country's only concern. On fairness grounds, one may decide to protect particular interests at the expense of wealth maximization. An example is agricultural protection. The aspect of trade motivating such protection is that it produces winners and losers. Trade affects the income distribution

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<sup>16</sup> We must also account for a different source of gains from trade. Much trade happens within industries and between countries that are similar with regard to technology and availability of labor and capital. Still, economies of scale give countries a reason to specialize even if there is no comparative advantage in doing so. Countries trade, that is, to allow for mutual specialization in fewer goods than they could produce themselves, and do so to produce more efficiently. Much intra-industry trade reflects economies of scale, while inter-industry trade reflects comparative advantages. (This follows Krugman and Obstfeld (2003).)

because some gain directly from beneficial trade arrangements, whereas others lose to international competition; moreover, people and resources cannot always move from one industry to another, and changes in output also change the demand for factors used in the production process.<sup>17</sup> A third reason is that a country may want to accept temporary protection for greater wealth later: protecting infant industries is a case in point. And fourth, a country may take protective measures to raise revenue. Each reason can be questioned, the main criticism being that, often, the goals of protection can be achieved more efficiently through other means. Often the reason is that a nation as a whole wins through trade and can use gains to compensate those who lose in the process.<sup>18</sup>

Like trade, restrictions produce winners and losers. Tariffs, quotas, and export subsidies redistribute from consumers to domestic producers by keeping prices higher than they otherwise would be. Restrictions also bring about “deadweight-losses,” distortions arising because restrictions motivate producers to produce more and consumers to consume less than they otherwise would. For instance, Irwin (2002), p 55, says that the price for sugar in the US is roughly twice that of the world market. Domestic producers receive about 1 billion dollars a year, of which 42% go to 1% of farms. The costs of protection amount to about 1.9 billion, of which farmers receive one billion, the rest being deadweight losses. Sometimes the effects of tariffs and quotas for a country might be positive if the measures affect world prices in a manner benefiting that country. Yet even if so, all protective measures redistribute from consumers to producers.

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<sup>17</sup> Free trade benefits economic factors (such as labor, or resources) specific to the export sector of a country, but hurts import-oriented sectors relative to export-oriented sectors. Those hurt by trade tend to be producers, who are better organized than those who win, the consumers.

<sup>18</sup> Irwin (2002), pp 62-67 discusses possibilities when trade protection is beneficial, at least for the country that imposes it, but those depend on rather special circumstances.

#### 4. Fairness in Trade: the Strong Westphalian View

4.1 We can now explore views on how fairness considerations apply to trade. The first view, the Strong Westphalian View, articulates a minimalist understanding that reflects the political realities of the state system:

*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, the social costs of producing and hence the prices of goods from a country should not be subject to external interference, unless such production involves atrocious activities such as slavery. The 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. Different countries, or citizens of 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 actually owe anything to their own citizens based merely on what social costs are elsewhere.

For the purpose of analyzing fairness in trade we ignore any other morally important relationships between states or distant individuals. SWV captures minimalism on "fairness in trade:" in line with the worries rehearsed in section 1, trade is a (largely)<sup>19</sup> unsuitable domain for talk about fairness. Yet SWV is implausible. As we saw in section 3, trade creates winners and losers. While a country as a whole wins, gains may flow to a subset of the population whereas others may actually suffer. Such distributional effects are acceptable if guided by a process justifiable to all, including the losers. Yet if, for instance, parts of the population are oppressed, this fact cannot be of moral indifference to trading partners. For it is through a *jointly practiced activity* that these effects arise. The situation is different from an exchange between A and B where B independently

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<sup>19</sup> The exception being cases of atrocities mentioned in the statement of SWV.



happens to be a perpetrator against C. Having been beaten by B, C has no complaint against A if A later buys something from B in a manner unconnected to the beating. However, C does have a complaint if the beating occurs as part of a process leading to A and B's enrichment (and can be expected to be known to A). So in the larger scenario, the oppressed have a complaint *in fairness* against trading partners. Their stringent claims not to be so treated cannot be disregarded, and trading partners are implicated in their fate. Trading with a country under such conditions is like trading in stolen goods.

SWV is implausible because it fails to acknowledge such complaints. This refutation puts little strain on the notion of fairness: even libertarians acknowledge that it is owed to everybody not to participate in activities constitutive of their oppression or of other forms of harm inflicted upon them.<sup>20</sup> Proper responses to, say, oppressive practices may be to suspend trade and possibly also non-trade-related measures, at least other things being equal. If an oppressive situation has worsened through trade in the past, rectification may also be called for, again other things being equal. Yet "other things" may well not be equal.

4.2 To see this, consider South Africa under Apartheid. One facet of Apartheid was that non-whites were the losers in trade relations. But what motivated and sustained Apartheid had little to do with gains *from trade* that would arise from oppressing parts of the population. Thus it is peculiar to say that trading partners are implicated in Apartheid in a way that makes for a complaint in fairness on the side of the oppressed.

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<sup>20</sup> For this line of argument to remain open to libertarians it must rely on a limited view of what is owed to people. Violations of what are considered "negative rights" are therefore best suited for this argument.

Yet this objection does not refute the argument against SWV. That argument does not require that, without trade, no oppression would occur, nor that trade plays a major role in either the causal explanation or an account of the evils of oppression. All it requires is that trade is a jointly practiced activity involving violations on the side of the trading partner, and this much was true of trade with South Africa. But while this objection does not refute my argument against SWV, it does draw attention to its limitations by addressing the question of whether the complaint in fairness the oppressed have towards the trading partners should persuade those to suspend or restrict trade or perhaps even intervene in the offending country. I submit that disregarding fairness concerns (perhaps temporarily) is warranted if sufficiently good and likely consequences outweigh them. This is often the case, since (a) trade is beneficial for economic growth, and (b) growth is connected to various other benefits. Let me elaborate.

Trade theory recommends liberalizing trade since it benefits countries that do so, even unilaterally. The evidence seems to support this view. Trade liberalization is a necessary condition for fast growth – necessary, since absent macroeconomic stability, credible policies, enforceable contracts and other hallmarks of stable political systems openness cannot trigger sustainable growth.<sup>21</sup> But the fact that trade is tied to economic improvement by itself fails to show that fairness worries can be outweighed: after all, growth may mostly benefit a few at the expense of a majority – which was the scenario envisaged to argue that SWV is implausible. So we must ask whether growth is tied to

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<sup>21</sup> Cf. the survey by USITC (1997). See also Wacziarg and Welch (2003) and the discussion of the literature (as well as references) in Anderson (2004), p 343f. See also Panagariya (2004a) and Panagariya (2004b). Rodriguez and Rodrik (2000) agree that there is a positive relationship between trade and growth, but question whether the relationship is due to trade policy, rather than transport costs or demand.

other goals whose realization would benefit even those currently oppressed. An obvious set of development goals to consider are the U.N. Millennium Goals, to be reached by 2015: to cut in half the proportion of people in extreme poverty; to achieve universal primary education and gender equality in education; to accomplish 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.<sup>22</sup> It is in the nature of these goals that their realization benefits the population broadly. It is generally recognized that growth is necessary to meet the Goals,<sup>23</sup> for two reasons: first, growth directly reduces poverty for many households, and second, it increases government revenue, thus freeing money for investments in health, education, infrastructure, and nutrition. Yet just as with regard to the connection between trade and growth, the relevance of growth for the achievement of these conditions is that of a necessary condition. In addition it requires an appropriate policy environment to put growth to work in such a way that the Millennium Goals can be reached.<sup>24</sup>

So a case can be made that trade will have beneficial consequences in the long run, consequences that may outweigh unfair conditions that currently sustain trade, at least if it is sufficient probable that other measures will be taken as well to make sure trade does have beneficial consequences. Cases in point are low labor standards. In a telling discussion, Wolf (2004) assesses efforts to improve working conditions in India,

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

<sup>23</sup> Cf. Human Development Report 2003, 2004 World Development Indicators and references therein.

<sup>24</sup> What about growth and democracy? Londregan and Poole (1996) suggests that, in the short run growth helps whoever is in power to stay 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 they do find that democracies, regardless of how they have been established, are much more stable in wealthy countries once they have come about (cf. chapter 2).

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)

It is a small step from these observations to what Wolf claims later about eradicating child labor, namely, that imposing sanctions "is a way of penalizing [countries] for their poverty while taking away the best ladder out of it" (p 188). Similarly, Burtless et al. (1998), p 124, point out that safety and health standards presuppose technology and equipment, and requiring such standards makes it impossible for industries in developing countries to be viable.<sup>25</sup>

Conceivably, the realization of some beneficial consequences such as those captured by the Millennium Goals does not require disregarding fairness concerns. For instance, proposals made by Fung et al. (2001) aim to end sweatshops without undermining economic improvement in a way in which Wolf claims it happened in India. My concern is not to enter into such debates but to point out that, although SWV fails as an account of fairness in trade, the kind of consideration that refute it need not be decisive for an assessment of whether trade should continue. Much depends on what kind of violations are weighed against what kind of expected benefits, and in the end a judgments will be required about how to ponder these considerations against each other.

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<sup>25</sup> 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).

4.3 Krugman and Obstfeld (2003) discuss “three myths” about trade. One “myth” is that “free trade is beneficial only if your country is strong enough to stand up to foreign competition” (p 23). This myth confuses “absolute” and “comparative” advantage, and while we need not dwell on this further, discussing the other myths elaborates on what has been said. Another myth is that “trade exploits a country and makes it worse off if its workers receive much lower wages than workers in other nations” (p24). As Krugman and Obstfeld themselves tell us (p 25), wages reflect the productivity of an economy. So the sheer fact that workers in country A receive lower wages than those in B cannot reveal that employers take *unfair* advantage and thus exploit them. Krugman and Obstfeld, however, actually offer a different response, namely, that what we need to ask is whether countries would be worse off with or without trade, suggesting the latter. As an illustration, Krugman (1998b) argues that trade improved the situation of Indonesian children. Yet this response misses the point. Part of the usefulness of the concept of exploitation derives from its describing a problematic state of affairs (unfair taking of advantage) that still may constitute an improvement for everybody over an original state. Asking if trade has improved matters is asking a question that cannot track exploitation. What should be considered is not whether trade is beneficial, but whether what exploitation is present is outweighed by the expected benefits of trade.<sup>26</sup>

The remaining and most interesting myth is the widely discussed “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), which he takes to imply that no unfairness is inflicted on

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<sup>26</sup> No detailed account of exploitation is necessary for our purposes, but cf. Wertheimer (1996) and Sample (2003) for recent discussions.

workers in industrialized countries because such labor is no threat to them. While Wolf disputes the factual assumption of the Pauper-Labor Argument, Krugman and Obstfeld proceed differently, attempting to rebut the fairness complaint directly.<sup>27</sup> They say it does not matter what causes lower costs of production abroad. What matters for the importing country is that it is cheaper in terms of *its* labor for it to produce some goods and exchange them for others, rather than to produce all of them, regardless of why those are cheaper abroad. What they seem to be saying is that the respective country engages in trade because social costs of production differ; moreover, since Krugman and Obstfeld mean for this point to be a rebuttal of a fairness complaint, they seem to endorse SWV: how others determine their social costs is none of “our” business: neither need we be concerned with how other countries treat their workers (short of atrocities), nor do our workers have a complaint in fairness in light of how workers elsewhere are treated.

In 4.1 I argued that workers *abroad* have a claim in fairness against us if we trade with their country while they are oppressed in the process. Now we ask whether *domestic* workers have a claim for compensation from their government if oppression abroad harms *them*. More generally, does A have a claim to his government because abroad B exploits C, thereby harming A’s interests? Do domestic workers still have such a claim if they are harmed because wages abroad are lower because of less stringent labor legislation (“social dumping”), a less extensive social system that is nevertheless justifiable to its participants?

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<sup>27</sup> For an argument as to why labor standards do affect international trade even after one has controlled for productivity, cf. Rodrik (1996). That is, Rodrik shows why Wolf’s attack of the underlying factual assumption is insufficient to address the Pauper-Labor Argument.

Consider the following argument for an affirmative answer to these questions – an argument that must show why the damage inflicted by foreign competition should be shifted it to all taxpayers.<sup>28</sup> We adopt legislation for social standards not merely because it expresses our practices, but for moral reasons. In particular, we have a certain view of the person and the kind of protection that should be granted to each person. In virtue of this view we think people should not be treated in certain ways. Moreover, to avoid setting incentives to treat people in such ways and out of respect for those who have been treated badly we think nobody should benefit from treating people badly in certain ways, or benefit indirectly from the fact that they are being so treated. This same view of the person applies across countries: the reason why we pass laws merely for our country is because our legislation is confined to it. However, we still have *pro tanto* reasons to ensure people abroad are not treated badly in those ways – which are reasons, however, that must be weighed against considerations that arise because those people live in a different political system (e.g., “sovereignty should be respected”), or are at a different state of economic development (e.g., “a country can be held accountable to implement certain social standards only at a certain stage of development in order not to thwart prospects of growth”). Still, we continue to have reasons to avoid setting incentives to treat people badly and to keep people from benefiting from the fact that some people are being treated badly out of respect for those people. While we may *also* have reasons not to interfere directly with practices abroad, we do have reasons to support domestic industries harmed through competition that benefits from treating people badly.

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<sup>28</sup> The subsequent discussion assumes that if all versions of this argument fail, then those questions cannot be answered affirmatively, although the argument by itself only offers a sufficient reason for answering them affirmatively. The discussion would have to be revised if there were an entirely different argument delivering the same affirmative answers. I have no idea, however, what such an argument could be.

4.4 What drives this argument is that social standards rest on moral reasons that cannot merely apply to people living within the boundaries of our state (although additional consideration may distinguish between people inside and outside of state boundaries). The argument, that is, draws on *consistency*. However, as a factual claim about how legislation is devised this view is false. Consider the following excerpt from the US Tariff Act of 1930 regarding the import of goods made by convicts:<sup>29</sup>

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.

This Act seems well-motivated on moral grounds, but is explicit about its protectionist intentions: products of forced labor must not be imported unless they satisfy an unmet demand. Plausibly, in many other cases legislation of social standards is also done for pragmatic reasons. However, if “our” standards have been adopted for mere pragmatic reasons, or as an outcome of a domestic power struggle, rather than guided by a moral view whose applicability cannot be limited to people living inside one’s borders, domestic industries cannot complain about unfairness if competitors abroad benefit from practices that are at odds with our standards. For then we do not have access to the consistency consideration that drove the argument we considered as the basis on which a domestic industry can, in fairness, ask their government for protection. Nothing has then

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<sup>29</sup> This is TITLE 19, U.S. CODE, CHAPTER 4 - TARIFF ACT OF 1930; SUBTITLE II - SPECIAL PROVISIONS, Part I – Miscellaneous, Sec. 1307.



been said to *ground a responsibility* of the government to shift the harm inflicted by foreign competition from that industry to all taxpayers. Only if the intent behind social standards was moral in the way sketched do we have an argument as to why domestic industries should be protected from foreign competition that benefits from violating the kind of policies that our legislation put into law. Yet this leads into muddy waters: while the legislative intent is easy to track in the 1930 US Tariff Act, in general it will not be, and the worries are both pragmatic and conceptual.

Perhaps we should not talk about actual legislative intent, but about the moral justification for social standards. Regardless of why standards have been adopted, their *justification* should draw on moral considerations, and if such considerations are available, the argument succeeds after all. But this response fails. We are exploring whether industries have a claim in fairness *against their government*, and for this purpose it is not sufficient that a wrong occurs somewhere else, that it affects these industries and that domestic legislation outlaws such wrongs. To shift the burden of the damage to all taxpayers, we need to make it plausible that moral considerations that cannot reasonably be restricted to citizens actually made for a sufficient reason for the adoption of a certain bit of legislation in a given society: we need to make an argument that a society as a whole is in some way committed to a certain moral view to hold its government responsible if industries are harmed as sketched here.

As far as Western democracies are concerned, this will be plausible in the case of oppression. We oppose oppression because we have a certain moral view of how persons should be treated, one that must apply to persons inside and outside state boundaries. From there we can argue that it is owed to domestic industries to protect them against

competition that benefits from oppression. But what if the other country has legitimately decided to adopt a weak social system? For instance, should Sweden grant its industries protection against competition from the US? Should Sweden even suspend trade with the US if that is what it takes to protect its industry? Following this argument it seems the answer would have to be affirmative if a plausible case can be made that Sweden's sophisticated labor standards rest on a certain view of how persons should be treated that is attributable to the Swedish public. In that case, the government should support its industries against competition that benefits from not treating persons that way.

However, as in the discussion about whether oppressed workers in other countries have complaints in fairness against trading partners, we must ask whether such complaints, if justified, should lead to sanctions. The answer above was that it may be in the long term interest of the country in which the oppression occurs if this does not happen. A similar answer can be given now. To stay with the example, the benefits from trade with the US that Sweden may reap may not only override fairness concerns of its industries, but since collectively Sweden will benefit from trade, the surplus can be used to support those who lose in the process in ways that are not trade-distorting (for instance, by making it easier for workers who lost their jobs to find other employment).

This type of argument will reappear in section 5. What matters for now is that this last "myth" is no myth at all. In 4.1 we already encountered considerations of fairness that any account of fairness in trade should be able to integrate but that SWV could not account for. Now we see that there are other considerations SWV cannot accommodate either – considerations of fairness that should be accounted for although they may not be conclusive as far as trade policy is concerned. This confirms that SWV is implausible.

However, we needed a stronger notion of what is owed to persons for this argument than in 4.1: we did not only use that nobody should be oppressed, but that the government has a responsibility to protect individuals from the consequences of others being oppressed.

## **5. Fairness in Trade: the Moderate and the Weak Westphalian View**

5.1 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 accordance with a legitimate process. 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 prices of goods from other countries that have been determined through a legitimate process cannot be demanded as a requirement of fairness. Still, prices of goods from other countries may 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.

One way of thinking about MWV is to assume a world in which all countries set up trade policies through a legitimate process, and have reasonably similar social systems. Asking about the plausibility of MWV is equivalent to asking whether, in a world like that, SWV is satisfactory.

A reason for doubt is that country A's policies affect B if either they have an impact on world prices (which will be the case for sufficiently large economies) or otherwise affect B's economic prospects by preventing industries in B from exporting (by lowering prices in A without affecting world market prices). Do other countries or individuals in other countries have complaints in fairness if they are harmed through

measures A takes to facilitate trade for its producers? This question leads to two topics: export subsidies (government payments tied to exported goods intended to lower prices to enable producers to export more easily) and anti-dumping measures. “Dumping” occurs if goods are sold at less than “normal” (WTO language) or “fair” value (US language). Anti-dumping duties make such goods more expensive and thus facilitate trade for domestic industries. These two kinds of measures are the primary fairness topics covered by WTO regulations (which constrain both), and they constitute test cases for MWV. I only discuss subsidies, but fairness issues arising about anti-dumping are similar.<sup>30</sup>

Notorious examples are agricultural subsidies in the US, the EU, and Japan, which harm poor countries that otherwise would 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 \$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)<sup>31</sup>

5.2 But *are* these priorities obscene? Perhaps there is something obscene about global inequality, but *internal* redistribution does not add much to that – considering also that, as

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<sup>30</sup> Economists in general reject anti-dumping duties. Irwin (2002) says (p 127): “[T]here is nothing inherently harmful or anticompetitive about price discrimination. It would be surprising if domestic prices were exactly the same as an exporter’s home price. (...) The antidumping laws are simply a popular means by which domestic firms can stifle competition under the pretence of ‘fair trade’.” Cf. also Cass and Boltuck (1996), p 401, and Wolf (2004), p 208 and p 214.

<sup>31</sup> Cf. Oxfam (2002), chapter 4. Anderson (2004), p 349f, says that agricultural subsidies account for 38% of governmental expenditures on subsidies between 1994 and 1998. Subsidies are understood to involve money payments; a government can also indirectly “subsidize” its industries through benevolent regulation. Note that in developed countries farmers (i.e., producers) are subsidized; in developing countries prices are kept down to protect consumers. The WTO in general forbids export subsidies, but allows others, unless they hurt other countries’ domestic markets. However, special regulations apply to agricultural subsidies, which had previously not been under the aegis of the GATT. Agricultural-related subsidies that are not trade-distorting continue to be acceptable.

we will see, such subsidies benefit consumers in poor countries that are net-food-importers. So let us explore what claims in fairness producers may have to subsidies because producers of the same good elsewhere can sell it more cheaply.

As we saw in section 2, one argument for such measures we should ignore is a “leveling-the-playing-field” consideration. Domestic producers do not have a claim *merely* because social costs elsewhere are different. However, an argument can be made that producers in A have a claim in fairness towards their government if regulations affect social costs of production, but have a bigger impact on their competitiveness than on the competitiveness of other industries in A. The reason is that, *qua* free and equal citizens, individuals have a stringent claim that legislation be justifiable to all of them. But in this case, some people have a complaint that their relative position vis-à-vis fellow-citizens in other industries is worsened – which gives them a claim against their government to protect their interests, if necessary through subsidies. This argument presupposes a notion of what is owed to individuals stronger than the minimal notion in section 4: what is owed is a certain status within a system of political equality.<sup>32</sup>

One objection is that such measures harm the domestic economy. As we saw in section 3, subsidies do not merely redistribute, but bring about deadweight-losses. Yet this objection (which economists will press forcefully), is indecisive because the complaint above is precisely that subsidies are needed to keep the domestic body of laws justifiable to all subject to it, even at the expense of overall wealth maximization. It will depend on the case how plausible such protection is: if protection mostly shelters the wealth of a few rich farmers, the case for subsidies will be less forceful than if it affects

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<sup>32</sup> A careful assessment of this argument would require spelling out just how much and what kind of protection of their relative standing citizens can demand. A rough sketch suffices for our purposes.

many badly paid employees, say, of the apparel business.<sup>33</sup> However, subsidies do not just inflict costs on domestic consumers, but also harm international competitors. Do such parties have a complaint in fairness about how an internally legitimate process elsewhere sets prices and in this particular case, about subsidies? Such a complaint would have a basis different from the complaint that supported subsidies to begin with.

5.3 Before we continue, note some complexities. Subsidies benefit domestic producers and harm domestic consumers (by raising domestic prices) as well as third-country producers (by lowering world prices), but they also benefit consumers in other countries. Food-subsidies in large countries benefit consumers in net-food importing countries.

In 1999, 45 of the 49 least-developed countries imported more food than they exported. Some of these countries will become net exporters when agricultural trade is liberated, but some will not. (Panagariya (2003)<sup>34</sup>

He 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.” Subsidies do not unambiguously benefit “the rich” and harm “the poor.” Instead, some interests in subsidizing countries are protected while those countries suffer a net loss, whereas elsewhere some may gain as well while yet others lose. Moreover, since developing countries also protect domestic interests, subsidies are ill-understood as a show-down between “rich” and “poor.”<sup>35</sup>

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<sup>33</sup> Watkins and Sul (2002) argue that a lion’s share of cotton subsidies goes to large farms that could easily grow other crops, whereas Sub-Saharan producers could not. Such considerations matter more for assessing the fairness of subsidies than references to what subsidies amount to in terms of dollars per acre or cow.

<sup>34</sup> For net-food-importers, see also Hoekman and Kostecki, pp 225 ff.

<sup>35</sup> 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%). Developing countries are often zealous in protecting their markets

Still, two considerations render the termination of subsidies compelling. First, if one acknowledges even a minimal duty of developed towards developing countries, trade-liberalization will become mandatory. As we saw, it is widely acknowledged that trade is necessary for growth and growth is necessary for other valuable goals. There are different reasons for endorsing duties towards developing countries: because needs by themselves morally compel us to meet them; because in a suitable global Rawlsian position such duties would be acknowledged; because humanity jointly owns the resources of the earth and must ensure everybody gets their share; because one cannot consistently endorse certain institutional standards for one's own country without assisting others to develop institutions with such features, etc. On any account, the links between trade and growth and growth and other goals deliver an overwhelming case for making it easier for developing countries to join the world markets.

However, protective measures create winners as well, which leads to the second consideration. The economic case for trade liberalization is overwhelming. According to Anderson (2004), p 550, estimates of gains from full liberalization of global trade range from \$254 Billion annually (of which \$108 Billion would go to non-OECD countries, in 1995 dollars), to \$832 Billion (of which \$539 Billion would go to non-OECD countries, in 1997 dollars), depending on how the estimates are made. Countries that terminate protection can use the surplus to support those who lose through the changes. Similarly, some of this surplus could be taken to ensure that consumers in third countries (in particular in net-food-importers) will not suffer.

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from goods exported by other poor nations. Labor intensive product such textiles, clothing, leather, and footwear that developing countries export to each other attract high duties in countries such as Brazil, Mexico, China, India, Malaysia, and Thailand. Same is true for anti-dumping: India now ranks first in the world in initiating new anti-dumping actions and third in the number of such actions currently in force.”

5.4 But what about the argument for subsidies? What must be reassessed is to what extent and in what ways the government should protect its citizens' interests, and one question is whether the government should enable citizens to continue to work in an acquired profession (thus protect them not just *qua* citizens with economic interests, but *qua* members of a certain profession), or at least offer assistance if a whole industry branch is threatened – and it is concerns of this sort that lead to demands for subsidies.<sup>36</sup> A range of accounts of what governments should do to protect citizens' interests is consistent with duties to developing countries, *even* the view that a government should enable its citizens to continue in an acquired profession – *except* through measures, such as subsidies, that are trade-distorting. Instead, governments may pay people affected by foreign competition directly, rather than based on the amount of goods they export (so they can stay in business without the market being affected), or by paying them to do something else. Politically such measures will be hard to realize since the public may be unwilling to see people paid in such ways whereas they may well be willing to see export activities supported. But while such trade-distorting measures are the only measures that are inconsistent with duties to developing countries, they indeed are inconsistent with them.

Yet nothing has been said as to why duties to developing countries should have priority over a government's duty to protect its citizens' economic interests so as to force

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<sup>36</sup> This question of the extent to which a government should protect the professional identity of its citizens is important for social policy. To illustrate, the German government introduced a package of social reforms known as "Hartz IV" that became effective on Jan 1, 2005. Prior to Hartz IV, the unemployed could continue to be supported by unemployment insurance (up to a certain limit) until they found something in their own professions and were not expected to look for employment in other professions or far from their place of residence. Now they are expected to accept employment outside their profession, as well as further away from her current residence. So the German government has taken the attitude that protection does not include making sure citizens can continue in their profession. This reform package was heavily contested.



us to drop support that would be trade-distorting: we have merely shown how these duties must be understood to be consistent, and that there would be surplus money to support those who lose out if subsidies are abandoned. Why should a government not take its duties to its citizens to include what is inconsistent with duties to developing countries (constraining those instead)? Recall that fairness is concerned with satisfying stringent claims in proportion, and that the difficulty in assessing fairness in trade is that individuals have claims on different bases. I submit that constraining the government's duty to protect its citizens' interests in the way I just sketched means satisfying their claims in proportion vis-à-vis the claims of the poor to grant them greater market access.

Where does all this leave us with regard to MWV? MWV does not explicitly acknowledge duties to developing countries, and it is not obvious that it is consistent with such duties. Since I endorse such duties,<sup>37</sup> I adopt the Weak Westphalian View:<sup>38</sup>

*Weak Westphalian 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 accordance with a legitimate process. 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, prices of goods from other countries may 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.

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<sup>37</sup> Cf. Risse (forthcoming) for my reasons to do so.

<sup>38</sup> WWV is "weak" relative to the notion of sovereignty central to the Westphalian system of states, but therefore "strong" in terms of the restrictions on sovereignty it acknowledges.

Realizing WWV comes with dramatic economic improvements. The implausibility of MWV rests on a view of what we owe to each other according to which at least minimal duties to developing countries are acknowledged. Such a notion has been presupposed throughout this section: the justification of subsidies also rested on a stronger notion of fairness than what libertarians would accept. If one endorses such a notion, WWV is a plausible account of fairness in trade, and can serve as a starting point for and background to assessments of specific judgments about trade in terms of fairness. So even if countries of different sizes and power are legitimate, arguments drawing on the nature of trade and the view of what is owed to persons presupposed in this section imply stringent restrictions on countries' trade policies.<sup>39</sup>

## 6. The WTO

6.1 Consider the following excerpt from the preamble of the GATT, part of which I quoted in section 1, which says that its parties are

desirous of contributing to these objectives [i.e., as explained in the preceding paragraph, raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full

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<sup>39</sup> One worry that not addressed, however, is that fairness considerations will often not make for *obviously* and *unambiguously* correct recommendations: but that, unfortunately, is in the nature of such considerations and does not undermine their appropriateness. Let me briefly address one other topic. Oxfam (2002), chapter 4 insists that developed countries practice *double standards*: on the one hand, they insist on poor countries' opening their markets, but they also subsidize their producers. This seems like an inconsistency – an inconsistency Wolf (2004) calls a disgrace (p 213). However, there seems to be no inconsistency. According to economic theory, what is forced upon developing countries is something that is good for them anyway, at least in the long run. The reason why liberalization can be demanded is that aid is given to them – in response to which it is reasonable to ask for measures that improve the economic fate of that country in the long run. One can argue in addition that what matters for those countries at this stage is that they make economic progress so that later there is room for other improvements. As opposed to that developed countries are not *inconsistent* in taking measures regulating their economy that harm their own prosperity but can be motivated on fairness grounds. The problem is that these subsidies have negative effects on other countries. However, that problem is ill-conceived in terms of an inconsistency.

use of the resources of the world and expanding the production and exchange of goods] 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 not mentioned. The WTO is devoted to making trade *freer*, and committed to the view that freer trade contributes to a set of economic goals. From the standpoint of economic theory, the existence of the WTO is puzzling. Since trade liberalization is unilaterally beneficial, in particular the language of “concessions” in WTO agreements seems oddly misplaced. Yet there is a rationale of the WTO in light of WWV. In section 5 we encountered stringent claims individuals have with regard to trade in virtue of being citizens as well as such claims in light of international duties. We also saw that, because of the mutually beneficial nature of trade, all these duties (to the extent that they indeed are such) can be satisfied. Yet a global trade organization facilitates, if it is not essential for, the realization of these different duties and hence of WWV. Governments are more easily inclined to accept demands from citizens than from foreigners. While economically the termination of trade barriers is no concession, it is one in the sense that demands of citizens are modified to make room for demands that arise globally.

How should one evaluate the actual WTO? One standpoint from which to do so is in terms of the goal it set for itself: to contribute to trade liberalization. Evaluating the extent and manner in which the WTO does so is difficult since the WTO is not merely a complex set of treaties, but comes with an equally complex framework for negotiation, administration, and dispute-settlement. How should those treaties be designed and that framework be organized, and what actors should be involved in what way, for the best realization of that goal? In addition, the WTO can be evaluated from a fairness standpoint. There are two viewpoints from which this is possible. First, we can ask about

the extent to which the WTO satisfies WWV, and second, whether the structure of the WTO and the distribution of benefits and burdens it engenders is fair given that it is (a) an association of sovereign states that is (b) concerned to foster trade and that (c) comes as a “single undertaking” from which it is no longer viable to stay away. While I will briefly address both questions, a thorough treatment requires assessing more technical details about the WTO than I can introduce here. Therefore this section will be sketchy.

6.2 So how should one assess the contribution of the WTO treaty to the realization of WWV? Prior to 1995, the impact of the GATT largely amounted to inducing OECD countries to reduce trade barriers. World Bank and IMF supervised economic reforms in developing countries, including trade liberalization. To the extent that developing nations were involved in GATT negotiations, they received “special and differential treatment:” not expected to make reciprocal concessions, they were exonerated from many obligations. So developing nations were free riders on agreements, but their concerns were also often absent from the negotiations, especially agriculture and textiles. This peculiar second-class status ended through the WTO’s “single-undertaking” character. Agriculture and textiles got on the agenda, but developing countries, especially the least-developed countries, continue to benefit from exceptions and extensions. As far as textiles are concerned, the system of quotas that governed that sector since the 1960s (Multi-Fiber Agreement) was phased out, and by January 2005 all quotas were abolished (though relatively high tariffs remain). Breakthroughs in agriculture have been less tangible, but negotiations about agricultural protection at any rate are on the agenda.<sup>40</sup>

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<sup>40</sup> 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 will see

Still, developing countries now face a higher level of tariff bindings,<sup>41</sup> particularly in agriculture, as well as new obligations with regard to government procurement, subsidies, anti-dumping, customs valuation and import licensing procedures. Moreover, as part of the “deep-integration” agenda of the WTO, the agreement on Trade-Related Aspects of Intellectual Property Laws (TRIPs) regulates patents, copyright, trademarks, geographical indications, industrial designs across countries. Since most intellectual property originates in developed countries TRIPs is likely to lead to a net transfer from developing countries to certain developed countries, despite flexibility in matters of public health and other concessions especially to the least developed countries. TRIPs not only assumes a role that so far has been left to sovereign states (to determine what counts as property to begin with); it also commits developing countries to a level of protection of intellectual property that industrialized countries only adopted at an advanced stage of prosperity (cf. Finger (2000), p 430). Yet TRIPs was the price to pay for getting agriculture and textile included into the WTO framework. It seems the most tangible advantage of TRIPs for developing countries at this stage is that its enforcement gives them a potential threat in negotiations.<sup>42</sup>

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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 are unlikely to be terminated before 2006 or 2007 (cf. the article “Now Harvest It”, pp 59f of the *Economist* of August 7, 2004).

<sup>41</sup> That is, legally binding agreements not to raise a tariff on a product that exceeds a certain limit.

<sup>42</sup> 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 that the net transfer will be from the South to the North, especially to the US, Germany, France, Italy, Sweden, and Switzerland, and from India, Mexico, and Brazil. Bhagwati (2004), pp 184-185 says that TRIPs is the outcome of massive lobbying.

By way of offering an overall evaluation of the WTO treaty, Panagariya (2003) comes to what seems like a balanced conclusion by saying that

while developed countries gained more than developing countries, the developing countries still gained: they cut the tariffs more because theirs were higher (and liberalization is a benefit anyway); and they persuaded developed countries to dismantle quotas in textiles and cloths; agriculture was put on the agenda.<sup>43</sup>

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

6.3 The WTO is (a) an association of sovereign states that is (b) concerned to foster trade and that (c) comes as a “single undertaking” from which it is no longer viable to stay away.<sup>44</sup> In light of (a), all WTO members have a claim to “equitable treatment.” Yet in light of (b), the WTO is an organization with a specific purpose (not a world government subject to democratic pressures), and there is some reason to think an organization concerned with trade should not make its decisions regardless of what share in trade its members have respectively. Developing countries do not have enough of a market share to be taken seriously as partners in reciprocity-based negotiations: the 100 largest developing countries (excluding transition economies) account for 29% of world exports; whereas the US alone accounts for 10%, the EU (not counting intra-EU trade) for 15%,

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<sup>43</sup> Hoekman and Kostecki (2001), p 400 mention that there is disagreement about whether the WTO treaty was favorable for everybody – studies disagree, in particular depending on implementation costs and TRIPs. Steinberg (2002) is more critical: “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).

<sup>44</sup> This is not quite correct. The WTO does not require that its members be sovereign states. For instance, the European Union is a member. Moreover, there is also some discussion about whether non-state transnational actors should be involved in global trade negotiations. But we can neglect these points.

and Japan for 6.5% (according to WTO, International Trade Statistics, 2004).<sup>45</sup> As Mattoo and Subramanian (2004) point out, integrating poor and small countries into the WTO is challenging: while such countries have acquired a significant say, they not only have little to offer by way of reciprocity, but often benefit from preferential treatment and to that extent have no interest in opening trade. Still, there is also pressure to think 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, according to (c), staying-away from the WTO is not an option.

So conflicting criteria apply to spelling out what “equitable treatment” amounts to. The solution the WTO has implemented is to make consensus-based decisions. Operating in such a manner does not mean that actual unanimity must be reached, but that no delegation present at the respective negotiation has fundamental objections. What in particular is governed in a consensus-based manner is the WTO dispute-settlement system. If one WTO member accuses another of violating rules, and cannot resolve it satisfactorily through negotiations, it has the right to ask the WTO to set up a panel to adjudicate, a panel that, if need be, may impose trade sanctions. Prior to the Uruguay Round, panel decisions could be vetoed by any GATT member, including the offender, which limited their application. WTO rulings, by contrast, can only be rejected by a unanimous vote. The consensus-based system sometimes conflicts with the demand that all WTO members accept all WTO regulations unconditionally. In particular, new members must satisfy the demands of all current members of the WTO. According to Article 13 of the WTO treaty, when country A becomes a member, it does not have to

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<sup>45</sup> Or as Hoekman and Kostecki (2001), p 10, tell us, in 1998, all 48 least-developed countries together accounted for .5% of trade; South Asia and Sub-Saharan Africa each represented only 1% of trade.

grant Most-Favored-Nation-status to all members, and similarly, current members do not have to extend that status to it.

In particular in virtue of its dispute-settlement system, the WTO has greater authority than the GATT. However, the system crucially depends on the compliance of its members and hence on their willingness to keep the WTO functional. For instance, if a country is harmed through policies of another member, the WTO may authorize it to “retaliate”. Yet such retaliation is of no use to small countries with little or no impact on the world market.<sup>46</sup> While many developing countries do take part in the dispute settlement mechanism, others are not represented at all in Geneva (the seat of the WTO). In particular many African countries do not participate: according to Hoekman and Kostecki (2001), p 395, 15 in 38 Sub-Saharan countries have no representation at all, most others have small representations. Such countries, then, cannot even participate in negotiations that affect them greatly, although it is also a function of their size that many negotiations will not matter to them. A country’s influence in the WTO is proportionate to its economic strength, and the consensus-based system can do little to change this.

So the two worries that emerge, as also emphasized by Oxfam (2002), p 252/3, are “underrepresentation of small countries” and “informal power.” As we saw, however, there are conflicting criteria for setting up WTO decision mechanisms, and it seems the consensus-based system makes a reasonable effort at balancing those criteria (and thus seems more appropriate than a decision mechanism that allots power in terms of market

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<sup>46</sup> Wolf, p 208: “In practice, dispute-settlement remedies are of little use to small countries, unless the big players voluntarily submit. This reflects the fact that the 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. But to the extent that countries abide by non-discrimination, this capacity for action is effectively at the disposal of all.”



shares or some other economic indicator, but also more appropriate than a majority or population-based system). Nevertheless, one can minimally insist on genuine representation and enforcement that does not itself depend on economic power and in that sense takes seriously the fact that the members of the WTO are sovereign states. Proposals to render enforcement independent of economic power have been around for a long time but not yet been implemented – especially the proposal to allow *coalitions* of countries to take responsibility for the enforcement.<sup>47</sup> As far as the issue of representation is concerned, an Advisory Center of WTO Law, based in Geneva, was agreed upon in 1999 and opened in 2001; it remains to be seen how this Center will perform.

## **7. The Fair-Trade Movement**

7.1 As in the eyes of many “fairness” and “trade” come together mostly in labels of the so-called Fair-Trade movement, our discussion is incomplete without a discussion of that movement. That movement arose as a response to falling commodity prices and consists of organizations concerned with improving the situation of commodity and handicraft producers (e.g., the International Federation of Free Trade Initiatives, the European Fair Trade Association, Transfair International, TransFair USA, or the Max Havelaar Foundation). Oxfam (2002), p 151, reports that in 2000, prices for 18 major export commodities were 25% lower in real terms than in 1980. For cocoa, coffee, lead, palm oil, rice, rubber, sugar, and tin the decline exceeded 50%. According to Jaffee et al. (2004), common criteria for obtaining the “fair trade” product label are “fair” prices paid to producers as well as “fair” wages to laborers –that is, prices and wages sufficient “to

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<sup>47</sup> There is also the so-called Uruguay-Brazil plan to award financial compensation for polices that harm a country’s trade (cf. Dam (1970), pp 368-373). Lawrence (2003) offers a different proposal for how to bring about compliance without relying on retaliation, which is intended in particular to address this concern.

make a living;” financial and technical assistance to producers; certain standards for the work place; long-term trading relationships; and environmentally sustainable production. So the Fair-Trade movement combines different concerns, and it depends on the product which one stands in the foreground. In particular, some products are largely grown by small farmers, in which case the price is the concern. In other cases, the product is grown on large estates, in which case the concern is the wages and working conditions.<sup>48</sup> Our question is in what sense the Fair-Trade movement can be said to be concerned with fairness. We will not find a satisfactory answer.

There are two views that can illuminate how this movement may claim to be concerned with fairness. The first view is that there is something about trade relationships that brings about a certain kind of duty for the participants in that relationship, namely: to make sure either that commodity producers get a certain proportion of the gains from trade (a relative standard), or that they can make a decent living (an absolute standard). The second view is that, while there is nothing morally important about the actual trade relationship, what matters is that people’s needs are satisfied. Everybody should contribute to that goal in ways available to them, and since people drink coffee, buy handicraft and consume other commodities, such purchases offer opportunities to do so.

7.2 Both views are problematic. One problem with the first view is that consumers who buy Fair-Trade products pay more than the market price – a consumer-based subsidy that seems *unfair* since it means giving some producers more than others get. Thereby some producers are put at a disadvantage, contrary to the kind of concern with proportionality

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<sup>48</sup> On the Fair Trade movement, cf. Leclair (2002); and for an extensive study Littrell and Dickson (1999).

essential to fairness.<sup>49</sup> Yet one may set this problem aside as hypercritical, in particular if one holds the first view in the sense that producers should have enough to make a living. But there is more. There is nothing morally relevant about trading relationships *per se*. It is hard to see why being involved in such relationships entails duties to ensure others obtain a certain share of the gains, or have enough to make a living. The interaction is not of the right sort to give rise to such duties. In particular, there might be many reasons why people should have a minimal income, but the mere fact of one's being involved in a trade relationship with them does not add to that. By way of contrast, in the objection to SWV the point was not that there was a trade relationship *per se*, but that it could implicate its participants in abusive relationships.

So that leaves us with the second view. That view, recall, was that people have a claim to having their needs met, that we should advance that goal in ways we can, and that trade relationships offer an obvious opportunity. Why would one hold that view? Again the reasons in section 5 for the existence of duties at the international level come to mind. Whichever view one endorses to ground the idea that needs should be met, one should adopt the additional condition that needs should be met in a *sustainable* manner. Yet the decline of commodity prices shows that commodities do not offer good prospects for creating an economic environment that allows for meeting needs in a sustainable way. Ensuring people can make a decent living in commodities although they should aspire at

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<sup>49</sup> Wolf, again, puts it well, p 206: "Unfortunately, in the absence of supply management, the growth of privately organized schemes for 'fair trade' in primary commodities will not lead to the higher incomes their proponents desire. They may well raise prices for some producers, but if, as seems plausible, this leads to somewhat higher capacity, as additional investment is made in response to those prices, they will lower returns for everyone else. In practice, the fair-trade movement probably makes virtually no difference: less than 1 per cent of cocoa, tea and coffee sales are carried out on a fair-trade basis." However, a crucial phrase is "in the absence of supply management." So should one not argue instead that there should be such more coordination of such management? The subsequent discussion addresses that question.

diversification also sets wrong incentives: it invites people to enter the commodities business although they are well-advised to do something else. If these concerns hold up under pressure (as I think they do) it is hard to see how the Fair-Trade movement can claim to do something that is well-motivated under the heading of fairness.<sup>50</sup>

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<sup>50</sup> Leclair (2002) also takes this view.

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