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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.[1] 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.[2] 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

[1] 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.

[2] Still, the moral dimensions of trade have long been recognized, as a quote from the sophist Libanius from the 4th 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.[3] 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

[3] 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.[4]

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 s*omehow*. 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.

[4] 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.[5]

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

[5] 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).[6]

1.3 Let me add some remarks about the GATT/WTO system, which is the background before which our discussion unfolds.[7] 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

[6] 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."

[7] 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.[8]

2. Fairness

[8] 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.[9] 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.[10]

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

[9] In this I roughly follow Broome (1999).

[10] 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.[11] 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.[12]

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

[11] The literature on "equity" and "local justice" does some of that work; cf. Elster (1992), Young (1994).

[12] 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.[13] 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

[13] 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.[14] 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.[15]

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

[14] 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.

[15] 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.[16]

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

[16] 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).)