

BOOK NOTE

GETTING TO FAIR TRADE FOR ALL

FAIR TRADE FOR ALL: HOW TRADE CAN PROMOTE DEVELOPMENT. By Joseph E. Stiglitz¹ & Andrew Charlton.² New York: Oxford University Press. 2005. Pp. xxvii, 315. \$30.00.

If the slogan “Trade Not Aid” has characterized the development movement since the 1990s,³ a recent book by Nobel Laureate Joseph Stiglitz and Andrew Charlton seems to recommend a new one: “Trade Should Be Aid.” In response to what is perhaps the international development community’s greatest conundrum — economists across the ideological spectrum agree that trade has enormous potential to help the world’s poorest nations, yet continually disagree on how to make it do so — Professor Stiglitz and Charlton advocate a philanthropic round of World Trade Organization (WTO) trade negotiations, which they call a “development round” (pp. 41–56). The authors propose a slew of policy and institutional trade reforms steeped in economic theory and aimed at benefiting the developing world.

While the authors make great strides toward their ambitious title, *Fair Trade for All*, they could have come even closer by addressing two important issues. First, the book succeeds in delivering a roadmap for trade agreements that would promote development and would be acceptable to developing countries, but it fails to make an adequate case for why the developed world would accept this roadmap. This Book Note argues that negotiation scholarship offers one way to make this case. Second, the book also falls short of its title’s promise by glossing over the issue of how widely the benefits of the authors’ trade proposals would be distributed within developing countries. Though this is a difficult question, efforts such as the nongovernmental fair trade labeling movement suggest that there are workable solutions.⁴ This is an essential critique to address because if increased trade does not have wide benefits that include the poorest individuals within developing

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³ See Joseph Kahn, *Losing Faith: Globalization Proves Disappointing*, N.Y. TIMES, Mar. 21, 2002, at A8.

⁴ Moreover, the authors’ insightful trade recommendations in other areas, such as their idea for nation-specific trade liberalization (pp. 108–09) and their suggestion of national treatment for determining anti-dumping sanctions (pp. 129–30), suggest they could offer significant contributions on this point were they to turn their attention to the issue.

countries, then the authors' claim that their recommendations will help fight poverty rests on unstable ground.

On the whole, *Fair Trade for All* delivers convincing theoretical analyses and practical proposals that trade decisionmakers would be wise to consider. The authors' theoretical approach starts from a conviction that trade liberalization can promote development (p. 13). They ground their theory in the principles of "economic analysis and social justice," as opposed to "economic power and special interests" (p. 5). They conclude that trade agreements based on such principles would look much different from those discussed and proposed by developed countries in the Doha Round, the most recent WTO negotiations (pp. 5–6).

By "different," the authors mean that the trade agreements would not be based on the faulty assumptions underlying the widespread argument that developing nations should unwaveringly lower tariffs for their own benefit (p. 25). One such faulty assumption is that trade liberalization will free up resources and workers from low-productivity protected industries, making them available for high-productivity export industries (p. 25). In developing countries with high unemployment, labor resources are already readily available. Further, there is often a long delay in realizing high-productivity export opportunities because of difficulties such as attaining the capital necessary for expansion (pp. 25–26).⁵

Moving from general analysis to concrete proposals, the authors argue for nation-specific trade liberalization. They propose that each WTO member provide free market access⁶ for all goods from any developing country that is both poorer and smaller than itself, measured by gross domestic product (GDP) per capita and GDP, respectively (pp. 108–09). Such a plan would provide countries with protection from competition from larger developing countries that benefit from greater economies of scale, and from wealthier countries that could use technological advantages (p. 98). The authors also call for developed countries to eliminate all agricultural subsidies (p. 109). These measures would be followed by further trade liberalization down the road, making them the first step in a sequenced trade liberalization plan rather than a one-shot deal.

Professor Stiglitz and Charlton also propose a number of institutional and legal changes at both the national and international levels. These reforms would increase market access for developing countries

⁵ The authors also discuss a second faulty assumption: the existence of perfect risk markets. Instead, international markets have high volatility, risk markets are highly imperfect, and trade policy can reduce exposure to risk (p. 26).

⁶ Free market access is defined as access free of import tariffs and other barriers (p. 108 tbl.7.1).

partly by limiting developed countries' use of non-tariff barriers (p. 126). For example, employing the trade equivalent of emergency powers, developed countries often implement WTO-sanctioned "safeguards," which are import restrictions that can be imposed temporarily in the face of a surge of imports (p. 127). Yet such measures are frequently abused; U.S. safeguard legislation insufficiently considers whether the decline of the safeguarded industry was actually caused by trade liberalization, as opposed to some other cause. To prevent such abuse, the authors propose clearer standards at the international level (pp. 128–29).⁷

To further address this problem and the abuse of anti-dumping duties, which the WTO allows a country to impose when another country is selling products below cost, the authors propose that countries be required to apply the same standard of scrutiny to foreign companies as to domestic companies accused of the equivalent transgression — thereby ensuring "national treatment" for all (pp. 129–30). For a company accused of dumping, for example, the equivalent transgression under American antitrust law would be predatory pricing. The high predatory pricing standard of proof would prevent governments from frivolously invoking anti-dumping measures solely to protect their domestic industries from foreign competition (p. 130).

Another legal constraint to fair trade identified by the book is the difficulty developing countries face in seeking redress for violations or in defending themselves against accusations under WTO laws. For example, if a country is accused of dumping, it must respond in a short period of time with a large amount of information. If it fails to do so, it is treated as though culpable, causing long-term damage to its export industry, even if it eventually supplies the necessary exculpatory information (p. 127). Similarly, a complainant — such as a country alleging injury by U.S.-imposed steel tariffs — must undergo a costly and lengthy WTO claim process (p. 130). One way to rectify this situation would be to take the initial decision to impose a tariff out of the hands of the imposing country and put it in the hands of an international tribunal, thus preventing that country from simultaneously serving as prosecutor, judge, and jury (p. 130).

The authors also suggest ways that nontrade opportunities might provide financial resources that could help developing countries to make the necessary industry shifts more quickly and to bear the difficult transition periods that accompany trade liberalization. Govern-

⁷ Professor Stiglitz and Charlton propose a standard requiring a country to demonstrate that the injury to the industry poses a risk to a significant percentage of jobs, and that the country's social safety net would be inadequate to absorb the shock. The threshold would be lower in developing countries. They argue this standard would limit safeguard measures to only those situations in which they are truly necessary (p. 129).

ments could maximize the value of remittances by “formaliz[ing] the structure of remittance flow,” thus making it “easier, safer, and cheaper” for migrant workers to transfer funds back to their families (p. 116). In addition, governments could provide migrants with “access to secure and low-cost financial services,” extend microcredit to families receiving remittances, and allow governments to issue “remittance-backed bonds”⁸ to help raise external financing more cheaply (pp. 116–17). The authors also call for outside assistance to developing countries for the provision of adequate social safety nets (pp. 203–04).

While the authors’ proposals, if implemented, would likely benefit the developing world as a whole, the recommendations might meet resistance for two main reasons. First, the authors fail to make a strong case for why wealthy countries should adopt the proposals. Although trade representatives will readily agree on the need to make trade work for developing countries, developed countries might find the idea of a “development round” that grants nothing to them difficult to swallow. Why would developed countries agree to the concessions that the book suggests, without receiving anything in return? The book mainly answers: out of a sense of growing international responsibility and fairness, and because it is right. This answer would be palatable to developed countries only if their primary concern were not their own interest — otherwise, this answer may prove fatally inadequate.⁹

Yet negotiation scholarship may offer a solution that addresses this issue by suggesting that even self-interested wealthy countries would be wise to heed the approach recommended by Professor Stiglitz and Charlton. Negotiation scholarship distinguishes between one-time negotiations, in which the agreement at hand is the sole concern, and negotiations between repeat players, in which cooperation takes far greater precedence.¹⁰ Using game modeling, scholars have demonstrated that in repeat negotiations, the players tend to practice a form of reciprocity, in which they look at what the other side did in the previous round and respond in kind.¹¹ Because many developing countries currently feel that they have received raw deals in previous

⁸ Future flows of remittances would help secure the bonds, and with such backing the bonds theoretically would have lower interest rates and thus be cheaper (pp. 116–17).

⁹ Some of the wealthiest and most influential countries, such as the United States, Japan, and European countries, are democracies, and people tend to vote based on their interests. There is thus reason to believe that it would be difficult for trade representatives, under the direction of elected leaders, to act philanthropically with respect to trade agreements, given that the electorate would then hold the leaders accountable at the polls.

¹⁰ See ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 156 (2d ed. 1991).

¹¹ See, e.g., Francesco Parisi & Nita Ghei, *The Role of Reciprocity in International Law*, 36 *CORNELL INT’L L.J.* 93, 98–100 (2003).

rounds,¹² they may be particularly disinclined to cooperate now. Thus, under the reciprocity principle, developing countries are likely to respond by rejecting any provisions that appear to benefit wealthier nations exclusively.

A development round potentially could shift the tone of negotiations from one of positional bargaining, in which each side makes proposals and counteroffers with a view only to its preferred outcome, to one of collaborative problem solving.¹³ A collaborative tone would allow the sides to search together for opportunities for value creation — solutions that could truly enlarge the pie.¹⁴ In the international trade context, value creation for wealthier nations comes primarily in the long term: ultimately, economists agree, international trade liberalization agreements have the potential for tremendous value creation in the form of increased efficiency, greater worldwide productivity, and greater economic growth for all parties.¹⁵ Negotiation scholarship suggests that in repeat-player situations, parties may choose to cooperate to maximize total long-term gain, even at the expense of short-term gain.¹⁶ But without concessions such as a development round that would build trust between developed and developing nations, trade talks are likely to continue at their current slow pace, and creating this value will take much longer. Combined with the authors' argument for the fairness of a development round, this appeal to long-term trade interests could help make the case to wealthy nations' citizens and governments.

The book's second vulnerability is that it focuses so much on the national level that it leaves out serious consideration of within-country poverty reduction — more specifically, it fails to grapple with the issue of how its trade recommendations would affect small producers and laborers. Addressing this issue is particularly important in making the case for a development round because one of the most frequent criti-

¹² In the 1990s, powerful economic institutions such as the World Bank, the International Monetary Fund, and the U.S. Treasury urged developing countries to liberalize their markets "rapidly and indiscriminately." Yet when developing countries agreed to trade liberalization, they were often disappointed with the results (p. 2 & n.2).

¹³ See FISHER & URY, *supra* note 10, at 42–44.

¹⁴ See *id.* at 60, 70.

¹⁵ These long-term benefits present the primary value creation opportunities for developed nations when negotiating at the global level. More elaborate forms of value creation can also be imagined, however. For example, many citizens of wealthy countries intrinsically value reducing misery and poverty in the world, and trade representatives could grant concessions to capitalize on the support of that constituency. Also, reducing poverty reduces war, famine, and other catastrophes in the developing world, the negative externalities of which are often borne by the developed world. In one-on-one negotiations or negotiations among a small number of parties, a clear way for countries to create value is to negotiate for trade concessions that would allow them to capitalize on their respective comparative trade advantages.

¹⁶ See Parisi & Ghei, *supra* note 11.

cisms of increased trade is that it does not always benefit those within developing countries who most need help.¹⁷ The authors briefly discuss this issue in a manner that illustrates why President Harry Truman once reportedly asked for a one-handed economist because all of his economic advisers kept saying, “on the one hand . . . on the other.”¹⁸ Professor Stiglitz and Charlton offer statistical evidence demonstrating that trade liberalization disproportionately negatively impacts certain sectors of the labor market, thereby increasing inequality in some countries, but not in others (pp. 194–203). Ultimately, they conclude that trade liberalization is likely to create adjustment hardships for many people because many companies in previously protected industries will fold (pp. 202–03). Those hardships can be mitigated by national and international policies that provide credit to facilitate adjustments and by financial assistance from developed countries, which will help laid-off workers survive the transition (pp. 213–14). Yet the book does not address what types of jobs will be available after the adjustment period as a result of trade liberalization. Establishing livable wages for agricultural workers and ensuring that small producers can survive in the global marketplace, for example, could help spread the benefits of trade in a manner that directly addresses poverty. For if only the large producers are able to survive unchecked international competition, and if they are able to do so only by paying dreadfully low salaries to workers, then such a system would not be truly “fair for all.”

Had the authors continued the effective problem solving they use to address other trade issues, they likely could have formulated useful recommendations for direct poverty reduction. For example, nongovernmental trade agreements have shown that consumer information can help address this problem. Nongovernmental organizations such as the Fairtrade Labelling Organizations International and the Fair Trade Federation place “fair trade” labels on agricultural and other products and work through promoting consumer awareness, monitoring production sites, and ensuring that producers are paid minimum

¹⁷ This issue could be seen as beyond the scope of the book, which focuses on trade policy. However, the book does address the issue of intranation inequality (pp. 198–99), and the book’s title also implies a broader agenda. For a similarly policy-oriented treatment of trade that does take a closer look at the issue of poverty within developing countries, albeit from an unabashedly pro-trade liberalization perspective, see JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 51–67 (2004).

¹⁸ E.g., Ronald Chen & Jon Hanson, *Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory*, 77 S. CAL. L. REV. 1103, 1194 n.386 (2004); Famous Quotes by Harry S. Truman, Yourquotations, http://www.yourquotations.net/Harry%20S%20Truman_quotes.html (last visited Apr. 9, 2006).

set prices for goods ranging from coffee to soccer balls.¹⁹ As of March 2005, this global label was benefiting over one million developing world farmers and workers by paying them higher prices for their goods sold throughout the developed world.²⁰ The effort bypasses the WTO and governmental trade treaties, instead bringing to consumers the question of whether they want to buy a chocolate bar with the fair trade seal — signifying that the cocoa was purchased from a cooperative of small farmers at a price that enables them to earn a living wage — or a comparably priced chocolate bar without the seal.²¹ Retail sales of these items were estimated at \$1 billion in 2004 and are expected to reach \$9 billion by 2012,²² with worldwide sales increasing by fifty-six percent from 2003 to 2004.²³ In countries where it is long established, the logo has attained large market shares, including nearly twenty-five percent for bananas in Switzerland and the United Kingdom.²⁴

Above all else, the movement's widespread success to date suggests that creative solutions can help address the issue of whom trade benefits within developing countries. Professor Stiglitz and Charlton thus might have better advanced their goal of truly addressing how trade can promote development and be fair for all if they had explored the implications of such a consumer-to-producer nongovernmental certification scheme, or provided some other way to address the issue of poverty within developing countries. At the very least, the fair trade logo could provide an opportunity for value creation; in their trade agreements, politicians from wealthy nations could offer to use their visibility to raise awareness of the fair trade label, as Prime Minister Tony Blair has done.²⁵ The irony of this omission is that Professor Stiglitz won his Nobel Prize in economics for work on asymmetries of information in markets — how some people know more than others —

¹⁹ See Jill Draeger, Note, *Perking Up the Coffee Industry Through Fair Trade*, 11 MINN. J. GLOBAL TRADE 337, 349–53 (2002); Fair Trade Federation, Homepage, <http://www.fairtrade.federation.org/> (last visited Apr. 9, 2006); Fairtrade Labelling Orgs. Int'l, About FLO, <http://www.fairtrade.net/sites/aboutflo/tasks.html> (last visited Apr. 9, 2006).

²⁰ See Fairtrade Labelling Orgs. Int'l, Facts and Figures, <http://www.fairtrade.net/sites/impact/facts.html> (last visited Apr. 9, 2006).

²¹ See Rory Van Loo, *A Sweet Recipe To Help Poor Cocoa Farmers*, S.F. CHRON., Dec. 5, 2003, at E1; Rory Van Loo, *Coming to the Grocery Shelf: Fair-Trade Food*, CHRISTIAN SCI. MONITOR, Sept. 29, 2003, at 16 (suggesting fair trade-certified goods are competitively priced with goods of similar quality).

²² See HELEN LEWIS, GLOBAL MARKET REVIEW OF THE WHOLE, NATURAL, ORGANIC, AND ETHICAL FOOD MARKETS — FORECASTS TO 2012, at 64 tbl.18 (2006).

²³ See Fairtrade Labelling Orgs. Int'l, *supra* note 20.

²⁴ See Bruce Horovitz, *Market To Sell Certified Fair Trade Bananas*, USA TODAY, Jan. 20, 2004, at 2B.

²⁵ See FAIRTRADE FOUND., ANNUAL REVIEW 2000/2001, at 4 (2002), available at <http://www.fairtrade.org.uk/downloads/pdf/annreview1.pdf>.

and thereby undermined older models that assumed perfect information.²⁶ The fair trade label is precisely an example of how to move the market toward more perfect information about which goods are most fairly traded.

The authors may have simply decided to focus little attention on the implications of their recommendations for the poorest and richest ends of the trade spectrum — small producers and developed nations — because there are few satisfactory answers to those questions within the traditional field of international trade policy. But negotiation scholarship and the fair trade logo movement — though by no means the only ways to address these issues or even necessary parts of a comprehensive fair trade plan — do suggest that a stronger case can be made for a development round, and that a closer examination of the beneficiaries of increased trade within countries can have positive implications for poverty reduction. Regardless, the book does offer commendably concrete recommendations whose implementation would make great strides toward fairer trade for many.

²⁶ See Carlos Lozada, *Latin America's Unlikely Revolutionary Folk Hero*, CHRISTIAN SCI. MONITOR, Oct. 10, 2002, at 7.