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Trade, Justice and Security

Frank J. Garcia*

“Our violence has its origin in injustice and inequality.”¹

I. Introduction

Many of the articles in this volume raise both historical and empirical questions about the nature of the relationship between trade, peace and security. I would like to add a further normative element to the discussion, namely the question of the trading system’s distributive justice, or “fairness,” and justice’s role in whether trade contributes to peace and security. However, I am not going to offer here a normative argument for why trade law *must* be just, or a normative analysis of whether trade law *is* just.² Instead, in this essay I want to suggest a new way to think about this question, based on research into the literature on the social psychology of justice, namely that there is an important *empirical* relationship between trade, justice and security, involving the social consequences of perceptions of injustice.³ Social psychologists study the emotive aspects of justice, involving our perceptions of justice and injustice and their effects on our behavior.⁴ Their research suggests that the human perception of injustice is one of the most powerful motivators in the human psyche. For this reason, our *perceptions* of the relative justice or

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¹ Roberto Luis Jaramillo, *quoted in* Eliza Griswold, *Medellin: Stories from an Urban War*, 207 NAT’L GEOGRAPHIC 72, 82 (2005).

² Elsewhere I have explored the normative relationship between trade and justice, arguing that as a matter of political and moral theory trade law must be just; see FRANK J. GARCIA, *TRADE, INEQUALITY AND JUSTICE* (2003).

³ As part of a broader investigation involving globalization and international economic law, I have recently become interested in how the social psychology of justice can inform our understanding of the “dynamics,” if you will, of the justice of trade law, rather than the more static picture of justice arising from the application of traditional political theory to trade law. See, e.g., John Bell and Erik Schokkaert, *Interdisciplinary Theory and Research on Justice*, in *JUSTICE: INTERDISCIPLINARY PERSPECTIVES* 237, 249-50 (KLAUS SCHERER, Ed. 1992) (empirical work can enrich ethical theory of justice). As my inquiry is at a preliminary stage, my analysis in this essay of both the social psychology of justice and its relation to trade, justice and security is intended to be more suggestive than definitive.

⁴ A good starting point is an excellent survey by Kjell Tornbloom, *The Social Psychology of Justice*, in *JUSTICE: INTERDISCIPLINARY PERSPECTIVES*, *supra* note 3 at 177.

injustice of the trading system, and our emotive response to these perceptions, add an important dimension to trade's capacity to increase or decrease peace and security.

The question of justice and trade involves the problem of inequality, since inequalities in resource distributions raise questions of justice, both subjectively and normatively. Inquiries into justice and trade generally focus on the problem of inequality as it affects relations *between* states.⁵ I would like to examine a different aspect of the problem of inequality, namely the problem of inequality *within* states, and its relationship to international trade. Put in the context of this book, I will argue that domestic inequality feeds perceptions that international regimes such as trade are unjust, thus undermining the ability of international trade to promote domestic and international peace.

In Part II of this essay, I introduce the social psychology of justice, and sample perceptions of trade and globalization as reported in the media, which suggest that trade has an image problem with respect to fairness. I further argue that this image problem is particularly influenced by domestic inequalities and their perceived link to trade and globalization. In Part III, I suggest some implications of these perceptions for the formation of trade policy in terms of the social psychology of justice, and argue that linking policy tools such as competition law to trade law can ameliorate the negative perceptions of trade's impact on domestic inequality, thereby improving trade's capacity to promote international peace and security.

II. Trade, Security and the Social Psychology of Justice

A. The Social Psychology of Justice

Social psychologists are interested in justice in a particular way, namely in the social formation of perceptions of justice and injustice, and their effect as motivators - the human emotional responses they provoke. Understanding the psychology of justice is

⁵ A noteworthy exception is the work of Enrique R. Carrasco. *See, e.g., Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 *TRANSNAT'L. L. & CONT. PROB.* 1 (1996); *Law, Hierarchy and Vulnerable Groups: Towards a Communal Model of Development in a Neoliberal World*, 30 *STANFORD J. INT'L LAW* 221 (1994).

important for those of us who are trade lawyers also concerned about peace and security, because social order and social control depend upon people's beliefs about the justice of the systems in which they live. Any explanations of social order and social control must focus implicitly or explicitly on members' beliefs about the justice of their institutions, for that belief will affect their willingness to maintain or destroy that society.⁶

One way to explore the psychology of justice is through equity theory, which views all interpersonal interactions, including trade transactions, as exchange transactions involving various resources.⁷ People make certain investments or inputs, in return for which they expect to receive certain rewards, or outputs. Justice involves their evaluation of the relationship between inputs and outputs.

We can analyze this relationship along two dimensions: reciprocity between inputs and outputs, and proportionality between inputs and outputs. Reciprocity consists of receiving when one has contributed, and proportionality consists of the relationship between the level of one's contribution, and the level of one's received outputs.⁸

One's perception of justice or injustice depends upon one's evaluation of the proportionality and reciprocity between one's inputs into the social system, and the outputs one receives. Inputs create expectations which vary in proportion to the inputer's evaluation of the level of input. These expectations also involve a social comparison process, in which people evaluate their own returns by comparison with the returns and

⁶ W.J. GOODE, THE CELEBRATION OF HEROES: PRESTIGE AS A CONTROL SYSTEM 329 (1978).

⁷ This approach builds on the exchange theory work of George C. Homans, Peter M. Blau, J. Stacy Adams and others. See generally Tornbloom, *supra* note 4 at 179. Although this work has since been developed in a number of directions (see, e.g., John F. Stolte, *The Formation of Justice Norms*, 52 AMER. SOCIOLOGICAL REV. 774, 774-5 (1987)(summarizing lines of development from Homans-Adams model), it remains a valuable starting point for this kind of inquiry into the basic workings of subjective perceptions of justice. See, e.g., C. Wesley Younts and Charles W. Mueller, *Justice Processes: Specifying the Mediating Role of Perceptions of Distributive Justice*, 66 AMER. SOCIOLOGICAL REV. 125, 126 (equity theory continues to play dominating role in the field); Duane F. Alwin, *Distributive Justice and Satisfaction with Material Well-Being*, 52 AMER. SOCIOLOGICAL REV. 83, 85 (1987) (citing Homans' work as theoretical foundation for contemporary inquiry).

⁸ Klaus R. Scherer, *Issues in the Study of Justice*, in JUSTICE: INTERDISCIPLINARY PERSPECTIVES, *supra* note 3 at 6-7.

investments of others, and judge their situation not only by their absolute outcome, but by whether their comparisons with others meet or disappoint their expectations.⁹

In this framework, when people judge their social rewards to be proportional to their costs and investments, both absolutely and relatively, the situation is deemed just or equitable.¹⁰ This supports the establishment and maintenance of orderly social relations, or security as we are calling it today.

Injustice involves the defeat of these expectations. Perceived discrepancies between the actual and the expected match between inputs and outcomes results in the subjective experience of inequity.¹¹ Outputs can be deficient either in terms of their proportionality, their reciprocity or both. When the rewards are perceived to be insufficient in either sense, a condition of inequity prevails, giving rise to psychological distress, and a desire to terminate the relationship, or at least alter it in the direction of equity.

This is the core reaction mechanism which can lead to social conflict over perceptions of injustice. In the words of one theorist: “Strong expectations coupled with the feeling of having invested in making the expectations come true produce feelings of entitlement. Violations of such entitlements will then be perceived as injustice, and will reliably provoke strong negative emotional reactions.”¹² These reactions manifest themselves socially in disaffection, underproduction, anger, conflict, boycott, and sabotage. In other words, perceptions of injustice contribute to individual and group behavior which threatens peace and security.

⁹ Tornbloom, *supra*.note 4 at 181 (citing Peter M. Blau, *Justice in Social Exchange*, 34 SOCIOLOGICAL INQUIRY 193, 193-206 (1964); see generally PETER M. BLAU, EXCHANGE AND POWER IN SOCIAL LIFE 143-167 (1964) (reviewing role of expectations in comparative evaluations of fairness of outcomes).

¹⁰ *Id.*... This is a foundational tenet of exchange theory. See also G.C. HOMANS, SOCIAL BEHAVIOR: ITS ELEMENTARY NORMS (1961).

¹¹ Tornbloom, *supra* note 4 at 181.

¹² Scherer, *supra* note 8 at 7.

B. Perceptions of Trade, Globalization and Fairness

This is where trade and, more generally, globalization enter the picture.¹³ If we want to understand trade's contribution to peace and security, we first need to understand people's perceptions about the justice of the trading system and its effects on their inputs and outputs.. Insofar as one perceives trade to be unjust, i.e., as negatively affecting the reciprocity or proportionality between one's inputs and outputs, it is not likely to be part of the security solution; instead, it is itself part of the problem.

With this in mind, I would like to examine the atmosphere surrounding trade and globalization generally. I include globalization both because trade is part of the larger globalization process (indeed it is at the leading edge), and because the two are invariably linked in popular perceptions of each other. Documenting people's perceptions of trade and globalization generally is an essentially empirical task, and to do so thoroughly would be beyond the scope of this essay. Instead, I am going to sample perceptions of trade, including coverage of trade and globalization-related events, as reported in the media.¹⁴

The theoretical starting point in terms of people's expectations of trade, is that trade is supposed to be a win-win proposition. According to conventional liberal trade theory, we can reasonably expect that freer trade will lead to overall welfare increases. This was the genius of Ricardo: we are supposed to be better off, in the aggregate and in the long-term. Of course, there will nevertheless be short-term and individual uncompensated losses. Not everyone is winning and not all of the time. These individual

¹³ By globalization, I mean the multi-faceted process whereby time and space are being essentially eliminated as significant factors in human social interaction, particularly with regard to communication and commercial interaction. For an excellent overview of the many aspects of globalization emphasizing its legal dimension, see Heba Shams, *Law in the Context of 'Globalisation: A Framework of Analysis*, 35 INT'L LAWYER 1589 (2001).

¹⁴ To do even this comprehensively would require a representative sampling of the media of many countries in many languages. I will be limiting myself in this inquiry to English-language sources, from as many parts of the world as are available through electronic database research tools. This necessarily means that these accounts have been reported for the English-reading public, and may therefore reflect political and strategic considerations. However, this approach does give us a starting point from which to sample at least public statements about people's perceptions.

losses create social welfare problems for states, but should in theory be manageable through first-best policies which do not distort trade as they address the particular problem in question.¹⁵

However, when we look at the global economy and levels of global development today, we see evidence suggesting that in practice trade may not be a win-win proposition, even in the long term, for certain states and social groups within states. Looking horizontally between states, we see states that seem to persist in the loser position over time.¹⁶ There are winners – Chile, India, Poland, and Turkey, for example, with export growth averaging more than 5% per year¹⁷ – but there are losers, too, such as Niger, Haiti, and Sierra Leone.¹⁸ Looking vertically within states, as will be discussed further below, there is also evidence of persistent and growing inequality within states, and evidence that free trade may be worsening, without apparent hope of reversal, these conditions for the least advantaged individuals and groups.¹⁹

It is important to look to these states, individuals and social groups in the persistent losing position, as sources of the potentially destabilizing perceptions of trade injustice which are the subject of this essay.²⁰ Media accounts of trade and globalization reveal ample evidence of ambivalence and conflict over globalization and international economic policy.²¹ Looking horizontally, there is evidence of a growing disillusionment

¹⁵ See, e.g., MICHAEL J. TREBILCOCK AND ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 3-4, 14-15 (3RD ED. 2005) (discussing classic trade theory and effects on social welfare legislation).

¹⁶ See, e.g., *New Forum May Be Necessary to Tackle Globalization*, JAPAN ECONOMIC NEWSWIRE, Feb. 12, 2000 (developing countries concerned that globalization is widening economic gap between industrialized and developing countries).

¹⁷ HUMAN DEVELOPMENT REPORT 1999 (UNITED NATIONS DEVELOPMENT PROGRAMME) (hereinafter 1999 UNDP) at 2.

¹⁸ *Id.*

¹⁹ See, e.g., *Unfair Trade Practices of Developed Nations*, NEW STRAIT TIMES MALAYSIA, October 17, 2000 (globalization characterized by growing gap between rich and poor within countries).

²⁰ In assuming a correlation between trade “losers” in an empirical sense, and perceptions of injustice, I am postponing for the moment the possibility that perceptions of injustice may arise among those who are not in fact losing in an empirical sense, i.e., the problem of subjectivity. I will say a bit more about this problem in section III.A, but fuller treatment of this issue will have to await future development of the project. I also do not wish to suggest that the only perceptions of trade injustice which matter are those which can be supported empirically, a point I also address in section III.A.

²¹ See, e.g., *Annan Calls for Fair Globalization, World Leaders Divided*, THE PRESS TRUST OF INDIA, Sept. 21, 2004 (UN Secretary General notes that too many people feel excluded by globalization).

among non-OECD countries with respect to the perceived failure of globalization's promised benefits for their people.²² Globalization is criticized for being in the control of wealthy states who structure it for their own benefit.²³ Moreover, there is a widespread perception that globalization is making the problem worse between states.²⁴ Looking vertically, there is particular concern that globalization is not addressing the poorest and neediest within states.²⁵ Again, there is the perception that globalization is widening this gap between rich and poor groups within states.²⁶

Such perceptions matter for security reasons. Recall that equity theory suggest that perceptions of injustice will be accompanied by patterns of civil disaffection, underproduction, anger, conflict, boycott, sabotage – the sort of behavior which surrounds globalization and the globalization debate.²⁷ Such behavior in an international context is certainly multi-causal, but we must nevertheless consider the relationship between negative perceptions of trade and globalization, and the existence of the types of

²² See, e.g., *Economist: Selective Liberalization is Better*, THE MALAYSIAN STAR, Feb. 28, 200 (changing perception among developing countries towards globalization attributable to lack of tangible benefits, economic costs and social dislocations); *Malaysia Urges Developing Nations to Voice Globalization Fears*, ASIA PULSE, Jan. 26, 2000 (globalization is widening, not decreasing, the knowledge gap between societies); *Saudi Minister Warns Impacts of Economic Globalization*, XINHUA GENERAL NEWS SERVICE, Jan. 22, 2000 (globalization damaging both new industries and traditional exports in many developing countries).

²³ See, e.g., *Nigeria: Multilateralism at Crossroads*, AFRICA NEWS, April 26, 2005 (globalization being driven by multinational corporations 'masquerading under the flags of western nations'); *Globalization can be Reshaped*, ASIA AFRICA INTELLIGENCE WIRE, Feb. 28, 2005 (fairer globalization requires reform of globalization institutions created for the good of OECD countries); *Developing Nations Urged to Resist Globalization*, XINHUA NEWS AGENCY, June 10, 2002 (globalization favors developed countries which are already beneficiaries of current system).

²⁴ See, e.g., *India: Globalization Promotes Monopolies*, GLOBAL NEWS WIRE, Nov. 21, 2001 (global markets have failed to converge and inequality of income between countries has increased); *Myanmar Warns of Challenges Brought by Globalization*, KYODO NEWS INTERNATIONAL, Nov. 6 2000 (globalization is creating a 'development divide' widening the gap between rich and poor nations); *The Darker Side of Globalization*, NEW STRAITS TIMES MALAYSIA, Nov. 16, 1998 (globalization causing gap between rich and poor to increase with little redress for the poor).

²⁵ See, e.g., *Sinha Urges More Aid to Poor Nations*, ASIA INTELLIGENCE WIRE, Oct. 29, 2000 (citing economic and social distortions of globalization, Indian Finance Minister urges focus on equity and concern for the poor).

²⁶ See, e.g., *The Globalisation Debate: An Opportunity or Threat to Developing Economies*, AFRICA NEWS, Mar. 23, 2005 (globalization is increasing the resource drain from the poor majority to the wealthy elite within developing and even developed countries); *India: Globalization Promotes Monopolies*, GLOBAL NEWS WIRE, Nov. 21, 2001 (global markets have failed to converge and inequality of income within countries has increased);

²⁷ 1999 UNDP, *supra* note 17 at 11 (migration pressure, environmental pressure, social conflict and instability of many forms attributable to perceived widening income gap between countries).

conflict which the social psychology literature cautions us to expect. In the international trade area, we do indeed see a wide range of conflict, which runs the gamut from anti-globalization protests²⁸ to breakdowns in trade negotiations²⁹ to outright calls for boycotts³⁰ and economic warfare.³¹ Many of the criticisms of globalization explicitly use normative language to describe globalization as unjust.³² Indeed, the entire system of trade and globalization has been called “exploitative” of the developing world.³³

This does not bode well for trade’s capacity to promote security – quite the opposite.³⁴ At its most extreme with respect to global security concerns, we see a troubling link between the risks of terrorism and the facts of inequality and perceptions of injustice.³⁵ While there is no simple linear connection between injustice and terrorism,³⁶

²⁸ Recall, for example, the anti-globalization protests surrounding every major WTO and BWI meeting since Seattle, as well as G-8 meetings, OECD meetings, etc. *See e.g. Sinha Urges More Aid to Poor Nations*, *supra* note 19, (anti-globalization protests reflect perception that globalization exploits the poor of developing countries); 1999 UNDP, *supra* note 17 at 2 (these protests are against market-led globalization).

²⁹ *See, e.g., Rich vs. Poor Takes Spotlight at UN Summit*, TORONTO STAR, Aug. 29, 2002, (different perceptions of globalization between wealthy and poor nations “a sticking point” in international negotiations over sustainable development). The trade law community well knows the mobilization of developing countries within the WTO, the failure of the Seattle and Cancun ministerials, and the difficulties in moving the Doha agenda forward, that are indicative in this respect.

³⁰ Indeed, there have been calls to abandon altogether contemporary international economic fora as inattentive to developing country concerns. *New Forum May Be Necessary to Tackle Globalization*, *supra* note 13, (then-Thai Deputy Prime Minister Supachai calls for new forum, citing concern that current institutional approach is uncoordinated and ineffective to tackle globalization problems).

³¹ *Developing Nations Urged to Resist Globalization*, XINHUA NEWS AGENCY, June 10, 2002, (Nigerian Justice Minister calls for resistance to globalization as threatening the economic sovereignty of developing countries).

³² *See, e.g., Saudi Minister Warns Impacts of Economic Globalization*, *supra* note 18 (globalization highlights need for a “fair” world economic system).

³³ *Sinha Urges More Aid to Poor Nations*, *supra* note 19, (anti-globalization protests reflect perception that globalization exploits the poor of developing countries).

³⁴ *See, e.g., Annan Calls for Fair Globalization, World Leaders Divided*, *supra* note 18, (too many people feel *threatened* by globalization); *Globalization and Poverty*, AUSTRALIAN INSTITUTE OF BANKING & FINANCE JOURNAL, Dec. 1, 2001 (dealing with problem of peace requires dealing with problem of poverty and inequity).

³⁵ *See, e.g., Forum Focuses on ‘Wrath’ Born of Poverty*, INTERNATIONAL HERALD TRIBUNE, Feb 5, 2005 (terrorism and anti-globalization violence can be manifestations of frustration over inequitable globalization).

³⁶ *See* Alberto Abadie, *Poverty, Political Freedom and the Roots of Terrorism*, KSG FACULTY RESEARCH WORKING PAPER SERIES RWP04-043 (2004) (no clear link between poverty levels and levels of terrorism); Alan B. Krueger and Jitka Maleckova, *Education, Poverty, Political Violence and Terrorism: Is There a Causal Connection?*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=319750, (no link between levels of poverty or education and support for politically motivated violence).

one can point to a link, at least at the rhetorical level, between terrorism or support for terrorists among third-world public opinion, and perceptions of economic injustice.³⁷

Trade's image problem likely has many causes, among them misinformation, misperception, politically-based manipulation, and actual structural and distributive problems in trade. One particular contributing factor I would like to focus on involves a particular set of perceptions, involving domestic inequality rather than inequality between states, which according to equity theory may play a powerful role in the question of trade, security and justice.

C. Domestic Inequality and Trade's Image Problem

(i). Static and Dynamic Aspects of Inequality

Looked at in static terms, the facts of vertical inequality among individuals are fairly well known. In 1999, when the United Nations Development Programme directly studied globalization and inequality, they reported that in terms of world GDP, the richest 20% of global population had 86% of world GDP, while the poorest 20% shared 1%. In terms of world exports of goods and services, the richest 20% consumed 82%, while the poorest had 1%. In terms of shares of FDI, the richest 20% had 68%, the poorest 1%. In terms of access to information, the richest 20% accounted for 93.3% of internet use, while the poorest a mere 2%.³⁸

Moreover, from a dynamic perspective there are data suggesting that these inequalities are increasing, within both OECD and developing countries.³⁹ Looking in the

³⁷ See, e.g., *Nigeria: Between Globalisation and Glocalisation*, AFRICA NEWS, March 14, 2005 (local effects of globalization mean that US hope that globalization would promote peace 'could [not be] further from the truth'); *Annan Calls for Fair Globalization, World Leaders Divided*, *supra* note 18, (Brazilian president reminds that "most destructive Weapon of Mass Destruction in the world is poverty"); *Gap Between Rich and Poor Nations*, AFRICA NEWS, Aug. 8, 2002 (growing imbalance between rich and poor nations a major threat to global peace and security).

³⁸ 1999 UNDP, *supra* note 17 at 2.

³⁹ Contrary figures citing overall inequality as shrinking are heavily influenced by developments in China and India. Martin Ravallion, *The Debate on Globalization, Poverty and Inequality: Why Measurement*

aggregate, in 1960 the 20% of world's people in the richest countries had 30 times the income of the poorest 20%. By the end of the 1980's, this figure had grown to 60:1. By 1997, this figure had risen to 74:1.⁴⁰ In the last half of the 1990's the world's 200 richest people doubled their net worth to over one trillion, while the assets of the richest three billionaires exceed the combined GDP of all LDCs, comprising 600 million people.⁴¹

More seriously for the purposes of this essay, there is evidence that trade/globalization may be contributing to this worsening trend. Economists broadly agree that free trade promotes growth, efficiency and welfare increases *in the aggregate*, but do not agree on the inequality effects within economies.⁴² While there is some support for the apparent distributive neutrality of trade-led growth,⁴³ a number of studies suggest that absolute inequality does seem to increase with growth,⁴⁴ and some data which suggest a positive correlation between trade and a rise in inequality.⁴⁵

Moreover, there is evidence that growth, while essential for reducing absolute inequality (absolute poverty reduction), is not adequate by itself for relative poverty reduction.⁴⁶ In other words, distribution matters: there is no automatic link between growth and reductions in relative inequality or increases in human development.⁴⁷ For

Matters, WORLD BANK POLICY RESEARCH WORKING PAPER 3038, APRIL 2003, at 7. Take them out, and inequality is increasing overall.

⁴⁰ 1999 UNDP, *supra* note 17 at 36.

⁴¹ *Id.* at 3.

⁴² Gary Burtless, *International Trade and the Rise in Earnings Inequality*, 33 J. ECON. LIT. 800, 800-01 (1995) (reviewing diverging views of Jagdish Bhagwati, Fred Bergstrand and others); 1999 UNDP, *supra* note 17 at 84-85 (strong link between trade and growth).

⁴³ Ravallion, *supra* note 39 at 17 (citing David Dollar and Aart Kraay, *Growth is Good for the Poor*, 7 J. ECON. GROWTH 195 (2002)).

⁴⁴ *Id.*, at 6. See, e.g., Philippe Aghion, et al, *Inequality and Economic Growth*, 37 J. ECON. LIT. 1615 (1999) (negative correlation between average rate of growth and inequality); J. David Richardson, *Income Inequality and Trade*, 9 J. ECON. PERSP. 33, 51 (1995) (trade is a moderate contributing source to income inequality trends); Albert Berry, *The Income Distribution Threat in Latin America*, 32 LAT. AM. RES. REV. 3, 30-1 (1997) (strong systematic correlation between market-oriented reforms and increased inequality in Latin America 1980's and 1990's suggests link between such policies and worsening distribution); Steve Chan, *Income Inequality among LDCs*, 33 INT'L STUD. Q. 45, 58 (1989) (The relative income position of the poor suffers from rapid economic growth, while that of the rich improves at the same time); *Id.* at 60 (negative relationship between FDI penetration and income equality).

⁴⁵ *But see* Ravallion, *supra* note 39 at 7 (no convincing evidence of trend either way).

⁴⁶ Francois Bourguignon, *The Poverty-Growth-Inequality Triangle* (2004) (manuscript on file with the author) at 3.

⁴⁷ 1999 UNDP, *supra* note 17 at 85

these reasons, Ravallion and others argue that while pro-growth policies are good for the poor in absolute terms, we cannot conclude from this that pro-growth policies are good for poverty reduction.⁴⁸

When we look at the time-path problem, or the question of “trend,” the problem looks worse.⁴⁹ Kuznets set the terms for this time-path debate in 1955 with his inverted U hypothesis: income distribution inequality is on an upside down U-shaped curve during development – it gets worse before it gets better, but it will get better.⁵⁰ However, critics now question the Kuznets curve, contending that the curve reverses itself yet again, that inequality inhibits growth, and that inequality levels do not re-adjust.⁵¹ In other words, it gets worse and stays worse.

(ii). Domestic Inequality Matters

In social psychological terms, the facts of domestic inequality are significant for the evaluation of trade and security, because these are the circumstances within which most people will derive their perceptions of trade justice.⁵² Most people in the world do not engage directly with the multilateral trading system or evaluate its fairness in systemic terms. Rather, they grow or make products which they sell locally, or they work locally for firms which produce and sell globally. The global trading system sets the framework in which they function economically, but they function locally. They are

⁴⁸ Ravallion, *supra* note 39 at 19; Sebastian Edwards, *Trade Policy, Growth and Income Distribution*. 87 AM. ECON. REV. 205, 209 (1997). There is also support from IADB research on Latin America, which found that despite return to macro-economic stability and trade liberalization in 1990’s, poverty and inequality levels did not decline. Juan Luis Londono and Miguel Szekely, *Persistent Poverty and Excess Inequality: Latin America, 1970-1995*, IADB WORKING PAPER SERIES 357 (SEPTEMBER 1997) at 2.

⁴⁹ Even an agnostic such as Ravallion writes emphatically that “there is no denying the perceptions held by critics of globalization that poverty and inequality are rising.” *See supra* note 39 at 2

⁵⁰ One reason Kuznets offered for the shape of this curve is that economies which start off relatively underdeveloped are largely agrarian, and demonstrate less inequality. Inequality gets worse as more workers shift to very low income urban economy, but is later offset by future growth in urban economy incomes; see *Economic Growth and Income Inequality*, 55 AM. ECON. REV. 1 (1955).

⁵¹ *See, e.g.*, PHILIPPE AGHION AND JEFFREY G. WILLIAMSON, GROWTH, INEQUALITY, AND GLOBALIZATION: THEORY, HISTORY, AND POLICY (2002) (questioning orthodox growth theory and Kuznets curve).

⁵² *See, e.g.*, *Globalization Bad for Africa*, AFRICA NEWS, Mar. 21, 2005, (citing ‘a gulf of perception and understanding between those who call the shots in globalization and those who are powerless’); *Economist: Selective Liberalization is Better*, *supra* note 16, (negative perception of globalization within developing countries influenced by growing inequalities of wealth and opportunities).

aware, moreover, of the relative affluence of elites within their economy which engage in the international trading system to the benefit of the elites, when compared with their own situation.⁵³

Thus these comparisons are an important source of the expectations which according to equity theory drive perceptions of injustice.⁵⁴ In other words, in evaluating globalization, the vertical matters.⁵⁵ This local dimension means that people will not ask in a general or global way how trade is working, as academics do; rather, they will say, “I see how free trade and globalization are working for the leading families, but how well are free trade and globalization working for me?”⁵⁶ For them, the justice or fairness of trade and globalization will be evaluated locally: do I have a job? am I closer or farther from having one? do my products have a market? is my standard of living rising or falling relative to that of my compatriots?⁵⁷ Their answers will form the basis for their perception that trade is just, or unjust.⁵⁸

⁵³ When this elite is an ethnic minority, this can lead to anti democratic and anti liberalization backlash by the less affluent majority. AMY CHUA, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* (2002).

⁵⁴ This is not to suggest that horizontal comparisons, i.e., the perception of the affluence of one’s state when compared to another, play no role in perceptions of trade justice. Certainly, global media play a role in disseminating images of the affluent west around the world, to wherever a television or film projector can be found. Nevertheless, studies suggest that contrary to earlier assumptions, relative evaluations of deprivation are important to a person’s behavior and their evaluation of their well-being, not simply their individual consumption levels. Ravallion, *supra* note 39 at 4; Bourguignon, *supra* note 40 at 2. Moreover, the sociological literature on justice also focuses on the effect of elite status on perceptions of justice, and on distributions of economic benefits. Scherer, *supra* note 12 at 13.

⁵⁵ See, e.g., *China Worries about Economic Surge that Skips the Poor*, THE NEW YORK TIMES, March 4, 2005 (growing wealth gap fuels social unrest); *Nigeria: Between Globalisation and Glocalisation*, *supra* note 31, (globalization’s effects must be understood locally); *ASEAN Prime Ministers Call for Reform[?]*, THE PRESS TRUST OF INDIA, Oct. 17, 2002, (Indian Prime Minister criticizes globalization in part due to uneven benefits within nations).

⁵⁶ According to Amartya Sen, the anti-globalization protests are not really against globalization per se, but against the continuing deprivations and rising disparities in levels of living which people observe locally in current globalization. See *Globalization, Inequality and Global Protest*, 45 DEVELOPMENT 11 (2002).

⁵⁷ See e.g., *Globalization Bad for Africa*, *supra* note 46, (widespread famine and food hoarding resulted from IMF-led changes to Malawi’s domestic food price support policy); *Annan Calls for Fair Globalization, World Leaders Divided*, *supra* note 18, (French president asks how globalization can be justified “to workers whose jobs have been relocated”). In discussing the effects of financial market instability, the authors of the 1999 UNDP remind us that “the real losses and risks from financial crises are felt by people...” *supra* note 17 at 10.

⁵⁸ See, e.g., *Sinha Urges More Aid to Poor Nations*, *supra* note 19, (in order to make globalization acceptable to people, they must be convinced that trade will result in an improvement in the quality of lives of the poor and needy).

There is a further reason for the peculiar impact of comparisons among compatriots, and it has to do with the interaction between absolute versus relative measures of inequality. Economists who attempt to measure inequality evaluate the distribution of social primary goods in both absolute and relative terms. Absolute inequality is about how much people get, period. For example, one person gets 1,000 in annual income, another 10,000. Relative inequality is about the ratio of how much certain people or groups get, versus others. In the above example, one person gets 10 times the annual income of another. Both measure the same facts, but in different ways, and with different implications.

This difference between absolute and relative inequality plays an important role in this debate. Take the example of the person with an income of 1,000, and the person with an income of 10,000. Now assume that economic development doubles their income, to 2,000 and 20,000 respectively. This is certainly a good thing for both people. Moreover, in terms of relative inequality, this growth has been neutral – the difference between both incomes is still a factor of ten.⁵⁹ However, the absolute inequality between the two is twice as large, having grown from 9,000 to 18,000 dollars! In other words, their absolute inequality has doubled, even as their relative inequality has stayed the same, and as even the worst off has received a much needed doubling of income.⁶⁰

Equity theory suggests that for the purposes of the present inquiry into perceptions of trade justice, absolute inequality has particular importance. Recall that in social psychology terms, evaluating justice involves a social comparison process, in which people evaluate their own returns by comparison with the returns and investments of others.⁶¹ In this sort of comparison, absolute inequality is much more visible than relative equality. In the above example, the person at the low-end will be more likely to perceive that the high-end person's fortunes have increased by 18,000 over theirs and to

⁵⁹ In this way, it is common to see literature claim that trade openness is distribution neutral, as it does not change relative inequality. Ravallion, *supra* note 39 at 5.

⁶⁰ Ravallion, *supra* note 39 at 4-6.

⁶¹ See *supra* note 9.

perceive this as unfair.⁶² In other words, in evaluating the perceived justice of trade, its negative effects on absolute inequality will be much more readily perceived than its neutral effects on relative equality. For this reason, it is significant that studies which measure absolute changes in inequality suggest that trade and globalization are increasing absolute inequality, even as the relative inequality remains the same, or absolute poverty levels improve.⁶³

III. Evaluating and Responding to Perceptions of Unjust Trade and Globalization

To recapitulate, the media accounts sampled in this essay report from many segments of the developing world the perception that trade and globalization are unjust. While empirical studies do not speak with one voice, many of them support the view that globalization is in fact worsening domestic inequality, and that negative changes in domestic inequality have serious adverse effects on economies and people. At a minimum, this suggests that trade's justice or injustice is being evaluated through local perceptions which are heavily impacted by domestic inequality. How should trade policy take this into account?

A. Evaluating Trade Justice: Does it Matter if the Perceptions are "Right?"

Put in terms of the social psychology of justice, the above indicators can suggest that trade/globalization may suffer from two perception problems: reciprocity – the perception that one is sacrificing in globalization and trade, yet not receiving anything;

⁶² See Ravallion, *supra* note 39 at 5 (“Perceptions on the ground that ‘inequality is rising’ appear often to be referring to [absolute] inequality.”). One reason may be that absolute inequality affects relative levels of consumption, for example, which are easier to see and therefore to compare. Accord Alwin, *supra* note 7 at 86 (interpersonal comparisons in wage rate context, for example, depend upon idiosyncratic, concrete, personal and informal social contacts rather than systematic knowledge of actual wage rates).

⁶³ Ravallion, *supra* note 39 at 5.

and proportionality – the perception that what one is getting out of globalization is not commensurate with what one is putting in.

This leads us to a causation question: what is at the root of these perceptions? Are trade's rules, practices, institutions, etc. interfering with reciprocity and proportionality for those participating in the trading system? Should we take the social fact of protest, conflict and insecurity as evidence of actual injustice, or as evidence of misperception, manipulation, politics or ideology? More importantly, does the distinction really matter?

(i). Perception of Trade Unfairness and Social Facts

To begin with, the trading system might in practice be unjust at a given point in time for a given set of trade participants. Therefore, the system is in fact not working for those protesting, and their causality analysis is correct. Whether or not this is in fact the root cause of trade/globalization conflict is one key element of the globalization debate.

If we assume for the moment that this assertion is correct, such a problem could have two principal causes. First, it could be a time-path problem. Classical trade theory argues that liberalized trade will lead to welfare gains, but these are aggregated. Some individuals lose while others gain, and some individuals lose now only to gain later. Thus the trading system yields outcomes which at some point in time can plausibly be perceived in that moment by the affected individual as unjust. In other words, the contesting individual could at this point in time be standing in the individual loss position, or the short-term loss position. This is the utilitarian conundrum at its most painful: trade is good for someone, just not me, not now.

If this is so, then states have domestic policy tools to address the problem, which involve social welfare/political responses. Even in this post-Westphalian system individual states retain their role as domestic social welfare guarantors to deal with such dislocation/adjustment effects. Nevertheless, the utilitarian problem remains particularly serious in states with weak welfare systems. Moreover, such problems may be localized,

but still create larger political issues, precisely because their localization may intensify their effects. Finally, even if it is merely a time-path problem, equity theory tells us we still need to take it quite seriously, even if not literally. A wrongly-founded perception of injustice can lead to as much social conflict as a correctly founded one, if not addressed seriously and empathetically.

Alternatively, "anti-globalization" protests could be pointing to a more serious long-term allocative problem: someone else *is* getting what should be coming to me, thereby adversely affecting the reciprocity and proportionality of my outputs. This is a distributive justice problem. If this is true, it suggests that there may be structural problems in the distribution of the gains from trade, both between states and within states.⁶⁴ This is a problem of justice, and would if true require that trade law be re-evaluated as a matter of substantive justice, in order to address trade's current tendency to promote insecurity.

(ii). Perception of Trade Unfairness as a "Mere" Perception Problem

Another way to evaluate the globalization protests/perceptions of injustice is as a simple perception or subjectivity problem. In other words, one is really getting more out of trade/globalization than one thinks, or one is putting in less than one thinks, but one doesn't know it. This error could have various sources: information problems, political problems, theory problems (i.e., wrong idea about development), etc.. This leads to a broader objection to the argument, namely that equity theory is fatally subjective and hence inappropriate as a policy guide. If we have reason to believe that the system is really fair, why should we care about erroneous perceptions?⁶⁵

⁶⁴ This is, of course, a huge and contested question of empirics, ideology and theory.

⁶⁵ This problem is recognized in the social psychological literature on justice. Scherer, *supra* note 8 at 7 (perceived entitlement is of necessity highly personal and subjective, hence weak basis for predictive theory); Tornbloom, *supra* note 4 at 186.

In my view, for the purpose of trade and security, the distinction between perception and reality does not matter with respect to the need to respond. The social psychology literature suggests that the perception/reality distinction is irrelevant at the level of emotive response, which is the origin of social conflict.⁶⁶ In other words, faulty perceptions of injustice have to be addressed and shown to be faulty, or else they lead to the same powerful effects as subjective perceptions that are also objectively true. The trade policy community cannot risk ignoring such perceptions because we believe them to be wrong, or leaving them to “sort themselves out.” Naturally, the perception/reality distinction does matter at the level of the kind of response to those who assert claims of injustice. If one believes that a given perception of trade injustice is subjectively valid but objectively incorrect, then appropriate responses might involve information, dialogue, improved public relations, perception-shifting, and persuasion, all bent on making the case that trade is in fact just. If the problems are deeper and objectively structural in nature, then we have to change the rules – changing perceptions is not enough.

In any case, whether perceptions of injustice are rooted in short term time-path problems, deeper structural problems, or in erroneous perceptions, there is one common thread: all of these views produce political problems, insofar as their common currency is a perception of injustice. In terms of equity theory, this means that widely-shared perceptions of trade injustice, influenced by perceptions of trade-related domestic inequalities, will contribute to increased social conflict and undermine our overall sense of security. Therefore, those of us who live in the developed world have reason to be concerned that trade and globalization as currently practiced are decreasing our security, because they are broadly perceived as unjust, whatever the data will ultimately prove. We have significant self-interested reasons to care about this because of the risk which instability poses to our own well-being, both in terms of security (terrorism) and in terms of impingements on our open society as we respond to security concerns. What can we do to increase the likelihood that the trading system will be perceived as just?

⁶⁶ See Scherer, *supra* note 8 (reactions of exchange participants depend upon their *subjective* evaluation of inputs and outputs).

At a minimum, there needs to be a genuine, searching dialogue with states and groups claiming that trade/globalization is unjust. Even if this view of trade/globalization's unfairness is merely perception, it matters. Moreover, negotiation is not the same as dialogue. While it is true that the Doha Round is supposed to be about development, in reality developing countries report frustration that their views are often not being seriously considered.⁶⁷ Whatever one's view of the merits, true dialogue can only help to reduce tensions.

B. Inequality-based Trade Policy

Going further, international trade *law* can be used to address the problem of domestic inequality and attendant perceptions of injustice, both indirectly through policies aimed at increasing aggregate growth (trickle-down); and directly, through policies specifically designed to more broadly disseminate economic opportunity and the gains from trade. In other words, we can concentrate on shaping multilateral trade law to make actual positive contributions to reducing inequality, as a basis for changing perceptions of trade's fairness.⁶⁸

(i). Pro-growth Trade Policies Which Reduce Inequality

To the extent that criticisms of globalization are not merely perception, we need to make sure that global trade policies actually favor growth by poorest states, as a prerequisite for poverty reduction. Development-sensitive trade policies which promote growth in developing countries can have positive effect on domestic inequality through trickle-down mechanisms. While alone this may not be enough, such policies are not to be ignored, since they facilitate poverty reduction, and in any event are better than the

⁶⁷ See, e.g., *WTO Talks Still Not Out of Danger Zone; Headway Elusive*, CARIBBEAN REGIONAL NEGOTIATING MACHINERY RNM UPDATE, Oct. 5, 2005 (CARICOM Trade Ministers express cynicism and disappointment about the Doha 'Development' round, and question whether it can effectively facilitate better trade and development prospects for the Region, given that development issues have been sidelined in favor of developing country priorities).

⁶⁸ I am assuming, consistently with equity theory, that actual changes in trade-related inequality will result in changes in perceptions concerning trade-related inequality. Tornbloom, *supra* note 4 at 188 (equity theory assumes some linearity between perceived inequality and equity-restoring behavior).

alternative, namely policies which do not promote growth in developing countries. Moreover, such trade policies should be complemented by IMF and World Bank policies that make it easier for poor people to take advantage of opportunities afforded by aggregate economic growth (e.g., access to health and education).⁶⁹

(ii). Trade law That Directly Addresses Domestic Inequality

Most importantly, it is essential to consider trade policies which can directly impact domestic inequality, at least in terms of economic opportunity. Two categories worth considering are targeted trade preferences, and trade-linked competition law.

(a). Targeted Preferences

Trade agreements can contain specific preferences for economic actors which themselves are responding to or suffering from inequality problems. Preferential trade is a form of indirect inequality measure, in that it aims to promote growth in an economy as a whole. However, preferences can be altered to more directly address those who are losing the domestic distribution of wealth, or those who are trying to address it. For example, special, even more favorable trade preferences could be granted to workers' cooperatives, producer groups, and NGO-backed economic actors, for example by including products and industries currently not eligible for preferential trade. Such groups have often been created to spread the benefits of trade to sectors of society traditionally left out of the distribution of any gains from trade.

It has been objected that trade preferences, even if well-constructed to support developing countries, yields little demonstrable positive economic impact.⁷⁰ Even if this is so, so long as preferential trade is a part of WTO policy, this opportunity should not be ignored, for both substantive and political reasons.

⁶⁹ Ravallion, *supra* note 39 at 20.

⁷⁰ Joost Pauwelyn, *Just Trade*, 37 GEO. WASH. INT'L L. REV 101, 109-112 (2005) (reviewing GARCIA, *SUPRA* NOTE 2). In evaluating this objection, it must be taken into account that developed countries have often shaped their preferential trade policy to avoid supporting the recipients' most competitive sectors, thereby reducing the potential positive impact from the preferences.

(b). Linking Trade and Competition Law

Another approach worth considering is to link trade law with competition law. Research suggests that trade openness can reduce income inequality in capital-intensive countries.⁷¹ However, this depends on access to capital and on economic opportunities to deploy capital on competitive terms,⁷² which in turn depend upon functioning competitive markets; otherwise, monopolists seek to keep high returns on capital through monopoly practices, even under conditions of increased openness. For this reason, redistributive policies can have positive effect on growth where the capital market is imperfect, in part due to family or dynastic concentrations of wealth having negative effects on individual investment possibilities.⁷³

Measures which restore competitive markets can reduce domestic inequality, by increasing economic opportunity to hitherto underrepresented actors. One such category of measures is competition law. By improving opportunities for small and medium size enterprises, competition law can be part of a comprehensive policy package addressing negative distributive effects of trade liberalization by increasing the bargaining power and market strength of low-income groups.⁷⁴

In many developing country markets, there is little effective competition, and significant barriers to entry exist for new entrepreneurs from races, ethnicities and socio-economic classes hitherto under-represented.⁷⁵ Traditionally dominant elites often enjoy the advantages of monopoly in the marketplace as well: as “first producers” for a variety of historic and social reasons, they develop the sort of advantages which make it difficult

⁷¹ Antonio Spilimbergo et al., *Income Distribution, Factor Endowments, and Trade Openness*, IADB WORKING PAPER SERIES 356, OCTOBER 1997, at 32.

⁷² The assumption is that returns on capital diminish with increased openness, improving distribution of income. *Id.*, at 21.

⁷³ Aghion, et al, *supra* note 44 at 1656.

⁷⁴ See Berry, *supra* note 44 at 35 (listing importance of policies favoring such enterprises for their major role in increasing employment); 1999 UNDP, *supra* note 17 at 12 (21st century global governance requires, among other things, a WTO with mandate extending to global competition policy, in order to address inequality problems); Tord Hoivik, *Social Inequality: The Main Issues*, 8 J. PEACE RES. 119, 140 (1971).

⁷⁵ Lan Cao, *Ethnic Question in Law & Development*, 102 MICH. L. REV. 1044, 1083 (2004).

for new actors to emerge.⁷⁶ In such an environment, although free trade can play a positive role,⁷⁷ free trade by itself is unlikely to address all anticompetitive problems. For this reason, competition law can play a powerful role in breaking down established patterns of market domination, attacking roots of domestic inequality and opening up of economic opportunity to new classes.⁷⁸

IV. Conclusion

Equity theory suggests that if trade and globalization are perceived as unjust, we should see as consequences conflict, impasse, and economic loss in the trading system and in global economic relations. Unfortunately, the antiglobalization movement and the internal difficulties in formulating trade law and policy suggest that we are seeing the predicted effects of such perceptions in international economic relations today. An important source of these perceptions is local domestic inequality and its perceived relation to trade and globalization.

Within the developed world, it is absolutely within our self-interest to take these perceptions seriously. There is the obvious concern that to the extent that trade-based social conflict spills over into terrorism, this has serious safety and security implications for all of us. Short of such drastic effects, however, perceptions of injustice do increase the transaction costs, if you will, of formulating multilateral trade policy today. Moreover, global security concerns, partially fueled by conflicts over economic resources, have resulted domestically in notable restrictions of civil liberties. This means

⁷⁶ *Id.* at 1083.

⁷⁷ *Id.* at 1089.

⁷⁸ See Eleanor Fox, et al., “The Proper Goals of Antitrust: When Public and Private Interests Collide,” 9 Loy. Consumer L. Rep. 112, 118 (1997) (competition law can protect economic rights of newly emerging market actors). In a similar way, Cao advocates the use of competition law to alter ethnic minority domination of the market. *Id.*, at 1089-90. However, developing countries have resisted any link between trade and competition law at the WTO level, out of concerns over disguised protectionism and implementation costs. See, e.g., HA-JOON CHANG, KICKING AWAY THE LADDER (2002) (competition policy generally adopted by developed countries late in industrialization, hence suspect as a policy recommendation for pre-industrialization or early-industrializing developing countries); William Kovacic, *Getting Started: Creating New Competition Policy Institutions in Transition Economies*, 23 BROOK. J. INT’L L. 403, 403-08 (1997) (reviewing implementation problems and disappointments for developing countries in competition area).

that even without loss of life and property, we may be faced with appreciable losses of liberty, stemming from a reluctance to take seriously the sorts of conflicts engendered, at least in part, by perceptions of unjust trade.