An Agricultural Law Research Article

Agriculture, Free Trade, and Global Development: Some Personal Observations

by

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I am very pleased to have been invited to offer some luncheon remarks for the Law School's Symposium on Agriculture, Free Trade, and Global Development. My thanks go especially to the staff of the *Journal of Law and Public Policy* and to my colleague and friend, Professor Raj Bhala, for allowing me this opportunity.

In selecting a subject matter for my remarks, I quickly decided that it would be foolish for me to try offering to this audience of distinguished scholars in the subject some new insight on the doctrine or practice of international trade law. I know when I am dramatically outclassed. But it occurred to me that you might find it interesting, or at least a light break from the weighty papers being presented at the symposium, if I were to offer some of my own personal observations about the three subject areas that combine to give this symposium its title: agriculture, free trade, and global development.

In offering some personal observations, I shall draw on my own experience in each of these three fields, for unlike most people, I have at various stages of my life devoted most or all of my energies to one of more of these fields. Specifically, I grew up on a farm and still work on that farm both as a laborer and as a co-manager; for several years early in my legal career I practiced international trade law in a Washington law firm, typically for clients who were favorably disposed (as am I) to encouraging free trade; and, lastly, for the past twenty-plus years I have been involved both in the practice and in the critique of global development work. So my remarks today will, in part, reflect those three aspects of my own life and career.

First let me speak of agriculture. A dictionary I often use defines "agriculture" as "the science and art of farming; [the] work of cultivating the soil, producing crops, and raising livestock."[1]

As I said, I grew up on a farm, so I have some experience with cultivating fields and with raising livestock. In a sense, I suppose I have well over a century of experience in that line of work and that style of life, if you will allow me to add to my own years my father's years there as well. After all, my father has told me so many stories about his life on the same farm I grew up on that I feel as if I have lived vicariously through his long tenure there. My father was born in 1910, and by the time he was a teenager he was working on that farm, which at the time was owned and operated by his parents. After his parents died, he operated the farm single-handedly for many years and then ran it with help. Six weeks from now, he will turn 94. He and

my mother still live on that farm; and he still builds fences, repairs machinery, chops pastures, and helps some with the planting and harvesting of crops. He still tells stories of the horse named Rex, of the effort involved in building the terraces and contours in several of the fields back in the 1930s, of how the New Barn (built in 1927) was constructed, of how much he collected on various milk routes when he ran a dairy that used to be part of the farm, of what it meant to have the banks close in the 1920s, and countless other personal recollections and stories that create a sense of place and history -- just like the personal recollections and stories of toil and satisfaction and disappointment and ownership that are common to farmers everywhere.

Although my experience in agriculture emerges primarily from the farm I grew up on, I also have had some other experience in other agricultural settings. I worked on a farm in south Wales, for example, one summer while in graduate school in England. In Nepal, I learned, mainly through sign language, how to use a hand plow to cultivate a field.

I revel in the knowledge that at least at some basic level, these various agricultural experiences of mine connect me with hundreds of millions of people -- probably more than a billion people -- the world over. I think as Americans we need to remind ourselves of how central a role agriculture plays in the economies of many countries and in the lives of so many people on our planet. This is less true in our country, for the proportion of the American population that is involved in agriculture is now quite small -- about three percent of the male population and one percent of the female population according to this year's edition of World Development Indicators.[2] But in many countries, especially in the less-developed world, agriculture is a foundation of life and culture. Let me offer some specific figures.

In Bangladesh, with a population of 135 million people, agriculture employs 53 percent of the male population and 77 percent of the female population.[3] In Pakistan, with a population of 145 million, agriculture employs 44 percent of the male population and 73 percent of the female population.[4] In both Mexico, with a population of 100 million, and Brazil, with a population of 174 million, agriculture employs nearly a quarter of the male population.[5] And of course, hundreds of millions of people in China and India, the world's two most populous nations, are engaged in agriculture. Likewise, agriculture employs over 20 percent of at least the male populations in many smaller developing countries, including Costa Rica, Colombia, Egypt, El Salvador, Guatemala, Malaysia, Panama, Paraguay, the Philippines, Romania, Thailand, Turkey, and the Ukraine[6] -- and probably numerous others for which specific figures do not appear in the World Development Indicators.

In short, for much of the world, especially the developing world, agriculture -- the cultivation of fields and the raising of livestock -- forms a common denominator of momentous proportions. It would be well, in my view, for government trade negotiators, especially American and European trade negotiators, to keep that fact

always in mind as they discuss and shape international agricultural trade policy. For if they screw it up, they have screwed up a lot-- a lot of individual lives and livelihoods.

That brings me to the second subject-area of our symposium -- free trade. I graduated from law school, and was sworn into the bar of the District of Columbia, in the same year that the U.S. Congress enacted the Trade Agreements Act of 1979, now a quarter of a century ago. I have no evidence that Congress enacted that legislation simply to honor my own accomplishments in legal studies, but I do know that that legislation had a significant and lasting personal influence on my career. I joined a Washington law firm that was starting to expand its work in the area of international trade -- indeed, that was a fact that attracted me to that firm -- and the very first case I worked on there was the famous automobile imports case of 1980. It was a Section 201 "escape clause" investigation by the U.S. International Trade Commission, and the firm I worked for represented Peugeot, the French automaker. I understand that Peugeot no longer sells cars in the United States, but that was a development that came much later, and I take no responsibility for it.

It was through my work in that case, and in numerous other trade regulation cases that followed -- countervailing duty investigations, petitions under the Generalized System of Preferences, and customs classification cases, to name a few -- that I gained some understanding of international trade law and practice. And I became persuaded that a conscientious liberal global trade regime can benefit everyone -- yes, even the North Carolina textile worker who loses her job. I won't attempt, in these brief remarks today, to offer a full-blown defense of that assertion, but I will draw attention to the label I just used a "conscientious liberal global trade regime"-- and try to summarize what I mean by it.

I believe the term "free trade" has lost its integrity or at least its neutrality. Whatever the term may have connoted several decades ago, I believe today it is taken by many people to signify a commercial no-holds-barred free-for-all in which the strongest will survive and the government will bless the outcome. In that sense the term "free trade" has traveled some of the same path as the term "free market." I did some central banking work in several former Soviet republics just after the Soviet Union collapsed, and just at the time that many of those newly-independent republics were embracing "free-market policies." What the term "free-market policies" meant to them, judging from my experience with officials from finance ministries and central banks, was an abandonment of government regulation and a *laissez-faire* attitude in which any sort of financial and commercial dealings, including personal grab-and-go operations, were to be legalized. I tried many times to explain that a "free market" did not mean an unregulated market and that indeed the United States and other developed capitalist countries had extensive regimes of government regulation to help prevent scoundrels from stealing from the more vulnerable segments of the population -- or expressed differently, to help create a conscientious liberal market regime.

I believe the same idea should apply to international trade: we should have a conscientious liberal global trade regime. For example, I believe the aim of the WTO should not be to create a commercial free-for-all in which international trade is deregulated and is allowed to occur at the expense of the environment, or to benefit a few powerful elites, or with a callous disregard for the special interests and needs of less developed countries. Instead, I believe the WTO should have been established with a view to accomplishing what I regard as conscientious liberal goals, such as raising standards of living, striving for full employment, protecting the environment, and ensuring that less developed countries secure a share in the growth in international trade commensurate with their own needs.

Well, guess what? The WTO *was* established for those purposes. I drew those very words about standards of living and full employment and protecting the environment and attending to the needs of less developed countries from the first two clauses of the preamble to the WTO Charter.[7]

My point is this: I believe, based on work I have done in my own career, that our world increasingly needs a strong and effective system of regulation for the exploding volume of trade taking place between nations. This system of regulation is necessary mainly in order to prohibit the very evils that regulation typically is designed to fight, including dishonesty, greed, overreaching, corruption, and stupidity -- especially the stupidity of allowing short-term personal interests, loudly expressed, to sabotage long-term societal interests. And I believe that many critics of what is unfortunately labeled "free trade" -- critics such as the protestor whose picture appears on the most recent edition of a famous treatise on international organizations[8] -- can have many of their criticisms rebutted and their demands satisfied if they realize that the aim of the WTO and most of the trade treaties it oversees is to create and sustain a conscientious liberal global trade regime. And of course, the way for such critics to realize that, and to believe it, is to see real evidence of it in the operations of the WTO. That is, the WTO must be true to the values set forth in its preamble; and part of our job as lawyers working in this field, whether as academics, practitioners, or government officials, is to urge the WTO always in that direction.

Lastly, let me turn to the third subject-area referred to in the title to the symposium: global development. Directly after my law-firm years, where I worked a lot on issues of international trade regulation, my career took a turn into economic development work; and I have been involved in that type of work, in various capacities, ever since. My interest in this area shows in the courses I teach, the articles and books that I write, and the overseas consulting assignments that I accept when time permits. My personal experience in this subject-area has taken me to many countries. I have helped appraise projects to build schools, equip hospitals, improve irrigation systems, extend rural credit to farmers, train government officials, upgrade pollution control facilities, broaden the availability of electricity, and expand port facilities. I have helped write

banking legislation and curriculum plans for law schools, and I have helped formulate and negotiate various forms of financial and technical assistance -- all with an eye to making some contribution toward improving the economic circumstances of people who want and deserve a better life.

This is extraordinarily hard work, and things often go poorly. But I believe it is important work, and I wish to make a few personal observations about why I see things that way, and what role I think the United States should play in it.

I believe global development work -- that is, efforts to promote economic improvement in less-developed countries -- is important for at least three reasons, which I will classify as practical, cultural, and ethical. First, it is eminently practical from a national perspective for the United States, or any other economically developed and politically stable country, to promote global development and to support the people and institutions who labor in that area. To the extent that the economic well-being of people generally improves in Indonesia or Iran, Kazakhstan or the Congo, the likelihood of military conflict, political instability, or economic meltdown declines correspondingly, thus reducing many types of risk to the United States. For example, the risk that the United States will later need to participate in a costly intervention of an economic or even a military character is diminished. We need look no further than Germany after World War I for evidence that economic distress an ocean away can impose a heavy cost here at home. Expressed from a more positive perspective, it is better for us, for many reasons, that other countries are well-off than that they are poorly-off economically.

Second, efforts to promote global development have cultural benefits, both at the individual level and at the national level, for those involved in those efforts. At the personal level, exposure to other cultures is deeply rewarding, although often deeply unsettling or frustrating as well, because it forces us to get out of our own cultural skin. And at the national level, an understanding of other cultures is not just enriching or intriguing, but essential. Our own country's national security, not to mention our spirit as a nation, is intimately tied up with the effective handling of cultural differences with our friends and allies, and perhaps even more with those nations who do not wish us well.

Third, global development work has, in my view, an ethical component as well. Most Americans are extraordinarily fortunate to live in a country that largely works -- politically, economically, socially. Those of us who were born here can credit this good fortune to the accident of our birth but to little more. I scarcely see any moral basis for me to claim as a matter of right or entitlement the good fortune I had to be born in this rich country. Indeed, it strikes me as inexcusably arrogant to assume an entitlement to the wealth of the land we were born in. We are trustees of that wealth, just as the current residents of any land are trustees of that land. To the extent that our own land, here in the United States, is richer in resources or economic productivity or

political stability, our responsibility as trustees is all the greater, and not just to our own children but to all the world.

If we take this attitude, then we must see it as a duty to protect and manage the resources that are temporarily entrusted to us in a way that is not just in our own long-term national interest but in the long-term interest of the world as a whole. To put it more briefly, to whom much is given, much is expected. And this is the ethical foundation on which I place my view that global development work is important work. Beyond the practical reasons to press for economic development in the less developed countries, and beyond the cultural benefits of doing so, rests this moral imperative as well, a moral imperative that I believe in today's world lies most heavily on us as Americans.

How has this country responded to this moral imperative in recent years? Inadequately. Again I draw from the current edition of World Development Indicators. Among the information provided there are details concerning the development assistance provided by each of the 22 members of the Development Assistance Committee of the Organization for Economic Co-operation and Development (OECD). These are 22 relatively rich countries, including the G-7 countries and 15 others ranging from Australia to Finland to Luxembourg to Switzerland.[9] Three especially noteworthy sets of figures show how much each of those countries provides in the form of official development assistance: first, on a per capita basis; second, as a proportion of government disbursements; and third, as a proportion of gross national income.[10]

Let me explain first what being measured in each of these cases. For OECD purposes, "official development assistance" is aid provided by the official sector (typically by national governments and international organizations) on concessional terms (for example, through loans at below-market rates of interest) mainly to promote the economic development and welfare of developing countries.[11] When I worked at the Asian Development Bank in the 1980s, the central focus of my work was on such economic development, and in that capacity I helped facilitate the types of projects I mentioned earlier, designed to build schools, equip hospitals, improve irrigation systems, extend rural credit to farmers, train government officials, upgrade pollution control facilities, broaden the availability of electricity, expand port facilities, and the like.

In 2002, the most recent year reported on, the United States spent on average $46 per American on official development assistance.[12] This put the United States 17th out of the 22 rich countries that are members of the Development Assistance Committee; only Greece, Italy, New Zealand, Portugal, and Spain provided less on a per capita basis to help pay for global development.[13] That is the first of the three ways of measuring how much the United States contributes to global development through official development assistance.

The second way of measuring the U.S. contribution is as a proportion of government disbursements. This set of figures puts the United States in an even less favorable light. As a percentage of general government disbursements, the United States came in dead last out of the 22 members of the Development Assistance Committee, committing only 36 hundredths of one percent of its government spending to providing official development assistance.[14]

The third way of measuring the flow of official development assistance is as a proportion of gross national income. Once again, the United States comes in dead last: we devote only 13 hundredths of one percent of our national income to global development -- about half as much as the levels provided by such countries as Australia, Austria, Canada, Germany, Japan, Portugal, Spain, and Switzerland, and less than a fourth as much as is provided by Denmark, Luxembourg, the Netherlands, Norway, and Sweden.[15]

In my view, this is inadequate. I believe that as the most powerful country in the world, and in many respects the richest, the United States should be leading the way in boosting global development through official development assistance financing. Instead, this country, and the George W. Bush administration in particular, has fallen short. This is, in my view, a breach of our responsibility to manage and husband our resources -- our economic resources, our human resources, our political influence -- in a way that serves the long-term interests of the world at large and of our own country in particular.

Unfortunately, I see this American shortcoming as part of a larger pattern of policy and ideology that I deplore -- and that is a gradual abandonment of the commitment made six decades ago to seek multilateral solutions for global problems in a wide array of areas, including economics, human rights, and the use of military force.[16] That commitment to multilateral solutions represented a collegiality of spirit and a faith in the mutuality of effort. The issue of global development that our current symposium focuses on, and as to which I believe U.S. behavior falls short, is just one example of many in which American foreign policy has taken a turn away from that form of multilateralism and toward unilateralism -- a "go-it-alone" policy. Other examples, in my view, include this Administration's snubbing of the international community with regard to the global warming treaty, this Administration's obstructionist attitude and action *vis-a-vis* the International Criminal Court, and the disregard or even disdain that this Administration has shown for numerous other treaty regimes dealing with environmental protection and human rights and international security. It is, I believe, a dangerous trend -- this abandonment of multilateralism and regression into unilateralism -- and also a shameful trend if, as I suspect, it arises out of an arrogance of wealth and an ignorance of history. I hope it is a trend that can be reversed, the sooner the better, and not only reversed but emphatically rejected and disavowed -- killed and buried with a stake driven through its heart.

Head

These, then, are some of my own perspectives on the three subject areas that combine to give this symposium its title: agriculture, free trade, and global development. I suppose you could say that I am in favor of all three of them, partly because of my own personal and professional experience, and that I see some strenuous challenges ahead for all three of them. First, I believe we absolutely must understand how central a role agriculture plays in the economies of many countries and in the lives of so many people on our planet -- and we should reflect that understanding in our design of agricultural trade law and policy. Second, I believe our world increasingly needs a conscientious liberal global trade regime that provides not for a "free-for-all" form of free trade but instead for protections against dishonesty, greed, overreaching, corruption, and the stupidity of allowing short-term individual interests to sabotage long-term societal interests. And third, I believe that as part of our duty to contribute to global development, we should renew our commitment to multilateralism as the best hope for surviving the current age and for bringing to our children, to *all* children on this planet, the fruits of the rich resources that we hold in trust for their future.

Notes

* John Head has been a Professor of Law at the University of Kansas since 1990. Before starting an academic career, Mr. Head was in the private practice of law, focusing on international trade and finance, and served as legal counsel to both the Asian Development Bank and the International Monetary Fund. He also has taught and provided consulting services in over a dozen countries in Asia, Africa, and the Middle East.

** These are the prepared remarks of Mr. Head, who presented the luncheon address for the symposium. Due to its nature, this contribution to the symposium is only lightly footnoted.

1. WEBSTER'S MODERN DICTIONARY OF THE AMERICAN LANGUAGE 15 (1972).
2. WORLD BANK, 2004 WORLD DEVELOPMENT INDICATORS 48 (2004).
3. *Id.* at 46.
4. *Id.* at 47.
5. *Id.* at 46-47.
6. *Id.* at 47-48.
7. Marakesh Agreement Establishing the World Trade Organization, preamble 1993, *available at* http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm. (The agreement was entered into force in 1995).
8. *See* PHILIPPE SANDS & PIERRE KLEIN, BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS (2004), front cover.
9. *See* WORLD DEVELOPMENT INDICATORS, *supra* note 2, at 331 (describing the Development Assistance Committee) and 330 (listing its members).
10. *Id.* at 332.

11. *Id.* at 331.
12. *Id.* at 332.
13. *Id.*
14. *Id.*
15. *Id.*
16. In an earlier issue of the *Journal*, I offered a more extensive set of views on this topic. *See generally* John W. Head, *Essay: What Has Not Changed Since September 11—The Benefits of Multilateralism*, 12 KAN J.L. & PUB. POL'Y 1 (2002).