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What Do Trade Agreements Really Do?

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The Booth School of Business at the University of Chicago asked its panel of economics experts—made up of leading professors of economics around the country—to respond to two statements on international trade in its March 2012 survey (at http://www.igmchicago.org/surveys/free-trade). The first statement focused on attitudes towards the general concept of free trade: "Freer trade improves productive efficiency and offers consumers better choices, and in the long run these gains are much larger than any effects on employment." The second statement honed in specifically on the North American Free Trade Agreement (NAFTA): "On average, citizens of the U.S. have been better off with the North American Free Trade Agreement than they would have been if the trade rules for the U.S., Canada and Mexico prior to NAFTA had remained in place." The experts could choose among a range of options, from "strongly agree" to "strongly disagree."

There was near-unanimous support for the first statement on free trade. Of the 37 economists who answered, 35 picked "strongly agree" or "agree." Two answered "uncertain" and none disagreed. The second question on NAFTA produced a virtually identical response. Once again, no one disagreed and only two economists picked "uncertain." The only difference was that there was one less vote for "strongly agree" (reducing the tally for this option from 11 to 10) and one more vote for "agree" (raising the tally from 24 to 25).

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The consensus in favor of the general statement supporting free trade is not a surprise. Economists disagree about a lot of things, but the superiority of free trade over protection is not controversial. The principle of comparative advantage and the case for the gains from trade are crown jewels of the economics profession, so the nearly unanimous support for free trade in principle is understandable. But the almost identical level of enthusiasm expressed for the North American Free Trade Agreement—that is, for a text that runs into nearly 2,000 pages, negotiated by three governments under pressures from lobbies and special interests, and shaped by a mix of political, economic, and foreign policy objectives—is more curious.

The economists must have been aware that trade agreements, like free trade itself, create winners and losers. But how did they weight the gains and losses to reach a judgment that US citizens would be better off "on average"? Did it not matter who gained and lost, whether they were rich or poor to begin with, or whether the gains and losses would be diffuse or concentrated? What if the likely redistribution was large compared to the efficiency gains? What did they assume about the likely compensation for the losers, or did it not matter at all? And would their evaluation be any different if they knew that recent research suggests NAFTA produced minute net efficiency gains for the US economy while severely depressing wages of those groups and communities most directly affected by Mexican competition?[1]

Perhaps the experts viewed distributional questions as secondary in view of the overall gains from trade. After all, opening up to trade is analogous to technological progress. In both cases, the economic pie expands while some groups are left behind. We did not ban automobiles or light bulbs because coachmen and candle-makers would lose their jobs. So why restrict trade? As the experts in this survey contemplated whether US citizens would be better off "on average" as a result of NAFTA, it seems plausible that they viewed questions about the practical details or the distributional questions of NAFTA as secondary in view of the overall gains from trade.

This tendency to view trade agreements as an example of efficiency-enhancing policies that may nevertheless leave some people behind would be more justifiable if recent trade agreements were simply about eliminating restrictions on trade such as import tariffs and quotas. In fact, the label "free trade agreements" does not do a very good job of describing what recent proposed agreements like the Trans-Pacific Partnership (TPP), the Trans-Atlantic Trade and Investment Partnership (TTIP), and numerous other regional and bilateral trade agreements actually do.

[1] Caliendo and Parro (2015) is the most sophisticated evaluation to date of NAFTA's overall economic effects. These authors develop a multisector, multicountry Ricardian model with intermediate inputs and productive heterogeneity within sectors. They conclude that NAFTA increased US "welfare" by 0.08 percent (that is, by less than one tenth of 1 percent). Moreover half of this gain came not from an increase in efficiency but from an improvement in the US terms of trade (that is, at the expense of other countries, mainly Mexico). As for the distributional impacts, they have been recently estimated by Hakobyan and McLaren (2016). These authors find very sharp adverse effects for certain groups of workers. High school dropouts working in industries that were heavily protected by tariffs on Mexican exports prior to NAFTA experienced a drop in wage growth of as much as 17 percentage points relative to wage growth in unaffected industries.

Contemporary trade agreements go much beyond traditional trade restrictions at the border. They cover regulatory standards, health and safety rules, investment, banking and finance, intellectual property, labor, the environment, and many other subjects. They reach well beyond national borders and seek deep integration among nations rather than shallow integration, to use Lawrence's (1996) helpful distinction. According to one tabulation, 76 percent of existing preferential trade agreements covered at least some aspect of investment (such as free capital mobility) by 2011; 61 percent covered intellectual property rights protection; and 46 percent covered environmental regulations (Limão 2016).

To illustrate the changing nature of trade agreements, compare US trade agreements with two small nations, Israel and Singapore, signed two decades apart. The US–Israel Free Trade Agreement, which went into force in 1985, was the first bilateral trade agreement the US concluded in the postwar period. It is quite a short agreement—less than 8,000 words in length. It contains 22 articles and three annexes, the bulk of which are devoted to free-trade issues such as tariffs, agricultural restrictions, import licensing, and rules of origin. The US–Singapore Free Trade Agreement went into effect in 2004 and is nearly ten times as long, taking up 70,000 words. It contains 20 chapters (each with many articles), more than a dozen annexes, and multiple side letters. Of its 20 chapters, only seven cover conventional trade topics. Other chapters deal with behind-the-border topics such anti-competitive business conduct, electronic commerce, labor, the environment, investment rules, financial services, and intellectual property rights. Intellectual property rights take up a third of a page (and 81 words) in the US–Israel agreement. They occupy 23 pages (and 8,737 words) plus two side letters in the US–Singapore agreement.

Taking these new features into account requires economists to rethink their default attitudes toward trade agreements, and the politics behind them. This paper offers a starting point toward the reconsideration that is needed. I will argue that economists' conflation of free trade with trade agreements is rooted in an implicit political economy perspective that views import-competing interests as the most powerful and dominant architect of trade policy. Under this perspective, protectionists on the import side are the main villain of the story. Trade agreements, when successfully ratified, serve to counter their influence and get us closer to a welfare optimum by reducing the protectionism (or harmful regulations) that these special interests desire. In particular, they prevent beggar-thy-neighbor and beggar-thyself policies that would result in the absence of trade agreements. In achieving these ends, governments may be assisted by *other* special interests—those with a stake in expanding exports and market access abroad. But the latter play an essentially useful role, since they are merely a counterweight to the protectionist lobbies.

There is an alternative political economy perspective, one that reverses the presumption about which set of special interests hold the upper hand in trade policy. In this view, trade agreements are shaped largely by rent-seeking, self-interested behavior on the export side. Rather than reining in protectionists, trade agreements empower another set of special interests and politically well-connected firms, such as international banks, pharmaceutical companies, and multinational corporations. Such agreements may result in freer, mutually beneficial trade, through exchange of market access. But they are as likely to produce welfare-reducing, or purely redistributive outcomes under the guise of free trade.

When trade agreements were largely about import tariffs and quotas—that is before the 1980s—the second scenario may not have been particularly likely. But with trade agreements increasingly focusing on domestic rules and regulations, we can no longer say the same. Taking these new features into account requires us to cast trade agreements, and the politics behind them, in quite a different light.

Free Trade versus Free Trade Agreements

Basic trade theory suggests that free trade is the optimal policy for an economy, provided compensatory policies can be implemented and adverse interactions with market failures can be addressed through complementary policies. The only exception is that a large country may be able to manipulate its terms of trade at the expense of its trade partners, using an "optimal tariff." The latter motive provides a rationale for countries to enter into trade agreements, preventing mutually harmful trade protectionism.

Economists have long known that real-world trade agreements are difficult to understand from the lens of "optimal tariff" theory. And as trade agreements have evolved and gone beyond import tariffs and quotas into regulatory rules and harmonization (patent rules, health and safety regulations, labor standards, investor courts, and so on), they have become harder and harder to fit into received economic theory.

International agreements in such new areas produce economic consequences that are far more ambiguous than is the case of lowering traditional border barriers. They may well generate increases in the volume of trade and cross-border investment. Nevertheless their welfare and efficiency impacts are fundamentally uncertain. Here, I will sketch the issues that arise in four areas that have become common in modern trade agreements: trade-related intellectual property rights, rules about cross-border capital flows, investor-state dispute settlement procedures, and harmonization of regulatory standards.

Consider first patents and copyrights (so-called "trade-related intellectual property rights" or TRIPs). TRIPs entered the lexicon of trade during the Uruguay Round of multilateral trade negotiations, which were completed in 1994. The United States has pushed for progressively tighter rules (called TRIPs-plus) in subsequent regional and bilateral trade agreements. Typically TRIPs pit advanced countries against developing countries, with the former demanding stronger and lengthier monopoly restrictions for their firms in the latter's markets. Freer trade is supposed to be win-win, with both parties benefiting. But in TRIPs, the advanced countries' gains are largely the developing countries' losses. Consumers in the developing nations pay higher prices for pharmaceuticals and other research-intensive products and the advanced countries' firms reap higher monopoly rents. One needs to assume an implausibly high elasticity of global innovation to developing countries' patents to compensate for what is in effect a pure transfer of rents from poor to rich countries.[2] That is why many ardent proponents of free trade were opposed to the incorporation of TRIPs in the Uruguay Round (for example, Bhagwati, Krishna, and Panagariya 2014).

Nonetheless, TRIPs rules have not been dropped, and in fact expand with each new free trade agreement. Thanks to subsequent trade agreements, intellectual property protection has become broader and stronger, and much of the flexibility afforded to individual countries under the original World Trade Organization agreement has been eliminated (Sell 2011).

Second, consider restrictions on nations' ability to manage cross-border capital flows. Starting with its bilateral trade agreements with Singapore and Chile in 2003, the US government has sought and obtained agreements that enforce open capital accounts as a rule. These agreements make it difficult for signatories to manage cross-border capital flows, including in short-term financial instruments. In many recent US trade agreements, such restrictions apply even in times of macroeconomic and financial crisis. This has raised eyebrows even at the International Monetary Fund (Siegel 2013).

Paradoxically, capital account liberalization became a norm in trade agreements just as professional opinion among economists was becoming more skeptical about the wisdom of free capital flows. The frequency and severity of financial crises associated with financial globalization have led many experts to believe that direct restrictions on the capital account have a second-best role to complement prudential regulation and, possibly, to provide temporary breathing space during moments of extreme financial stress. The International Monetary Fund itself, once at the vanguard of the push for capital-account liberalization, has officially revised its stance on capital controls. It now acknowledges a useful role for them where more direct remedies for underlying macroeconomic and financial imbalances are not available. Yet investment and financial services provisions in many free-trade agreements run blithely against this new consensus among economists.

A third area where trade agreements include provisions of questionable merit are the so-called "investor-state dispute settlement" (ISDS) procedures. These provisions have been imported into trade agreements from bilateral investment treaties. They are an anomaly in that they enable foreign investors, and they alone, to sue host governments in special arbitration tribunals and to seek monetary damages for regulatory, tax, and other policy changes that reduce their profits. Foreign investors (and their governments) see ISDS as protection against expropriation, but in

[2] See Diwan and Rodrik (1991) for an attempt to justify TRIPS from the standpoint of developing nations. The history of this paper is of some interest. It was written while I was visiting the World Bank as a junior researcher and at a time when developing nations were strenuously objecting to the US push for TRIPS in the Uruguay Round. The paper was motivated by a challenge that came down to us from the then chief economist of the World Bank. Wouldn't it be nice if someone could make a positive economic case for TRIPS for the developing nations? It turned out someone could.

practice arbitration tribunals interpret the protections provided more broadly than under, say, domestic US law (Johnson, Sachs, and Sachs 2015).

Developing countries traditionally have signed on to investor–state dispute settlement procedures in the expectation that they would compensate for their weak legal regimes and help attract direct foreign investment. But ISDS also suffers from its own problems: it operates outside accepted legal regimes, gives arbitrators too much power, does not follow or set precedents, and allows no appeal. Whatever the merits of ISDS for developing nations, it is more difficult to justify its inclusion in trade agreements among advanced countries with well-functioning legal systems (like the prospective Transatlantic Trade and Investment Partnership between the United States and European countries).[3]

Finally, consider the pursuit of the harmonization of regulatory standards that lies at the center of today's trade agreements. The justification for harmonization is that eliminating regulatory differences among nations reduces the transaction costs associated with doing business across borders. Taking this line of argument one step further, proponents sometimes label regulatory standards abroad that are more demanding than those at home as "non-tariff barriers." There is little question that governments sometimes do deploy regulations to favor domestic producers over foreign ones. But these differences may also reflect dissimilar consumer preferences or divergent regulatory styles. European bans on genetically modified organisms and hormone-fed beef, for example, are rooted not in protectionist motives—the same bans apply to domestic producers as well—but in pressures from consumer groups at home. The US government, for its part, considers them as protectionist barriers, and dispute-settlement panels of the World Trade Organization have often agreed (Euractiv 2006 [updated 2012]).

For economists, the trouble is that unlike in the case of tariffs and quotas, there is no natural benchmark that allows us to judge whether a regulatory standard is excessive or protectionist. Different national assessments of risk—safety, environmental, health—and varying conceptions of how business should relate to its stakeholders—employees, suppliers, consumers, local communities—will produce different standards, none obviously superior to others.

In the language of economics, regulatory standards are public goods over which different nations have different preferences. An optimal international arrangement would trade off the benefits of expanding market integration (by reducing regulatory diversity) against the costs of excessive harmonization. But in general, we have only a hazy idea where that optimal point may lie, which in any case will vary across different policy domains. Perhaps regulators and trade negotiators do their

[3] For some statistics on the use of investor-state dispute settlement procedures, see UNCTAD (2015, chapter III). Of all concluded cases as of end-2014, 27 percent resulted in a ruling in favor of the investor. Twenty-seven percent of the cases were settled, 9 percent were discontinued, and in 2 percent of cases, the state was found in breach but no damages were awarded. In the rest of the cases (36 percent), rulings were in favor of the state. Note that even when the state "wins" in these cases, it is at most awarded its legal costs.

job properly and assess the costs and benefits appropriately, safeguarding room for diversity. Perhaps not.

Regardless, it is curious that economists tend to be nearly unanimous in their view that trade agreements are a good thing. Despite not knowing much about the details, they must believe such agreements regularly strike the right balance in all these areas of ambiguity.[4] Is it that none of these complications matter as long as the agreement is called a "free trade agreement"?

The tendency to associate "free trade agreements" all too closely with "free trade" may result from the fact that the new (and often problematic) beyond-the-border features of these agreements have not yet made their mark on the collective unconsciousness of economists. But I suspect it also results from a certain implicit, hand-waving kind of political economy analysis. In this perspective, protectionist interests are the dominant influence in the determination of trade and other policies. Hence, in the absence of trade agreements, barriers to trade are too high and there is too little trade. Trade agreements are in turn a mechanism through which protectionist interests can be neutralized. The specific details of the agreement do not matter much as long as trade-creating interests are empowered to offset the otherwise dominant protectionist influences. In other words, trade agreements must move us in a desirable direction because they are a counterweight to protectionists.

This inference is valid as long as the argument's premise is correct—namely, that trade agreements on balance empower the special interests more closely aligned with good economic performance. But what if they empower the wrong special interests instead—the investors, banks, and multinational enterprises seeking to increase rents at the expense of the general interest?

When trade agreements are mostly about tariffs and quotas, there is an easy way to tell the difference. The presence of high tariffs before the agreement and tariff reduction as a result of the agreement provide prima facie evidence that protectionists were the dominant influence before the agreement and that they were countervailed through the agreement. But this intuition does not carry over to trade agreements on domestic rules, regulations, and standards because we do not readily know where the efficient benchmark is. A trade agreement captured by an alternative set of special interests may make things worse just as easily as it makes them better. Such an agreement can move us away from the efficient outcome, even if it takes the guise of a free trade agreement and expands the volume of trade and investment.

There is plenty of anecdotal evidence of rent-seeking by firms that favor trade agreements. But to put this evidence in context, let us first examine why countries sign trade agreements in the first place.

[4] An additional area of concern raised by trade specialists early on in the context of NAFTA was the design of the rules of origin, the regulations that determine whether a good imported by one country receives duty-free treatment within the free trade area. Krueger (1993) and others worried that restrictive rules of origin would essentially extend the more protectionist country's tariffs to the other partners. (This concern does not arise in customs unions where countries adopt a common external tariff.)

The Logic of Trade Agreements

When economists teach gains from trade, they emphasize that free trade is good for each nation on its own. (What it means to say "good for the nation" in the presence of losers as well as gainers is, of course, a thorny issue, but I will leave that aside, in keeping with the standard treatment.[5]) Ricardo's (1817) demonstration of the principle of comparative advantage—free trade expands a nation's consumption possibilities frontier even if it has an absolute productivity advantage in producing every good—remains one of our profession's most significant intellectual achievements. A direct implication is that countries should want to have free trade regardless of what their trade partners do. Responding to another country's protectionism by raising one's own trade barriers is tantamount to cutting off the nose to spite the face.

If this insight were the end of the story, the presence (and proliferation) of trade agreements would be a mystifying puzzle. What is the point of signing agreements with other countries to do what is in your national interest in the first place? A possible answer was provided early on by Harry Johnson (1953). Countries that are "large" in world markets have the incentive to exploit their market power. An import tariff restricts home demand for other countries' exports and drives down the world price of the imported good. A Nash equilibrium among large countries would be inefficient, as each country would be imposing its own, positive "optimal" tariffs. Correspondingly, a trade agreement that enforced free trade could leave all the countries better off.

Even if the logic of this argument is accepted, the question remains of why a *formal* trade agreement is needed, such as the World Trade Organization or NAFTA. After all, a free-trade equilibrium can be achieved through cooperation in a repeated interaction game. In addition, one can ask whether a formal agreement on its own can prevent opportunistic behavior on the part of sovereign nations. Nonetheless, the motive to manipulate the terms-of-trade provides a valid economic motive for countries to commit themselves to free trade by signing on to trade agreements.[6]

However, this theory does not sit well with the fact that actual policymakers do not seem very concerned about the terms of trade when they negotiate trade agreements. They tend to care more about the volume of trade: nations like it when their exports grow, but not so much when their imports expand. Effectively, nations trade market access: more of your imports in return for more of my exports. Moreover, these preferences do not seem to be grounded in the effects that trade volumes have on world market prices. It is true that home policies that lower import demand tend to reduce world market prices of imports, and hence improve the terms of

[5] However, Driskill (2012) takes the profession to task, correctly, for sweeping distribution under the rug when discussing the "welfare gains" from trade.

[6] See Grossman (2016) for an exposition of the Johnson argument and the subsequent literature. Bagwell and Staiger (2002) have been the most consistent and prolific defenders of this perspective on trade agreements.

trade. But on the export side, general government practice consists of boosting export supply, through export subsidies, credits, and other assistance, rather than reducing it. This has the effect of lowering export prices on world markets, and hence worsening the terms of trade.

Also, if trade agreements are really about curbing terms-of-trade manipulation, what do we make of the prohibition on export subsidies in the World Trade Organization? When a government resorts to export subsidies, it worsens its own terms of trade and confers economic benefits on other nations. If it does so nevertheless, it must be for noneconomic or special-interest reasons. Regardless, there would be no reason for trade agreements to prohibit their use. As Grossman (2016) notes, "the literature offers no compelling reason why trade agreements should outlaw export subsidies in a trading environment characterized by perfectly competitive markets."[7]

Trade policy practitioners seem to worry little about international terms-of-trade spillovers. Instead, they tend to justify trade agreements by reference to the politics of trade policy at home: Trade agreements are what enable governments to say "no" to domestic import-competing interests. Absent trade agreements, this argument goes, governments are too easily tempted to do the easy thing and provide import protection when faced with short-term political pressures (for example, Bown 2016).

A number of academic papers conceptualize this argument in the form of a time-inconsistency problem (for example, Staiger and Tabellini 1987; Maggi and Rodriguez-Clare 1998). In this framework, the government knows that free trade is the best policy in the long run. But it faces short-term political pressures to respond to organized interest groups. Forward-looking workers and capitalists understand the difference between the government's short-run and long-run incentives and behave accordingly. In particular, they make their investment decisions so as to ensure the government provides them with trade protection. In these settings, trade agreements are a commitment device for governments to withstand political pressure from future protectionists. As Grossman (2016) notes, we may question whether there is not an easier way of purchasing such commitment than negotiating very complicated deals with multiple partners over many years. Nevertheless, the view that trade agreements serve to neutralize protectionist special interests is very widely held.

This commitment or lock-in argument is analogous to the familiar case for policy delegation in other areas with dynamic inconsistency, such as monetary policy (justifying an independent central bank) or business regulation (justifying autonomous regulatory agencies). In any of these settings, the validity of the policy conclusion depends critically on the specification of the game that is being played between the government and special interests.

When there is a genuine time consistency problem, everyone is better off with pre-commitment or delegation (save, possibly for the lobbyists and special interests). When protectionists show up at the government's door, the government says:

[7] Under imperfect competition, countries may have an economic incentive to use export subsidies to shift excess profits from foreign firms to domestic firms. See Grossman (2016, section 3) for a discussion.

"Sorry, I'd love to help you out, but the trade agreement will not let me do it." This is the good kind of delegation and external discipline.

Now consider a different setting. Here, the government fears not its future self, but its future *opponents*: the opposition party (or parties). The latter may have different views on economic policy, and if victorious in the next election, the opposition may well choose to shift course. In this situation, an incumbent government enters an international agreement to tie the hands of its opponents. From the standpoint of social welfare, this strategy has much less to recommend itself. The future government may have better or worse ideas about government policy, and it is not clear that restricting what it can do in the future is a win-win outcome. This government too will present its case in traditional delegation terms. But what it is really doing is to ensure the permanence of partisan policies.[8]

Now suppose further that the current government is captured by special interests—but by exporter lobbies instead of import-competing lobbies. In this case, the government's objectives are explicitly redistributive, to transfer rents from the rest of society to a special interest. But unlike in the usual model, the rent-seekers are not the traditional protectionists. They are pharmaceutical companies seeking tighter patent rules, financial institutions that want to limit ability of countries to manage capital flows, or multinational companies that seek special tribunals to enforce claims against host governments. In this setting, trade agreements serve to empower special interests, rather than rein them in.

Whose Interests Do Trade Agreements Serve?

With traditional trade agreements, which focused on reducing tariff and nontariff barriers to trade, it was relatively easy to figure out which of these different models approximated reality better. Consider for example the GATT (General Agreement on Tariffs and Trade) rounds of multilateral trade negotiations before the World Trade Organization was established in 1995. Tariff levels were high after World War II, and negotiations were largely about bringing them down. Few other issues were discussed beyond tariffs and other explicit barriers at the border. The fact that tariffs were high to begin with is prima facie evidence that protectionist interests had previously held the upper hand in the political equilibrium. The fact that trade agreements succeeded in lowering tariffs is evidence that such agreements served to counteract those protectionist interests. In other words, the trade-agreements-as-political-commitment story worked pretty well. It suggests that these agreements were moving the economies of the negotiating parties broadly in the right direction.

[8] Of course, if trade deals are the outcome of partisan politics, there will be pressure in the future to renege on them, once political power changes hands. But this is no different than in the standard time-inconsistency case, where short-term incentives always militate in favor of reneging on trade agreements. In both cases, the argument relies on the presence of costs that render international agreements hard to reverse.

With post-1995 trade agreements, matters are no longer so simple. Tariffs and explicit barriers to trade have dropped considerably, and many new areas of negotiation have opened up in which there is typically no efficient "free-trade" benchmark analogous to the role that zero duties play in the context of tariffs. Do Vietnam's capital-account regulations, say, or patent rules serve the country's economic development well or poorly? Are European Union food safety regulations closely aligned with European consumers' risk preferences or do they privilege producer interests too much? Does US jurisprudence provide adequate protections for foreign investors, or not? To be sure, domestic regulations and product standards can be enacted for protectionist purposes—simply to keep competing imports out. But they can be also used to serve developmental, social, or other deserving goals.

If countries have gotten the balance wrong in these and other areas, can we be at all sure that trade agreements such as the Trans-Pacific Partnership or the Transatlantic Trade and Investment Partnership will move their policies closer to the social optimum—and not further away? Can the dispute settlement process provided by such trade agreements draw the appropriate distinctions in practice between pure protectionism and legitimate regulatory divergence?[9]

It is hard to provide a definitive answer to these questions. What is clear is that we cannot simply look at whether agreements are trade-creating or not and evaluate them on that basis. It is all too easy to come up with examples where too much regulatory harmonization in the name of reducing transaction costs to trade leaves at least one of the negotiating parties worse off. The case of tightening intellectual property rights in developing countries, mentioned earlier, is a prominent example. Erosion of consumer protections in high-standard countries may likewise expand trade, but it will not leave importing countries better off. It is similarly easy to see that agreements that privilege investors or corporations over other interests (like labor or the environment) can end up producing largely redistributive consequences with few efficiency gains. That fear is widespread among opponents of investor courts.

Potential trade-offs arise in all of these areas: regulatory harmonization may spur trade, but it could also prevent regulations from reflecting domestic preferences. A proper negotiating process would take both sides of the ledger into account. The texts of trade agreements pay plenty of lip service to economic and social goals beyond trade. However, these are fundamentally *trade* deals. They are not negotiations on public health, regulatory experimentation, promoting structural change and industrialization in developing nations, or protecting labor standards in the advanced economies. It would not be surprising if the process were captured by

[9] See Sykes (2017) for some of the difficulties. Howse and Tuerk (2001) provide an early discussion of WTO jurisprudence, drawing attention to the risk that WTO rules can be used to challenge domestic regulations aimed at addressing serious health risks. The specific case they discuss is a case brought by Canada against France's ban on asbestos in construction materials. Even though the WTO panel ultimately ruled against Canada, it accepted the basis of the claim, namely that asbestos and non-asbestos materials were "like products" and that therefore France had discriminated against Canadian imports.

trade interests. Nor should it be unexpected that the success of the agreements is typically gauged by the volume of trade they create.

We could gain further insight into specific outcomes by looking at the actual process through which trade agreements are negotiated. However, such negotiations are typically secret—a feature that draws the ire of labor, public-interest groups, and many politicians. During the Trans-Pacific Partnership negotiations, for example, only two copies of the text were made available in special reading rooms to US congressmen and their staff with special security clearances (Bradner 2015). And even these readers could be prosecuted if they revealed the contents to the public.

The ostensible reason for secrecy is to facilitate the back-and-forth dealing needed to produce compromise. But from the perspective of broader social welfare, secrecy is a mixed blessing. It may promote quicker bargains. But it also tends to bias the results against interests not present in the negotiation (Kucik and Pelc 2016). Business is rarely far from the actual negotiations. In fact, it is commonplace for business lobbyists to wait just outside the negotiation room and influence the outcome in real time (for example, see the account of NAFTA negotiations in Smith 2015).

One of the better-known and most instructive cases is the story of trade-related intellectual property rights, or TRIPs. The inclusion of TRIPs in the 1994 agreement that established the World Trade Organization was a landmark event. As Devereaux, Lawrence, and Watkins (2006, p. 42) write, "[a]fter seven years of negotiating, industries that rely on copyrights, patents, and trademarks received more protection than anyone had believed possible at the outset of the talks." Business interests had been pushing since at least the 1970s to get the US government to enforce patent and copyright protections abroad. The conventional international forum for discussion of such issues was the World Intellectual Property Organization (WIPO). However, US firms regarded WIPO as an ineffective UN agency dominated by developing countries. A coalition made up of agrochemical companies like Monsanto, trademark-based companies such as Levi-Strauss and Samsonite, pharmaceutical companies like Pfizer, and computer companies such as IBM effectively redefined TRIPs as a trade issue. They managed to engineer what political scientists call "forum shifting," moving the focus of international negotiation from WIPO to what would eventually become the World Trade Organization. US firms coordinated with their counterparts in Europe and Japan to develop minimum standards on which they would agree. These standards would in turn significantly shape the final agreement that emerged from the Uruguay Round (Devereaux, Lawrence, and Watkins 2006; Sell 2011).

The shift in forums from the World Intellectual Property Organization to the World Trade Organization was a brilliant strategic move for business. It ensured that commercial considerations would dominate and outweigh other goals, such as implications for economic development and public health. But TRIPs was only the beginning. Following their success with using the Uruguay Round to pursue their goals for protection of intellectual property, pharmaceutical and other companies engaged in what Sell (2011) calls "vertical" forum shifting—that is, pushing for and obtaining further protections in specific free trade agreements. The United States had much greater bargaining leverage vis-à-vis individual developing nations in bilateral or regional trade agreements. Once a precedent had been set in the WTO talks, it was now possible to go considerably beyond TRIPs. Pharmaceutical companies were able to obtain test data exclusivity (preventing generics providers from using the same data in their own licensing applications), a prohibition on parallel imports (of original products, but by other than the patent-holders), severe restrictions on compulsory licensing requirements by host governments, and automatic patent term extensions (Sell 2011). The Trans-Pacific Partnership (TPP), the latest of these agreements, has such broad protection of intellectual property that the head of the World Health Organization has spoken out against it, blaming interference by "powerful economic operators" (Germanos 2015).[10]

The influence of special interests is rarely exercised through the naked application of power—do this, or else! Instead, these groups get their way by convincing policymakers and the broader public that certain of their goals also further the public interest. The success of TRIPs had to do in no small part with the framing of the issue in terms that gave it broad legitimacy and appeal. Thus, what might have been more accurately called monopoly rents were transformed into "property rights." Then firms abroad who imitated and reverse-engineered technologies of the more advanced countries became engaged in "piracy," even though this is a time-honored practice by technologically lagging countries, including today's developed countries in the past. As one prominent example, many of Boston's original textile mill owners "stole" their designs from Lancashire, taking elaborate steps to evade British intellectual property rights protections (Morris 2012). With some hand-waving, preserving the monopoly of US film studios, pharmaceutical companies, and fashion houses turned into a fundamental issue of free trade.

Pro-trade business interests are known to have played a significant role in the expansion of trade agreements into other new areas beyond intellectual property. For example, the push to include services in multilateral trade negotiations took place at the behest of American firms. Services differ from trade in goods insofar they often require changes in domestic regulations. Financial services is a good example. As Marchetti and Mavroidis (2011, p. 692) write, "it was the US financial

[10] Even though US pharmaceutical companies would have gotten a better deal under the Trans-Pacific Partnership than they ever had, they were dissatisfied at the end because they could not get the other countries to agree to the 12-year protection in biologics that they currently enjoy in the United States. They got a minimum of five years instead, with three additional years under special regulatory safeguards. Mark Grayson, a spokesman for PhRMA, which represents top pharmaceutical companies, is quoted as saying: "They were supposed to come back with U.S. law on [intellectual property] rights, and they didn't, and our board is very disappointed" (Ferris 2015). For another perspective, Branstetter (2016) concludes that TPP struck a reasonable balance between incentives to innovation and access to medicines. He praises the agreement for exporting the US regulatory model (specifically, the Drug Price Competition and Patent Term Restoration Act of 1984, often known Hatch–Waxman Act) to the Asia-Pacific context. But given that the parties to the trade agreement are at very different stages of development, it is not clear that a similar model is suitable for all, rather than being a mechanism for rent shifting from less-developed to more-developed countries. Moreover, empirical research fails to find strong effects on innovation from more restrictive patents (Boldrin and Levine 2012; Moser 2013; Sakakibara and Branstetter 1999; Branstetter 2004).

services sectors that first argued systematically in favor of a trade round that would include a chapter on liberalization of trade in services." A key role was played by the Coalition of Service Industries, a trade group representing US service industries, which focused its energies on the right of establishment of financial and insurance companies in foreign countries: "The CSI gathered data, organized conferences, engaged in extensive public lecturing, and heavily lobbied the US government to this effect" (p. 693). The heads of Citibank and American Express each headed key advisory groups organized by the US Trade Representative in the run-up to the Uruguay Round agreement in 1994. American Express was especially active, with its executives building up a domestic lobby, establishing links with other service-industry lobbies around the world, and exerting influence on US policy through direct participation in negotiations with other countries (Yoffie 1990, cited in Marchetti and Mavroidis 2011).

Interestingly, this lobbying to expand markets abroad in services has not done much to nullify service protectionism in the United States itself—unlike in the traditional account of what trade agreements do. For example, one of the most blatant forms of US protectionism is the Merchant Marine Act of 1920 (often known as the Jones Act), which prevents foreign ships from serving domestic US shipping lines. The objective of the law is to maintain a strong US shipbuilding industry and merchant marine, ostensibly for national security purposes. But the protectionist intent and consequences are clear (Grennes 2017). It has remained untouched in all the trade agreements the United States has negotiated, including the Trans-Pacific Partnership.

As trade agreements move into these new areas, the role of business lobbies changes as well. Governments have to rely on knowledge and expertise from businesses to negotiate complex regulatory changes. Hence, business lobbies become partners and collaborators for the trade negotiators: they help define the issue, provide information and expertise, and mobilize support from other business groups transnationally. As Woll and Artigas (2007, p. 131) put it, "[u]nlike the exchange model assumed in the traditional economic models, firms do not just exchange votes or money to lobby against regulation. Rather, they offer expertise and political support in exchange for access to the elaboration of specific stakes." Business lobbies also become much more intimately involved in the actual trade negotiations, sometimes forming a larger part of the delegation than the actual government representatives (Woll and Artigas 2007).

A rough idea of who actually lobbies for trade agreements can be obtained from data collected by the Sunlight Foundation for the Trans-Pacific Partnership. Their analysis is based on public lobbying reports issued by corporations and industry associations, and whether the TPP is mentioned by name in those reports (as reported by Drutman 2014). Perhaps unsurprisingly, pharmaceutical manufacturing firms and PhRMA (the industry association) dominate the list. Others that stand out are auto manufacturers, milk and dairy producers, textiles and fabrics firms, information technology firms, and the entertainment industry. Labor unions such as United Steelworkers and AFL-CIO, which are traditionally associated with protectionist motives, tend to lag behind these industry-based groups.

Business interests exert influence also through their presence in the various trade advisory committees that are set up in the course of trade negotiations. Such committees are in principle made up of a wide range of all the stakeholders, including labor groups and environmental nongovernment organizations who may have a negative view of conventional trade agreements. But business representatives and trade associations are by far the dominant group, making up more than 80 percent of the membership of such committees during the negotiation of Trans-Pacific Partnership (as reported in Ingraham 2014; Ingraham and Schneider 2014).

Systematic studies of how interest groups on different sides of trade agreements shape the negotiations are rare, given the lack of transparency of the process. However, one analysis of Swedish lobbies takes advantage of the fact that Sweden has a far-reaching freedom-of-information clause in its constitution, which enabled Rönnbäck (2015) to access all the documents behind trade policy formulation in the country during the Uruguay Round. As Rönnbäck points out, the commonly maintained assumption in the literature on the political economy of trade is that the process is influenced overwhelmingly by import-competing, protectionist interests. Trade agreements are signed *despite* these interests, not because of them. But Rönnbäck found that the approach pursued by the Swedish government in the trade negotiations was not only in line with special-interest lobbying, but it was largely shaped by it. The interest groups that played the determining role in the consultative process were in favor of expanding trade. But the interests of these groups were not in tariffs per se, which were already low. Instead their demand was "to broaden the scope of the agenda of the GATT, by including issues such as trade in services, investment measures and public tender agreements" (p. 286). In other words, industry lobbies pushed for deep integration measures beyond the standard free-trade policies.

Rönnbäck's (2015) study also documents how trade negotiations can help special interests coordinate across national borders. Apparently Swedish businesses initially did not show much awareness—or interest in—intellectual property rights. But as the United States pushed harder on TRIPs in the negotiations, the issue rose in prominence among Swedish interest groups. As Rönnbäck (p. 287) puts it: "It seems as if the interest groups only realized the potential for economic rents that the trade negotiations could offer quite slowly, as the negotiations progressed. As soon as the Swedish interest groups realized this potential, however, they did not hesitate to act and make demands on the government." As individual corporations such as Astra as well as the Pharmaceutical Industry Association took up the cause, Sweden's government followed suit. By the late 1980s, any doubts the Swedish government may have harbored about the wisdom of including TRIPs in the Uruguay Round seems to have vanished. In the years leading to the final agreement, the intellectual property issue came to be "described as among the most important for the Swedish interests" (p. 288).

Finally, the influence of special interests also shows up in the dog that does not bark: potential areas of negotiation with high social returns that are left out of the trade agenda. One such area that touches directly the interests of large firms is global tax-and-subsidy competition. In a world with mobile capital, governments are tempted to offer better terms to globally mobile corporations in order to compete for investment. This results in a sub-optimal Nash equilibrium with larger transfers to corporations and their shareholders than is globally desirable. In practice, the effects show up in two areas: investment subsidies (in the form of tax holidays and other sweeteners) and reductions in corporate tax rates. In view of the obvious cross-border externalities, enacting global disciplines on tax-and-subsidy competition would make excellent economic sense. Yet trade agreements never touch on this issue. They are replete with restrictions on what home governments can do to impose obligations on foreign investors. But they do not prevent these governments from wasting tax dollars and enriching corporations in a harmful race to the bottom.

Ammunition to the Barbarians?

When I recently gave a talk arguing that economists underplay some of the adverse consequences of advanced globalization, an economist in the audience took me to task: Don't you worry, he asked, that your arguments will be used (or abused) by populists and protectionists to further their own interests? It is a reaction that reminds me of a response from a distinguished economist more than two decades ago to my 1997 monograph *Has Globalization Gone Too Far?* All your arguments are fine, he told me, but they will give "ammunition to the barbarians."

The objection is instructive insofar as it lays bare the implicit political economy understanding with which economists tend to approach public discussions of trade policy. In this perspective, the serious threats to sensible trade policy nearly always come from the import protectionists, and trade agreements mainly offset the influence of the protectionists. But as trade agreements have evolved and gone beyond import tariffs and quotas into regulatory rules and harmonization—intellectual property, health and safety rules, labor standards, investment measures, investor-state dispute settlement procedures, and others—they have become harder and harder to fit into received economic theory. Why do many economists presume that it is more dangerous to express skepticism in public about these rules than it is to cheerlead? In other words, why do they think that there are barbarians only on one side of the issue?

I have presented an alternative perspective in this paper. Rather than neutralizing the protectionists, trade agreements may empower a different set of rent-seeking interests and politically well-connected firms—international banks, pharmaceutical companies, and multinational firms. They may serve to internationalize the influence of these powerful domestic interests. Trade agreements could still result in freer, mutually beneficial trade, through exchange of market access. They could result in the global upgrading of regulations and standards, for labor, say, or the environment. But they could also produce purely redistributive outcomes under the guise of "freer trade." As trade agreements become less about tariffs and nontariff barriers at the border and more about domestic rules and regulations, economists might do well to worry more about the latter possibility. They may even adopt a stance of rebuttable prejudice against these new-type trade deals—a prejudice against these deals, which should be overturned only with demonstrable evidence of their benefits.

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