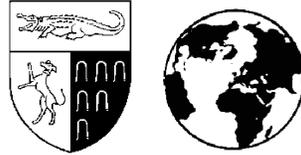


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A World Trade Organization for Workers?

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This essay reviews the role of trade and trade agreements in economic growth and wealth distribution. It is intended as a response to recent criticisms of trade and trade agreements. These criticisms have come from both the populist right and the anti-market left and largely focus on the effect of trade and trade agreements on employment. The conclusion of this analysis is that (1) continuing trade liberalization promotes the interests of workers as a class; (2) the trade aspects of trade agreements¹ as currently framed do not systematically harm workers as a class; and (3) a progressive agenda to advance the interests of workers should focus not on opposing trade liberalization but on adding collective bargaining and social safety net requirements to trade agreements.

I. TRADE LIBERALIZATION PROMOTES THE OVERALL POSITION OF WORKERS

In this section, I review the facts regarding the effects of trade liberalization on workers in both wealthy and poor countries. “Economists have long known that opening up to trade causes income redistribution and absolute losses for some groups even as it enlarges the national economic pie overall.”² The “China Shock” literature by Autor, Dorn, and Hansen (ADH) did not reveal for the first

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1. Due space constraints, I do not analyze intellectual property or investment provisions because they are not directly linked to trade liberalization. As to investment provisions, and in particular investor-state dispute settlement, these had already been established extensively within bilateral investment treaties before it became popular to include them in free trade agreements (and they are not included in the World Trade Organization). There is little evidence that they have been a significant problem for workers, or for non-discriminatory regulatory autonomy, although NGOs, politicians, and other commentators have inflated their importance, perhaps causing the very “regulatory chill” they criticize. Intellectual property provisions, while having little identifiable differentiated effect on workers, are more ambiguous.

2. DANI RODRIK, *STRAIGHT TALK ON TRADE: IDEAS FOR A SANE WORLD ECONOMY* 203 (2017) (emphasis in original).

time that trade liberalization imposes losses on import competing workers.³ Before ADH, it was already well known that trade creates diffuse benefits and concentrated costs.⁴ What ADH did show was that because labor market adjustment is difficult, the concentrated costs are persistent and debilitating. Nonetheless, this effect is small relative to overall churn in labor markets caused by competition, changing consumer preferences, and, most importantly, technological advances. As Harvard's Dani Rodrik notes, "trade is only weakly implicated in the major economic problems of the day—deindustrialization and income inequality."⁵ Rodrik explains:

Some suggest trade is problematic because it redistributes income. The basis for that claim is true, but trivial. Pretty much everything else that happens in a market economy redistributes income somehow. Technology and market competition are the source of endless churn in an economy. Moreover, plenty of other things, including skill-based innovation and minimum wage laws, have vastly greater effects on income distribution than trade per se.⁶

In the aggregate, the effect of trade liberalization is positive. First, it raises GDP in liberalizing countries.⁷ Second, it has contributed to a significant reduction in global—as opposed to domestic—inequality. Increased global trade has brought massive benefits to poor people, mostly in China, during the past 20 years. Even in wealthy countries, trade liberalization has improved average welfare. Notably, it has a net positive impact on employment when export-based employment and services employment are taken into account. In the United States, for example, trade with China increased labor demand by 1.7 million jobs, largely in the services industry.⁸ Furthermore, trade barriers often operate as a regressive tax: trade liberalization increases consumption opportunities for workers.

Thus, on balance, trade liberalization is good for poor countries and good for workers in wealthy countries. Of course, any market, whether domestic or international, produces winners and losers. The winners win enough to compensate the losers—the aggregate is positive—but in the United States, this compensation is practically non-existent. In contrast, a number of European States maintain substantial and general social safety nets that can protect harmed

3. For a summary of this work, see David H. Autor, *Trade and Labor Markets: Lessons from China's Rise*, IZA WORLD OF LAB. (2018), <http://chinashock.info/wp-content/uploads/2018/02/Lessons-from-Chinas-Rise-IZA.pdf>. For a response, focusing on positive employment effects of exports, see Robert Feenstra, Hong Ma, Akira Sasahara & Yuan Xu, *Reconsidering the 'China Shock' in Trade*, VOX (Jan. 18, 2018), <http://voxeu.org/article/reconsidering-china-shock-trade>.

4. See Sebastian Edwards, *Openness, Productivity, and Growth: What Do We Really Know?*, 108 ECON. J. 383 (1998).

5. RODRIK, *supra* note 2, at 233.

6. *Id.* at 229. Boudreaux calculates that even the jobs lost due to the "China shock" from 1999-2011 (without netting out jobs gained in production for export) were about the same in number as normal churn in the United States over a single 41-day period. See Donald J. Boudreaux, *Trade Is Not a Job Killer*, N.Y. TIMES (Mar. 28, 2018), <http://www.nytimes.com/2018/03/28/opinion/trump-tariffs-trade-war.html>.

7. See RODRIK, *supra* note 2, at 203; Autor, *supra* note 3.

8. Robert C. Feenstra & Akira Sasahara, *The 'China Shock', Exports and U.S. Employment: A Global Input-Output Analysis* (NBER, Working Paper 24022, 2018); see also Bernard Hoekman & Douglas R. Nelson, *Reflecting on Populism and the Economics of Globalization*, 1 J. INT'L BUS. POL'Y 34 (2018).

workers.

II. THE SCAPEGOATING OF TRADE AGREEMENTS

What about the impact of trade agreements, as distinct from liberalized trade per se, on wealth distribution? Dani Rodrik, a leading economist and a leading critic of trade agreements, argues that trade agreement provisions in support of what he calls “hyperglobalization”—principally restrictions on discriminatory or disproportionate product or services regulation—excessively restrict national regulatory autonomy. In this section, I review the ways in which Rodrik alleges that trade agreement provisions—and “global governance” measures in general⁹—cause harm to workers in both developing and developed countries. I argue that these allegations are fundamentally incoherent. Simply put, there is no evidence that the types of trade agreement provisions Rodrik criticizes¹⁰ cause any harm to any particular States or to workers as a class within any State. Moreover, Rodrik’s attack on global governance is a non-sequitur: global governance has nothing to do with the distributive problems caused by trade liberalization. To the contrary, global governance could play a role in addressing these problems.

Rodrik, like all other competent economists, recognizes that liberalized trade generally improves national wealth. It thus follows—and Rodrik agrees¹¹—that States should autonomously reduce their own barriers to trade in order to improve their national wealth. This is particularly true in the age of complex international supply chains, which have heightened the adverse effects of protectionist policies. For example, just as protectionism in steel harms a given country’s national competitiveness in steel-using fields of production, protectionism in intermediate products hinders national competitiveness in related areas.

Rodrik goes further than most, however. He asserts that it is inappropriate for international law to address States’ failure to act in accordance with their economic interests.¹² Rodrik describes economic policy in general (other than the maintenance of large surpluses through monetary policy) and trade barriers in particular as “beggar thyself” policies that can be addressed simply by good national governance, and he leaves no room for intervention from international law.¹³ In these areas, international law is both unnecessary and unavailing, because international institutions “are easily overwhelmed by the same special vested interests that undermine domestic policy.”¹⁴ For Rodrik, “global governance”—a synonym for international law—is appropriate only for what he considers “truly global problems,” such as global warming.¹⁵

9. RODRIK, *supra* note 2, at 206.

10. My analysis does not include intellectual property or investment provisions. *See supra* note 1.

11. RODRIK, *supra* note 2, at 207-08.

12. *Id.* at 208.

13. *Id.* at 209.

14. *Id.*

15. *Id.* at 207.

Rodrik's argument is flawed for three reasons. First, States do not behave as economists think they should. Rather, economists and political scientists have long understood protectionist policies as the result of a stable domestic political equilibrium in which the political power of concentrated import-competing industries overcomes that of dispersed consumers, even though such policies reduce overall welfare.¹⁶ However, reciprocity through trade agreements can add to the political power of exporting interests in order to help to establish liberalized policy. Reciprocity through trade agreements engages domestic exporters in seeking domestic liberalization, in reciprocal exchange for market opportunities abroad resulting from foreign commitments to reduce trade barriers.

So it is not enough to claim, as Rodrik does, that these “beggar thyself” policies will right themselves and do not require global governance. International law is a tool of exchange between States, but it does not directly address exchange of economic welfare. Instead, it facilitates politically-motivated exchange: agreements that make the relevant governments better off in political terms.¹⁷

Second, protectionism is a “truly global problem”: the adverse effects of protectionism are not solely felt at home. Protectionism hurts foreign exporters and their workers and reduces global wealth through trade externalities that affect outsiders. To this extent, notwithstanding Rodrik's assertions to the contrary,¹⁸ the trading system is a global commons. While it is true that not every externality needs to be internalized, reciprocal liberalization agreements such as the Agreement Establishing the World Trade Organization (WTO) are effective in reducing these harms.¹⁹

Third, Rodrik takes an excessively narrow view of States' right to regulate. Despite Rodrik's view that as a “beggar thyself” policy, protectionism need only be addressed at the national level, he does not criticize “streamlined” tariff reduction agreements such as the pre-WTO General Agreement on Tariffs and Trade (GATT). Rather, he focuses his criticism on intellectual property obligations, investment provisions, manufactured product standard harmonization (and presumably mutual recognition), and similar food product standard disciplines contained in trade agreements. He criticizes mega-free trade agreements—such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)—along these lines, asserting that the TTIP “would have almost certainly restricted the space for domestic regulatory action.”²⁰ He also emphasizes the role of special interests that oppose regulation in the negotiation of trade agreements. Such interests seek to reduce regulation under the guise of reducing non-tariff barriers. Thus, Rodrik argues that “even if

16. See MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1971); see also Gene M. Grossman & Elhanan Helpman, *The Politics of Free Trade Agreements*, 85 *AM. ECON. REV.* 667 (1995).

17. See JOEL P. TRACHTMAN, *THE FUTURE OF INTERNATIONAL LAW: GLOBAL GOVERNMENT* 48-52 (2013).

18. RODRIK, *supra* note 2, at 207.

19. See Pushan Dutt, Ilian Mihov & Timothy Van Zandt, *Does the WTO Matter?*, *VOX* (May 1, 2011), <http://voxeu.org/article/does-wto-matter>.

20. RODRIK, *supra* note 2, at 211.

regulatory harmonization [under those agreements] wouldn't have created a race to the bottom, the interests of investors and exporters would have cast a longer shadow than ever before over social and environmental goals."²¹ Rodrik also fails to acknowledge that special interests may often oppose liberalization, in order to protect a crony capitalism that allows local producers to avoid competition.

Indeed, the reduction of non-tariff barriers to trade was expected to be a major benefit of these agreements. And it is true that in order to achieve this benefit, States would have to accept some degree of harmonization and perhaps mutual recognition, which would mean a reduction in their discretion to regulate. But it is also true that the ability of States to bind themselves—to make reciprocal exchanges of policy autonomy in ways they determine to be welfare improving—is itself a reflection of their right to regulate, even if it results in constraint. Rodrik declines to recognize that international legal commitments necessarily involve exercises of autonomy, just like freedom of contract for individuals.²² In addition, such commitments are legitimized by the same democratic credentials—and oftentimes the same processes—that underlie a government's domestic regulations. Furthermore, these commitments do not cause the adverse distributional effects that are the central concern regarding trade and trade agreements.

Rodrik belies his position as defender of the right to regulate when he argues that States should have the right to condition importation on exporting States' adoption of "norms embodied in [the importing State's] institutional arrangements."²³ While such conditions protect importing States' ability to set their own developmental or industrial policies, they deprive exporting States of the same: States interested in export market access would, under this proposal, lose their right to regulate, or perhaps their right not to regulate. Which States would be subject to this coercion? It is likely that developing countries, with less protective regulatory systems, would be the main targets. States that have relied or may in the future rely on their export industries to develop, including China, India, and many other Asian and African States, would bitterly reject this type of constraint. In this sense, Rodrik's approach would hurt workers in the export sector in these countries.

This is precisely why States have established limited, conditional constraints on national autonomy in the WTO framework and in free trade agreements, including in the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Agreement on Technical Barriers to Trade (TBT Agreement). However, Rodrik criticizes these agreements, which are important to developing countries' ability to export to

21. *Id.*

22. For further discussion on this point, see Joel P. Trachtman, *Review Essay: The Antiglobalisation Paradox – Freedom to Enter into Binding International Law is Real Freedom*, 36 *WORLD ECON.* 1442 (2013).

23. RODRIK, *supra* note 2, at 230. This idea of establishing consistency of national labor, environmental, or other institutional arrangements as a predicate for market access was earlier rejected in the GATT system in 1952. Report Adopted by the GATT Contracting Parties, *Belgian Family Allowances*, WTO Doc. G/32-IS/59 (adopted Nov. 7, 1952).

wealthy States without unjustified barriers. As an interface system, the WTO is designed to allow trading between countries with different regulatory systems. It preserves both sides' right to regulate, but it recognizes the inevitable conflict between them. Specifically, it allows compromise by States of their rights to regulate domestically in exchange for virtual rights to regulate abroad (in connection with the policies of foreign countries), which they have deemed to be of greater political value. States can avoid this choice only by moving to a technologically impossible and economically self-defeating autarky. This is the true dilemma (not a trilemma²⁴) of globalization.

III. THE CONTINUING EMBEDDED LIBERALISM CHALLENGE: DOMESTIC FAILURES

In the United States, both the right's and the left's scapegoating of trade in recent years exposes our historical failure to address the labor market dislocation caused by trade and other factors. In this sense, it is useful to explore potential means of linking trade liberalization with labor rights or trade adjustment assistance. The optimal response to such dislocation is not protectionism, or minimum wage requirements applied to the production of imported products that amount to protectionism, as recently agreed upon in connection with the renegotiation of the North American Free Trade Agreement (NAFTA).²⁵

Instead, two plausible approaches exist. The first, which is currently used in international agreements, is to link trade liberalization to unionization, which may allow workers to capture a larger share of the gains from liberalization. The second, which is not currently used, is to condition trade liberalization on implementation of satisfactory adequate trade adjustment assistance, or an expansion of the social safety net. This is Joseph Stiglitz's social protection without protectionism.²⁶ While trade agreements are not the preferred means for addressing labor market dislocation, in the absence of sufficient national policies to protect workers from dislocation, the interests of foreign States in the stability of trade agreements may cause them to include commitments to address labor markets in trade agreements, or to link them to trade agreements.

As noted above, free markets maximize aggregate wealth, but they also result in politically and ethically unattractive distributive consequences. In order to sustain free markets politically, Karl Polanyi, John Ruggie, and Robert Howse have all suggested that liberalism and markets must be embedded in regulatory regimes that can compensate the "losers" they produce.²⁷ For Howse, "trade

24. See TRACHTMAN, *supra* note 22.

25. As an example of a non-tariff protectionist tactic, the newly negotiated United States-Mexico-Canada Agreement's ("USMCA") automobile rules of origin require that a specified percentage of a car's content be produced using high wage labor in order to qualify for zero tariff treatment. See Chad P. Bown, *The 5 Surprising Things About the New USMCA Trade Agreement*, WASH. POST (Oct. 9, 2018), http://www.washingtonpost.com/news/monkey-cage/wp/2018/10/09/the-5-surprising-things-about-the-new-usmca-trade-agreement/?noredirect=on&utm_term=.062ffb1ca173.

26. Joseph E. Stiglitz, *The Globalization of Our Discontent*, PROJECT SYNDICATE (Dec. 5, 2017), <http://www.project-syndicate.org/commentary/globalization-of-discontent-by-joseph-e--stiglitz-2017-12?barrier=accesspaylog>.

27. See KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC*

liberalization was embedded within a political commitment, broadly shared among the major players in the trading system of that era, to the progressive, interventionist welfare state . . .”²⁸ Many European countries have carried this commitment forward. As Rodrik notes, “the European welfare state [was] the flip side of the open economy.”²⁹ As might be expected, this system was not legally mandatory internationally, and different States embedded liberalism to different extents. The United States has not done so sufficiently.

Surveying developments in U.S. international trade policy since the inauguration of President Trump, it is easy to see that the failure to maintain a political consensus in favor of free trade in the United States has harmed other countries by reducing their market access to the United States in products like steel and aluminum, and for China, in a much broader array of products. As a result, if and when these countries enter into new long-term trade agreements with the United States, they may seek provisions making withdrawal more difficult in order to promote trade-motivated investments. But in order to make the United States less likely to seek withdrawal or violate its commitments, it would be useful to ensure that the United States embeds its liberalism in a system designed to ensure political stability—that is, a system designed to represent a durable political consensus. This can be done by ensuring that workers have sufficient bargaining power to claim a fair share of the gains from trade and by providing a sufficient social safety net.

One of the main causes of the United States’ continuing weak wage growth³⁰ is the decline of unionization.³¹ There are numerous reasons for this decline, but it is interesting that free trade agreements have increasingly demanded the basic right of association and right to collective bargaining. Indeed, they are required negotiating objectives under the U.S. Trade Promotion Authority law.³² While the United States has nominal domestic rights of association and collective bargaining, trade partners may seek requirements that would do more to ensure effective unionization in the United States as a condition for entering into a bilateral trade agreement in the future.

The U.S. commitment to a social safety net has declined since the 1970s. Since then, Republicans have opposed trade adjustment assistance and other types of social safety net arrangements, while Democrats have not been strongly committed to these policies, either. In the aftermath of the 2008 financial crisis,

ORIGINS OF OUR TIME (1944); John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT’L ORG. 379 (1982); Robert Howse, *From Politics to Technocracy—and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT’L L. 94 (2002).

28. *Id.* at 97 (emphasis in original).

29. Dani Rodrik, *Populism and the Economics of Globalization*, J. INT’L BUS. POL’Y 12, 17 (2018).

30. Kenneth F. Scheve & Matthew J. Slaughter, *A New Deal for Globalization*, FOREIGN AFF. (July/Aug. 2007), <http://www.foreignaffairs.com/articles/2007-07-01/new-deal-globalization>.

31. For evidence linking weak wage growth to the decline of unions, see, for example Tom VanHeuvelen, *Moral Economies or Hidden Talents? A Longitudinal Analysis of Union Decline and Wage Inequality, 1973–2015*, SOC. FORCES (2018), <http://academic.oup.com/sf/advance-article/doi/10.1093/sf/soy045/5025596>.

32. 19 U.S.C.A. §§ 4201(a)(6), 4210(7) (West 2018).

when great economic pain and dislocation arose—not from trade but from financial mismanagement—it became easy to scapegoat trade and trade agreements. This scapegoating deflected blame from the politics that failed to pay the price of embedding liberalism: a humane social safety net policy. As with unionization, trade partners may seek to ensure effective social safety net arrangements in the United States as a condition for entering into future trade agreements. Seeking to enhance social protections through an international agreement may also address Rodrik’s principal concern with trade adjustment: time inconsistency.³³ If the fear is that governments will promise adjustment assistance upon signing but later fail to deliver, international agreements can reduce this problem by incentivizing continued compliance.³⁴

Rodrik argues that it is now too late for the United States to compensate trade’s losers, perhaps because the same forces that have frustrated redistribution in the past are expected to continue.³⁵ Yet he offers no alternative. His proposed response to globalization—pulling back on WTO agreements that discipline non-tariff barriers—would not address the adverse distributive consequences of trade, technological change, or any other market shift. Instead, as discussed in the previous section, they merely address unrelated concerns about the right to regulate, where “regulate” does not involve redistribution.

CONCLUSION

Trade has contributed greatly to poverty alleviation worldwide. It allows poor people to sell their labor for higher prices and provides them with greater consumption opportunities. Liberalized trade favors workers by limiting crony capitalists’ ability to seek rents through government-imposed restrictions on competition at the expense of consumers, as well as at the expense of input-using industries and export industries.³⁶ And reciprocal trade agreements provide governments with an opportunity to engage export industries in seeking liberalization and do not generally contain provisions that are harmful to workers as a class.

Where trade agreements seek to reduce non-tariff barriers to trade by constraining States’ discretion to regulate, these constraints are (1) accepted through whatever processes the relevant State has decided are best to make these commitments; (2) limited insofar as they specifically seek to restrict discriminatory or protectionist regulation with regard to trade; and (3) reciprocal whereby each party to the agreement voluntarily accepts such constraints in exchange for trade benefits that are presumably more valuable than the autonomy it sacrificed.

The challenge of embedded liberalism is to provide appropriate

33. Rodrik, *supra* note 29, at 17.

34. See Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, ILL. L. REV. (forthcoming 2019).

35. RODRIK, *supra* note 2, at 206.

36. See RAGHURAM G. RAJAN & LUIGI ZINGALES, *SAVING CAPITALISM FROM THE CAPITALISTS: UNLEASHING THE POWER OF FINANCIAL MARKETS TO CREATE WEALTH AND SPREAD OPPORTUNITY* (2004).

redistributive mechanisms to compensate those who lose out from market processes, in order to maintain political support for liberalization. Embedded liberalism has failed in the United States because of the inability of its domestic politics to provide an adequate social safety net, whether in the form of specific trade adjustment assistance or otherwise. In order to obtain more politically sustainable trade agreements with the United States, other States may seek U.S. commitments to provide appropriate labor rights and a stronger social safety net.

So long as it engages in trade, a State will be able to impose harm on people in other countries through either actual or competitive externalities. Thus, it is only natural that States would seek out ways to reduce trade's potential harm and maximize its benefits. This is what global governance is; and it should be embraced, not rejected.