

5910

INTERNATIONAL TRADE

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Abstract

This chapter provides a survey of the law and economics literature on international trade topics. It includes an overview of the legal system, and a general discussion of normative and positive economic approaches to the analysis of the legal rules on trade. Particular issues discussed subsequently include antidumping and subsidies rules, the escape clause for troubled industries, non-discrimination obligations in international trade, technical barriers to trade, and international dispute resolution in the trade field.

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1. Introduction

The instruments of international trade policy, such as border taxes (tariffs) and quantitative restrictions on the volume of imports or exports (quotas) are, in one fashion or another, laws. Economic scholars have studied the impact and wisdom of these laws for centuries, creating a branch of international economics devoted to these matters of 'commercial policy'. It is no stretch to characterize all of the work in this field as 'law and economics'. Were I to define the field in that fashion, however, the bibliography accompanying this chapter would by itself fill this volume. To reduce the undertaking to manageable proportions, I have restricted attention primarily to the work of economically-oriented scholars with legal backgrounds, to work with considerable legal as well as economic content, and to work that has been published in law and economics journals. I have also omitted attention to various 'trade and' issues, such as trade and the environment, trade and labor standards, and trade and competition policy, on the premise that they are better addressed elsewhere (see Bhagwati and Hudec, 1996). Finally, I have included a selective set of references to the mainstream international economics literature, intended to provide readers with a place to start should they desire to learn more about the basic economics of international trade. The work of many prominent figures in international economics is nevertheless

unrepresented or underrepresented, and to them I apologize in advance.

2. The Legal Landscape

Until modern times, most nations maintained substantial tariffs or restrictive quotas on a wide array of goods. Accordingly, much of the early work in international economics focused on the wisdom of these conventional instruments of international trade policy. Scholars soon developed the economic case for free trade, which holds that (with some qualifications) nations can increase their national economic welfare through a unilateral reduction in their import restrictions. The logic of this proposition, which involves a demonstration that trade liberalization benefits consumers more than it costs producers or the government treasury, may be found in virtually any international economics textbook.

The years since the end of World War II have changed the legal landscape profoundly, with equally important implications for the research agenda. From the Bretton Woods conference of 1944 emerged the General Agreement on Tariffs and Trade (GATT), concluded in 1947. Although the central objective of GATT was to foster a reduction in tariffs and quotas, its drafters recognized from the outset that bare commitments to lower tariffs and quotas were but a small part of what would be necessary to an effective trade liberalizing agreement. The restrictive effects of a tariff could easily be recreated by a domestic regulatory measure that disadvantaged imported goods, by a domestic subsidy, by a state-franchised monopsonist with the sole right to import from abroad, by a cumbersome bureaucracy for import processing, or in a number of other ways. The drafters had to plug such 'loopholes', and also had to decide whether reductions in trade impediments could be implemented on a discriminatory basis, and whether subgroups within the GATT membership would be allowed to negotiate separate trade agreements. They had to accommodate demands by signatories for the right to address certain 'unfair' trade practices unilaterally. They also had to anticipate the possibility of contingencies that might make some terms of the bargain politically unpalatable, and incorporate mechanisms to permit modification of the bargain under appropriate circumstances. Finally, they had to confront the question of how to respond to breach (or alleged breach) of promise by a signatory. As a result of attention to these and other issues, the GATT emerged as a lengthy and elaborate document, with provisions governing not only tariffs and quotas but, *inter alia*, various domestic taxes and domestic regulatory policies, the conduct of state controlled entities, methods of customs valuation, unfair practices such as dumping and subsidization, rules governing discrimination in trade, procedures for adjusting and renegotiating the bargain, and a dispute settlement mechanism.

After 1947, the GATT continued to expand its scope and coverage. In the late 1970s, additional agreements were entered on such matters as technical standards and regulations, subsidies, antidumping, and government procurement. Various regional arrangements also emerged (such as the European Union and the NAFTA) that afforded preferential trade benefits to their members pursuant to an exception to the non-discrimination obligations of GATT allowing for customs unions and free trade areas. These regional arrangements have their own legal foundation, often more complex and far reaching than that of the GATT itself (Jackson, 1989).

During the most recent round of negotiations under GATT auspices (the 'Uruguay Round'), a new institution was created to absorb the GATT and its various side agreements - the World Trade Organization (WTO). The WTO treaty elaborated many prior GATT obligations, added a new dispute resolution system with considerably greater credibility and authority, and for the first time extended the coverage of the GATT system to services industries, such as banking, securities, telecommunications and insurance. This service sector liberalization has proven even more complicated than liberalization in the goods sector due to the mix of licensing, prudential, and other regulations that are in play. The effects of international trade agreements on national regulatory policies has thus become considerably more significant, and will likely continue to grow. Current discussions in the WTO and the OECD further contemplate possible linkages between trade policy on the one hand and competition policy, environmental policy and labor market standards on the other. The WTO already extends its umbrella to the substantive rules of intellectual property law.

Nations that are parties to the WTO (over 120 at this writing) or to various regional arrangements must implement their international obligations at the national level. Usually, the implementation process requires a host of domestic statutes or their equivalent, replacing or modifying preexisting domestic law in a number of areas, and creating new domestic law in a number of others. Title 19 of the United States Code, for example, a massive volume, is closely connected to and shaped by the international law of the WTO and NAFTA. For a general introduction to the scope of international and national law in the trade area, the reader may wish to consult Jackson, Davey and Sykes (1995).

3. The Framework for Law and Economics Research

Although I have said little about economics to this point, the reader should already appreciate the potential scope of law and economics research in the area. Each of the topics addressed by the WTO agreement, the various regional agreements, and national laws relating thereto raises a range of normative and positive questions. In this section, I sketch a framework for thinking about and

identifying these questions in general terms. The succeeding sections delve into the literature on particular topics.

Normative Perspectives

Much of the research in international economics has a normative cast. Early writers such as Adam Smith and David Ricardo were responding to the misguided Mercantilist instinct that national wealth was measured by the size of the gold reserve rather than the standard of living of the citizenry, urging governments to open their markets. The more modern articulation of the case for free trade grounded in the theory of comparative advantage, with various technical caveats and qualifiers, is also plainly normative in tone, resting either on Kaldor-Hicks conceptions of welfare as a basis for policy making or, in the alternative, the claim that other policy instruments can better address distributive concerns. It is also conventionally argued that trade policy is an inferior policy instrument for addressing various market failures including production externalities, labor market imperfections and the like. Better to tax the pollution output of a domestic polluter directly, for example, than to tax its imported input products - a tax on pollution will correct the externality without distorting the choice of inputs and sacrificing the least cost method of production (see Bhagwati and Srinivasan, 1983; Dixit and Norman, 1980; Kenen, 1985, and Krugman and Obstfeld, 1994).

Normative discussion of international trade policy often must distinguish between *national* welfare and *global* welfare (or now regional welfare) for many purposes. For example, perhaps the best known caveat to the case for free trade - the opportunity for importing nations with the power to influence their terms of trade (that is, a degree of monopsony power) to use tariffs to extract rents from foreigners - suggests how some nations can increase their own welfare at the expense of global welfare (see Bhagwati and Srinivasan, 1983; Dixit and Norman, 1980). The modern literature on strategic trade policy, which suggests among other things how nations can increase their welfare by subsidizing or protecting certain industries with increasing returns to scale, affords yet another example of the importance of the choice between national and global objective functions (see Krugman, 1987).

The same welfare economic framework can be brought to bear on the broader range of topics implicated by modern international trade law. Whether the problem concerns the discipline of national government subsidies that may distort trade, 'dumping' by foreign firms (explained below), the question whether nations should discriminate between trading partners in their tariff policies, the consequences of harmonizing regulations for the international marketing of prescription drugs, the procedures for certifying that imported foodstuffs are sanitary, or the wisdom of protecting declining industries to facilitate 'orderly contraction' or alleviate unemployment, the normative

questions to be asked are much the same. The Kaldor-Hicks benchmark can be used to evaluate the available alternatives. Sometimes, but not always, global and national welfare will point in different directions. One can inquire as to what policy is optimal by the appropriate criterion in the abstract, or ask the related question whether some existing legal rule at the global, regional or national level is optimal from among the set of politically feasible choices.

An alternative normative framework rests not on conventional economic measures of welfare, but on democratic legitimacy and international consensus as the underlying value. Here, the question becomes one of how national governments should faithfully implement their international obligations, or perhaps how courts and administrative agencies with discretion should exercise it to promote the international or national goals implicit in the texts of treaties and statutes. Sometimes, though not always, an interpretation of a text intended to provide it with economic coherence may be helpful in this context, much as economic scholars have helped shape the interpretation of laws such as the US Sherman Antitrust Act or sections of the Uniform Commercial Code.

Positive Perspectives

Although international economists have long described themselves as engaged in positive as well as normative inquiry, the distinction between the two has been muddled for much of the history of the discipline. Part of the muddle owes to the naiveté of much economic writing (particularly older writings), in which governments are 'assumed' to maximize national welfare. Normative analysis using the national welfare criterion then becomes positive analysis as well, with the national welfare optimum serving as a predictor of how governments will behave. That predictor has proven a poor one, however, on many fronts. Most obviously, national governments would engage in far less trade protectionism than they do in practice if the economists' familiar measure of national welfare were the touchstone of policy making.

To improve the quality of positive theory, it has been necessary for international economics to embrace the insights of public choice theory. The emergent 'political economy' of trade policy recognizes that different interest groups have different degrees of influence on political actors. The weakness of consumer interest groups, for example, can explain why tariffs emerge in the first instance despite their generally adverse impact on national economic welfare (see Baldwin, 1982; Dougan, 1984). Public choice has also proven successful at explaining a number of more narrow policy decisions in the trade field (see Gerber, 1976) such as the politics of particular quotas, as well as the pattern of votes cast in elections where trade was a key issue (see Irwin, 1994).

Public choice insights further help to explain why international agreements such as the GATT tend to liberalize trade despite the absence of much consumer participation - they allow producer groups comprised of exporters to

reward their political representatives for securing access to foreign markets (see Baldwin, 1987). This example once again suggests the importance for analysis of the distinction between the national and global perspectives - the interest groups in play (or at least their stakes in the outcome) may change importantly as we move from an environment in which nations act noncooperatively to an environment in which nations act cooperatively.

The positive analysis of international agreements also draws on another line of economic analysis - the economics of contracts. An international agreement is, after all, a contract between or among nations. It can be honored or breached, breach can be efficient or inefficient (from the perspective of the self-interested officials who enter the agreement), moral hazards and hold-up opportunities may arise, the agreement may be self enforcing or not, enforcement may rely on reputation, self help, third party coercion, and so forth. Insights from the theory of contracts about how parties design agreements to facilitate valuable adjustments of the bargain while discouraging opportunism thus have much to contribute to the understanding of international agreements generally, and international trade agreements in particular.

With this background, I now turn to the literature on particular legal topics. The concluding section contains some thoughts about further research. A compact survey of many of these issues may be found in the recent volume by Trebilcock and Howse (1994). Another useful selection of writings may be found in Bhandari and Sykes (1998).

4. Antidumping Law

Aside from the study of conventional tariffs and quotas, perhaps no topic in the law and economics of international trade has a longer history than the study of dumping. The term 'dumping' has meant different things through the years, but in modern parlance it refers to pricing behavior by an exporting firm that results in (a) an F.O.B. price to the export market that is below the F.O.B. price to the home market for the same goods; (b) an F.O.B. price to the export market that is below the F.O.B. price to some third market; or (c) an F.O.B. price to the export market that is below the fully allocated cost of production for the good in question (including an allocation of fixed costs, general selling and administrative expenses, and so on). Prior to the formation of GATT, some nations (including the United States) unilaterally condemned dumping and had statutes in place to sanction it. The GATT (now WTO) authorizes such sanctions but constrains them - an importing nation can counteract dumping with an 'antidumping duty' equal to the magnitude of dumping (the difference between the export price and the relevant benchmark above), but only if the dumping is causing material injury to a competing domestic industry.

The early view of antidumping law in the economics profession was favorable. A distinguished University of Chicago economist, Jacob Viner, devoted an entire volume to dumping, arguing that it is harmful to the importing country. He reasoned that low prices attributable to dumping are transitory, and impose adjustment costs on the importing nation that exceed the benefits of temporarily cheaper imports (Viner, 1923). The basis for Viner's analysis, however, was shaky. Dumping need not be transitory (as when different markets have different demand elasticities), and even when it is, nothing in Viner's work (or since) demonstrates that temporarily cheap imports necessarily impose adjustment costs that exceed the welfare gains to the importing country from temporarily cheaper imports.

Not surprisingly, therefore, scholars eventually began to question the wisdom of antidumping policy. Various possible justifications in addition to Viner's have been considered, including the notion that dumping is somehow symptomatic of predatory pricing, and by and large rejected (see Barcelo, 1979; Ordover, Sykes and Willig, 1983; Knoll, 1987; Messerlin, 1990; Therakan, 1990; Cass, 1993). It is also clear that the administration of the antidumping laws often biases the system in favor of a finding of dumping through peculiar accounting and averaging practices (Boltuck and Litan, 1991; McGee, 1993; Dick, 1991). To be sure, an antidumping duty may by chance benefit a nation with the ability to influence its terms of trade. Or it may protect an industry with increasing returns or positive externalities, and thereby yield the sorts of benefits that are the focus of the strategic trade policy literature (see Dick, 1991). But these benefits of antidumping duties have nothing to do with the existence or nonexistence of dumping, only with the special circumstances in which protectionist measures may have utility to the importing nation for other reasons. It is thus fair to say that an academic consensus now holds antidumping law to be welfare-reducing in general. Interestingly, the national welfare effects are often *worse* than the global welfare effects, because the importing nation is generally harmed, *ceteris paribus*, when it deprives itself of cheaper imports. From the global perspective, however, if antidumping policy reduces the incidence of imperfect price discrimination, the welfare effects can be favorable (see Ordover, Sykes and Willig, 1983). Cass and Boltuck (1996) also consider various 'fairness' justifications for antidumping law, and for the most part reject them.

Although the normative analysis of antidumping law is well developed and has probably hit diminishing returns, strikingly little has been done from the positive perspective. If antidumping policy is so foolish, why is it also so survivable, particularly in the WTO environment where nations have mutually agreed to forego economically foolish policies on a number of other fronts?

5. Subsidies and Countervailing Measures

Attention to the problem of subsidies in international trade, and to the legal regime that constrains them or allows nations to respond to them, also has a rich history in law and economics. Economists have long distrusted government subsidy programs, recognizing that although subsidies may in principle correct certain forms of market failure, they may also cause distortions in resource allocation. The latter concern has become increasingly prevalent with the rise of public choice.

In an ideal world, governments would limit subsidies to their constructive uses and eschew unproductive uses. Suppose that this goal is doubly difficult to achieve in a noncooperative environment because governments find themselves in a race to the bottom of sorts (farmers in country A can demand subsidies to level the playing field with the subsidized farmers in country B, for example). Or suppose that subsidies are being used to protect domestic industries against foreign competition, much like tariffs. If so, international trade law might usefully incorporate a covenant to forego certain types of subsidies - indeed, such an evolving covenant has been present in the GATT system since its inception. The question of what an ideal anti-subsidy compact might look like was the focus of Schwartz and Harper (1972). In the end, however, they concluded that the problem was immense and perhaps insoluble, suggesting, among other things, that Kaldor-Hicks efficiency is not easy to identify in practice, and that is hardly clear that the Kaldor-Hicks benchmark is the proper one in any event.

Related to the policies imposing multilateral constraints on subsidies are those facilitating a unilateral response to imports of subsidized goods. Subsidized competition is often labeled 'unfair', and the GATT system has since its inception permitted signatories to counteract the effects of subsidization at the border through the use of 'countervailing duties'. These duties may be employed in many instances even when the foreign subsidy practice at issue is perfectly legal under international law. As in the case of antidumping duties, however, countervailing duties are only permitted when subsidized imports are causing injury to competing firms.

The wisdom of unilateral countervailing measures has been questioned. Subsidized imports are cheaper than unsubsidized imports, *ceteris paribus*, and cheaper imports tend to enhance the welfare of the importing nation regardless of the reason for their cheapness. It is by no means clear why an importing nation should not respond to subsidized imports with, in the words of Paul Krugman, 'a thank-you note to the embassy'. Although Barcelo (1977) viewed unilateral countervailing measures as a useful adjunct to efforts to discipline wasteful government subsidy practices, Schwartz (1978) initiates a more skeptical line of discussion. Sykes (1989) argues that under virtually any

assumption about market structure or possible market imperfections, countervailing duties are an imprudent policy from the perspective of the importing country, and dubious as well from the global welfare perspective (see also Trebilcock, 1990).

Another strand of literature questions the ability of existing countervailing duty law to achieve its own posited objectives (granting the possibility that those posited objectives may not be welfare enhancing). In particular, if one assumes that the goal of countervailing duty law is to counteract the effects of the subsidy on the prices charged for imported goods, it is essential for those who administer the law to identify that price effect in deciding what duty to impose. Likewise, if countervailing measures are only allowable if a subsidy is causing injury abroad, it is necessary to identify the price effect to decide whether the subsidy is indeed causing material injury. The effect of the subsidy on price will depend, in turn, and *inter alia*, on how the subsidy affects marginal costs for subsidized firms. Yet, existing law pays little attention to that issue (to see its importance, consider one example - farm programs that pay farmers to reduce acreage will not lower their export prices). Goetz, Granet and Schwartz (1986) made these points, which led Diamond (1989, 1990a) to suggest some specific reforms designed to make countervailing duties a more accurate device for counteracting the cross border effects of subsidies. Sykes (1990a) is critical of these proposals on grounds of administrative cost, coupled with some uncertainty as to whether they will have any welfare payoff. Cass (1990) also has a mixed reaction.

As in the case of antidumping law, far less has been done with the positive side of subsidies and countervailing measures than with the normative side. The effects of duties in the presence of downstream integration have been examined (Benson et al., 1994), but the political economy of national and international rules regarding subsidies has received little attention.

6. Injury Analysis in Antidumping and Countervailing Duty Cases

As noted, WTO law prohibits antidumping and countervailing duties unless the importing nation first establishes that the unfair imports in question are causing or threatening 'material injury' to domestic competitors. The task of determining what impact an unfair practice has on the domestic industry lends itself readily to economic analysis, and much has been written on the subject.

Initial work focused on the lack of economic coherence in the analysis of the US International Trade Commission (ITC), the agency charged with administering the injury test under US law. The pertinent statute requires the ITC to determine whether dumped or subsidized imports, as the case may be, have caused or threaten to cause 'material injury' to domestic producers of like

products. If the task of the ITC is thus to ascertain what effect the dumping or subsidization has had on domestic producers (a proposition that is not uncontroversial as a legal matter), it has often relied on information that is misleading. For example, it has tended to look for a correlation between rising imports and deterioration in the condition of domestic producers, but that correlation may be spurious. It has also emphasized price comparisons between imported and domestic goods, even though price differentials may reflect quality differentials that have nothing to do with the impact of any unfair practice. These and other criticisms have been leveled by a number of writers, most notably Knoll (1989a, 1989b). He and others have suggested that the tools of price theory be employed to construct quantitative models that would allow the ITC more accurately to measure the impact of dumping or subsidies. Proponents of this economic approach include Boltuck and Kaplan (see Therakan, 1990, as well as Rousslang, 1988; see also Morkre and Kelly, 1993). In Wood (1989), the emphasis is rather different - she argues that antidumping and countervailing duties should not be used to protect supracompetitive rates of return to a domestic industry, and urges that lost monopoly profits not 'count' in the injury analysis.

Other writers have wondered whether the apparent economic incoherence in the analysis of the ITC has a political economy explanation. Cass and Schwartz (1990) address the issue, and conclude that it probably does not. Sykes (1996) disagrees to an extent, offering some conjectures as to why ITC practice may serve the joint political interests of the United States and its trading partners. He further questions whether a more economic approach to injury analysis would have any welfare benefits.

Finally, efforts have been made to ascertain whether injury findings reflect political factors (such as the interests of the constituencies of key Senators and Congressmen), or instead reflect judgments about the 'merits' of each case. Finger, Hall and Nelson (1982) hold the former view, while Anderson (1993) concludes that ITC decisions are not well explained by such political variables.

7. Safeguards Measures and the 'Escape Clause'

Article XIX of the GATT (the 'escape clause') permits signatories to withdraw trade concessions temporarily when increased imports cause or threaten to cause 'serious injury' to a domestic competing industry. US law further provides that these 'safeguards measures' shall not be taken when some cause other than increased imports is a more important source of injury.

Several writers have undertaken to give economic content to this inquiry. Grossman (1986) analyzes the causes of injury to the US steel industry in the early 1980s, while Pindyck and Rotemberg (1987) consider the copper industry.

In these papers, the authors set forth a framework within which to think about the causal contribution of increased imports to industrial decline (no trivial task since import quantity is usually viewed as an endogenous variable by economists), as well as the causal contribution of other factors such as recession. Kelly (1988, 1989) also addresses these issues.

Other writers have inquired into the wisdom of safeguards measures. Lawrence and Litan (1986) find efficiency and fairness arguments unpersuasive as a justification for protecting industries impaired by import competition, although in the end they favor the use of escape clause measures as a 'safety valve' against protectionist pressures that might produce an even worse outcome if left unchecked. Trebilcock, Chandler and Howse (1990) are agnostic about the possible utility of temporary protection to facilitate adjustment, although skeptical of government policies in practice. Sykes (1990c) suggests some possible reforms in the injury analysis aimed at limiting relief to plausible cases of labor market imperfections.

On the positive side, Sykes (1991) offers a public choice explanation for the existence of GATT Article XIX. He suggests that declining firms will rationally expend greater resources to secure protection than growing firms, and that the escape clause may facilitate the politically 'efficient breach' of GATT obligations.

8. The Most-Favored Nation Obligation and Exceptions

Article I of the GATT agreement is a general prohibition on discrimination in tariff policy, creating a so-called 'most-favored nation' obligation. Article XI creates a similar obligation relating to the use of quotas. But the GATT system also contains a number of exceptions to these obligations. The most important is Article XXIV, which permits the formation of customs unions and free trade areas (such as the European Union and NAFTA) that grant trade preferences to members. Other exceptions include the authority to use discriminatory safeguards measures under certain conditions, and the authority to grant preferences to developing countries.

The normative economics of trade discrimination has been studied extensively. Other things being equal, discrimination in protectionist policies (such as the use of different tariffs for different trading partners) produces greater deadweight losses than nondiscriminatory policy. The reason is that discrimination produces 'trade diversion' - inefficient investment and production in higher cost countries that benefit from trade preferences. Other things may not be equal, however, because discriminatory trade liberalization may be better than none at all - in the parlance of the profession, 'trade creation' can dominate trade diversion (see Lipsey, 1960; Bhagwati and

Srinivasan, 1983). Thus, the theoretical view of discrimination is agnostic, and it becomes a difficult empirical question whether a particular discriminatory arrangement is welfare reducing or welfare enhancing. The question is all the more difficult because the answer turns on a counterfactual - what would the world look like without the discrimination in question? The prevailing view seems to be, however, that most of the existing preferential arrangements have tended to be welfare enhancing, and that regional arrangements such as the EU and NAFTA are 'building blocks' rather than 'stumbling blocks' on the road toward a more open trading system (see Lawrence, 1996).

Schwartz and Sykes (1996) examine the GATT rules on trade discrimination from a positive perspective. They argue that nondiscrimination rules tend to maximize political surplus for officials in signatory nations, other things being equal, by increasing the sum of producer surplus and government revenue (both assumed to count heavily in the political welfare functions of politicians). But exceptions exist - for example, the most-favored nation obligation may at times create a free rider problem in bargaining that makes it difficult for nations to exhaust all politically valuable deals. Schwartz and Sykes use these observations to offer an explanation for some of the exceptions to the most-favored nation obligation under GATT, including Article XXIV.

9. Technical Barriers to Trade

Recent negotiations under WTO auspices have produced two agreements concerning 'technical barriers' to trade, which result from divergent product standards and regulations in the international economy. The agreement on sanitary and phytosanitary measures is aimed at food safety issues and related problems in the agricultural sector. The agreement on technical barriers to trade covers other product markets. These agreements contain their own commitments regarding nondiscrimination, least-restrictive means tests, covenants to rely on international standards where feasible, and many other matters. Sykes (1995) provides a survey of the economic issues involved in the technical barriers area, a review of the different legal approaches to policing technical barriers around the world, and an economic explanation for many of the legal rules that are in place. Leebron (1996) discusses in a general way the case for harmonizing national regulatory policies (see also Davidson et al., 1989).

10. Dispute Settlement, Self Help and Unilateralism

International trade agreements have no central enforcement authority with the power to compel nations to adhere to them. It is also exceedingly unlikely that

any nation would unilaterally go to war to vindicate its rights under these agreements. Yet, these agreements seem to hold together fairly well, and it is apparent that some mixture of reputational concerns and implicit threats of unilateral retaliation on matters of commercial policy go a long way toward making trade agreements viable.

But unilateral 'retaliation' in the trade arena may also be opportunistic, and may be employed against nations that have done nothing wrong under international law. This concern has been expressed widely with respect to Section 301 of the 1974 US Trade Act, which permits the United States to retaliate for all manner of 'unfair' practices. Many prominent economists have been critical of the 'aggressive unilateralism' of the United States under this statute. Bhagwati (1988) is illustrative.

Sykes (1990b) takes the other side of the debate, arguing that Section 301 was a potentially sensible 'self help' measure in the face of imperfections in the GATT dispute resolution system. Sykes (1992) argues further that Section 301 might play a constructive role in addressing trade impediments outside the coverage of GATT obligations, and that Section 301 had been fairly successful from the US point of view in opening up foreign markets without the need for any retaliatory measures in most cases.

New developments in the WTO dispute resolution system moot many of the arguments in this debate, as it can no longer be argued that unilateral action is necessary to create meaningful commercial policy sanctions for breach of promise - the new Dispute Resolution Understanding ensures that WTO-authorized sanctions can be imposed on nations found to be in violation. Likewise, the number of matters still outside the explicit or implicit coverage of the WTO/GATT system has diminished greatly. Perhaps the next step in the economic literature on dispute resolution within trade agreements will be to explain the recent changes in the WTO system, including the details of procedures and sanctions, and in time to assess their efficacy.

11. A Concluding Note on the Research Agenda

The expanding scope and detail of international trade law affords law and economics scholars an exceptionally broad range of research opportunities. Although the welfare economics of conventional tariffs and quotas is quite well developed, normatively inclined scholars should find much to occupy them in the treatment of nontariff issues of various sorts. Issues relating to regulatory divergence and harmonization, for example, will be central for many years in both goods and services markets. I suspect that much of the best work will be focused reasonably narrowly on particular problems, from the marketing of prescription medications to the harmonization of telecommunications standards

to the opening of insurance and securities markets. Much work also remains to be done on understanding the economic consequences of regional trading arrangements, and on the question of how the WTO ought police their emergence and operation. Opportunities for normative, comparative analysis are also widespread, as the world witnesses a proliferation of sophisticated legal arrangements that must all contend with essentially similar problems. The 'trade and' issues that I have neglected in this chapter - trade and the environment, trade and competition policy, and so on - will also afford fruitful subjects for research as the wisdom of harmonizing policies across nations increasingly becomes a subject of topical debate.

The opportunities for positive analysis are equally great, if not greater. The political economy of much of the WTO/GATT system remains unexplored, from the provisions on 'unfair' trade practices to the treatment of developing countries to the rules for accession, voting, renegotiation and dispute settlement to the sector specific arrangements such as the Agreement on Agriculture. Fundamental questions relating to the expansion and evolution of the GATT system, both in scope and timing, have hardly been posed, let alone answered. The same may be said about the details of regional arrangements - even the most basic questions, such as who joins a regional arrangement, when, and why, remain little touched.

In short, much like other subject areas under the rubric of international law, law and economics has only begun to make a dent in the set of potential topics in the trade area. The rapid rate of change in international trade law simply adds to the possibilities for interesting new research. Mainstream economists can, of course, be expected to continue to invest considerable energy in the field, but scholars with legal training as well will retain a comparative advantage in work addressed to many of the concrete positive and normative problems raised by modern legal developments.

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