

The Stakes of Trade Policy: domestic and global inequalities

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Abstract

Economic nationalism is on the rise, while decision-making is floundering within multilateral and regional trade institutions. As states ‘take back control’ over their trade policies, what does this imply for domestic and global inequalities? The paper will clarify how a state’s trade policy can affect what matters about domestic inequalities, global procedural fairness, and global distributional inequality. A state should aim to: i) pursue gains in national income, without making excessive contributions of its ‘policy space’ on issues that matter for disadvantaged groups; ii) refrain from abusing its unilateral decision-making power over its trading partners; and iii) prioritize trade liberalization with poor countries that have the competencies to take advantage of economic opportunities and that are likely to share the benefits of prosperity with disadvantaged citizens. There is room for a state’s trade policy to represent improvements over existing multilateral and regional institutions with respect to these aims, although improvements are by no means guaranteed.

Keywords: fair trade, equality, global distributive justice, procedural fairness

Introduction

Economic nationalism is on the rise, while decision-making is floundering within multilateral and regional trade institutions. These trends are highlighted by the collapse of the Doha round of negotiations in the World Trade Organization (WTO), the US's withdrawal from the Trans-Pacific Partnership, and the US and the UK taking steps that could lead to withdrawal from NAFTA and the EU's Single Market and Customs Union, respectively. The WTO and, to a lesser extent, the EU and other regional institutions have figured prominently in debates about where there should be limits on inequalities. Some participants in this debate have argued that states could not feasibly 'take back control' over their trade policies from these institutions, while others have argued that states retain this capacity but usually will not exercise it.¹ As decision-making on trade shifts from multilateral institutions to preferential trade agreements and unilateral policies, it is unclear whether advocates of equality have more reason for hope or despair.

Political forces of nationalism, visible in 'America First' and similar slogans in other countries, provide an important explanation for the shift in political rhetoric and action on trade policy. Political leaders claim they can secure a better deal for disadvantaged citizens through preferential trade agreements. On their view, multilateral trade institutions are procedurally unfair and tend to favour other countries at their citizens' expense. Opposition to economic globalization is another important explanation for the shift. Many economists fear the decline of multilateralism will lead to greater trade protectionism, thereby slowing the pace of trade liberalization and limiting the prospects of poor countries. Reflecting upon these two explanations—rising nationalism and anti-globalization sentiment—it could be thought that the shift away from multilateral trade institutions represents an advance for the ethics of nationalism and a defeat for the ethics of cosmopolitanism. On this brief assessment, advocates for limiting domestic inequalities can rejoice, while advocates for reducing global inequalities should despair.²

However, the idea that a state has received a 'bad deal' from trade has broad appeal across the divide between nationalists and cosmopolitans. While the most prominent critics of 'bad trade deals' lately have been nationalists and political leaders espousing anti-globalization rhetoric, cosmopolitans and enthusiasts of economic globalization have made similar claims about developing countries' limited access to rich countries' markets. Moreover, multilateral and regional trade institutions are imperfect realizations (at best!) of ideals of global procedural fairness and global distributive

¹ Nagel (2005) argues that the WTO is dissimilar to the coercive authority of a state, while Pogge (2008) claims the WTO imposes harms on poor countries by denying them the benefits of trade liberalization. In contrast to both, James (2005; 2012: 77-102) argues that trade negotiations in the WTO represents a site of governance without 'sovereign rule.'

² Moellendorf (2005: 158-159), Brandi (2014), and Risse (2017) all express concern that departures from multilateralism will worsen the prospects for global justice.

equality, so there is room for potential improvements in these respects. Shifting decision-making to states will not necessarily represent an improvement in what matters about domestic equality, nor will it necessarily represent a setback in what matters about global equality. This paper will describe the ideal design of a state's trade policy so that it generates improvements over existing multilateral and regional institutions, without venturing probabilistic statements about whether these improvements are likely to occur.

The three sections of this paper correspond to its accounts of the stakes of trade policy for domestic equality, global procedural fairness, and global distributional equality. First, I endorse a political-economic account of the function of a trade agreement, and I argue that a 'good deal' for a state offers prospective gains in national income that compensate for its contribution of valuable policy space. Second, I endorse criticisms of global procedural fairness in the WTO that have been advanced by defenders of special and differential treatment, and I take these criticisms further. Third, I argue that concerns of global distributive equality require states to unilaterally liberalize, even at some cost to their valuable policy space, and they should prioritize liberalization with countries at low levels of economic development that are also competent and inclusive societies. In sum, a state should aim for its trade policy to: i) pursue gains in national income, without making excessive contributions of its 'policy space' on issues that matter for disadvantaged groups; ii) refrain from abusing its unilateral decision-making power over its trading partners; and iii) prioritize trade liberalization with poor countries that have the competencies to take advantage of economic opportunities and are likely to share the benefits of prosperity with disadvantaged citizens.

1. How trade agreements can represent 'bad deals' for a state

There is a near consensus among economists that, for any country, reducing its own barriers to trade will result in gains in national income.³ If political leaders are motivated to increase national income, it is puzzling why they would reduce their state's barriers to trade only on the condition that other states do so as well. Economists widely suspect that trade agreements and trade institutions are the result of political leaders' poor grasp of economics, specifically their adherence to a discredited, mercantilist theory of trade (Krugman, 1997). In this section, I will describe the idea of a 'bad deal' with reference to three reputable positions in the debate among economists and political economists about the function of trade agreements. I will advance the position that trade agreements represent a state's contribution of its policy space, which can be a 'bad deal' when it does not produce prospects of worthwhile gains in national income.

³ Some argue that developing countries should not be required to liberalize trade immediately, which is an objection to the temporal sequencing of liberalization, or not entirely, with exceptions for some 'infant industry protections,' in order to maximize prospective gains in national income. The evidence is less clear about the relationship between trade liberalization and poverty alleviation, see (Winters et. al., 2004).

Most economists take the position that trade agreements and trade institutions serve no rational purpose, since it is in the economic interest of a state to liberalize its existing barriers to trade even if other states fail to do so. When trade negotiations fail, a state that has liberalized its barriers to trade on a unilateral basis can still complain about their failure. The state's national income has not increased *as much as possible*, because this requires other states to reduce their own barriers to trade. Fernando Tesón, a libertarian political theorist, has endorsed the position that states can be criticized for failing to increase their own and other states' national incomes through trade liberalization (2012; Tesón and Klick, 2012). What he adds to the economists' analysis is that the lost opportunities for gains in national income have the greatest ethical significance when poor people can be expected to suffer these losses. For Tesón, the lost opportunities for disadvantaged groups in developed countries, particularly low-income consumers, and the global poor, have the greatest ethical significance. Tesón argues it is a requirement of justice that any state, especially a developed country, should adopt a free trade policy.

The claim that a trade agreement is a 'bad deal' for a state is at odds with the position that a state ought to liberalize regardless of what other states do. Consider a state that has unilaterally reduced its barriers to trade, in order to increase its national income. This action provides a public good for other states, whose national incomes will increase regardless of their own action (or lack thereof) to liberalize trade. Since the state has provided a public good and other states fail to do likewise, it could be viewed as a failure of reciprocity or 'fair play.'⁴ On a duty of fair play, an actor makes a contribution to the public good that comes at a cost to himself; other actors who accept these benefits have a duty to undertake the same costly action in order to provide him with benefits in return.⁵ However, the 'fair play' argument does not apply if we adopt the economists' position that the liberalizing state incurs no costs from its actions. Tesón's argument that a free trade policy is a requirement of justice is also incompatible with the claim that a liberalizing state receives a 'bad deal' when other states fail to liberalize. Other states' failures to liberalize do not alter the content of the state's duty of justice to liberalize, nor do they increase the burden of the duty—again, because it is in the state's own economic interest to liberalize.

Economists Kyle Bagwell and Robert Staiger (2002) have argued there are certain conditions under which a state can maximize its national income through protectionism. They show that, theoretically, a large state could alter the global terms of trade in its favour by restricting imports. If a large state can use protectionism to increase its national income at the expense of other countries, it is not always in a state's economic interest to unilaterally liberalize. Under these conditions, trade

⁴ Kapstein (2006) argues for a duty of reciprocity between trading states that is 'diffuse' rather than 'strict' in character.

⁵ The duty of fair play is most frequently discussed in the context of political obligation, which assumes obeying the law is costly for the agent (Dagger and Lefkowitz, 2014).

agreements and multilateral trade institutions have a function for political leaders who seek to increase the national income. Bagwell and Staiger argue that trade agreements and institutions structure cooperation among states to achieve reciprocal reductions in their barriers to trade, without altering the terms of global trade. Aaron James' influential theory of fairness in trade endorses Bagwell and Staiger's explanation of the function of trade agreements and multilateral trade institutions (James, 2012: 35-75). On James' view, states make agreements to assure others they will refrain from engaging in 'beggar thy neighbour' protectionism. James argues that claims of fairness apply to the practice of international trade, partially because states make these contributions at some cost to themselves, in terms of their foregone gains in national income.

Even if trade agreements and multilateral institutions do serve the function Bagwell and Staiger propose, my claim is that James' theory of fairness in trade cannot find support in their position.⁶ On Bagwell and Staiger's explanation, the GATT/WTO was formed as a solution to a cooperation problem among large states. Once a rule-based trading system was in place, it was attractive for existing members to have small states join and for the new entrants to accept its rules.⁷ Nevertheless, among the members of the WTO, only the large states forgo gains in national income that could result from strategic protectionism. Small states do not have the capacity to alter the global terms of trade, and thus none of their trading partners gain 'assurance' from their agreement to refrain from doing so.⁸ However, restricting the scope of the argument to large states would be a severe limitation to James' theory of fairness in trade. It would imply that poor and developing countries are unable to claim the trade regime treats them unfairly: only large states with market power could claim to have received a 'bad' or 'unfair' deal.

Finally, the dominant position among political economists is that state leaders use trade agreements and institutions to resolve domestic conflicts over trade liberalization (Goldstein, 2017). For the two positions I have described above, the domestic distributional consequences of trade liberalization are unintended and peripheral to the function of agreements. By contrast, political economists argue a state participates in a trade agreement *for the very reason* that some domestic groups will be disadvantaged by trade liberalization. Some groups will lose competitive advantages, experience economic dislocations, and suffer other setbacks as a result of trade liberalization. Domestic legislative processes to reduce barriers to trade can be blocked by these groups, when they are politically powerful. Political leaders use trade

⁶ Some economists have expressed scepticism that Bagwell and Staiger's theoretical result actually explains the historical development of the GATT/WTO or the contemporary functioning of the WTO.

⁷ Bagwell and Staiger propose that a rule-based system assuaged small countries' fears that they would be exploited by large countries (2002, p. 69). See Gowa and Kim (2005) for evidence these fears were warranted.

⁸ On the difficulty of integrating developing countries' concerns into the WTO, on Bagwell and Staiger's account of the WTO's function, see Bagwell and Staiger (2014).

agreements and institutions to assemble a broader domestic coalition in favour of trade liberalization (including exporters who will benefit from access to foreign markets) or to bypass the normal domestic legislative processes. This position on the function of trade agreements and institutions has not been explicitly referenced in support of normative or evaluative claims about the quality of trade deals.⁹

This paper sketches an account of a ‘bad deal’ that draws from the third position about the function of trade agreements and institutions. According to this third position, political leaders’ motivations are either to seek out gains in national income or to provide economic advantages for a set of interest groups that will support her political survival. My account of a ‘bad deal’ is specified in reference to the former motivation and not the latter. Trade agreements and trade institutions provide a state with gains in national income, as a result of reductions in barriers to trade on the part of the state itself as well as its trading partners. For the issues covered in the trade agreement, the state’s policy positions on these issues would have been determined through its normal legislative processes. What the state contributes to the trade agreement is a portion of its policy space. A trade agreement is a ‘bad deal’ when the gains in national income are low, relative to the value of the policy space. What is distinctive about my account is that the value of the policy space, and thus the cost the state incurs for contributing its policy space, is not measured in economic terms.¹⁰ On my account, policy space is valuable when it is essential for the society’s ‘competency’ or its ‘inclusiveness.’¹¹ For instance, a trade agreement that limits a state’s ability to provide food security may undermine its ‘competency’ (since food security is a core function) and its ‘inclusiveness’ (since it loss disproportionately impacts the poor), even if the trade agreement makes the society better off economically.¹²

This requires a brief explanation of how contributions of states’ policy space produce gains in national income. When a trade agreement or institution requires a state to lower tariffs, for instance, the state has a policy removed from its set of legally permissible possibilities—the option to retain tariffs. Tariffs are one form of state regulation that make it more expensive for consumers and domestic firms to purchase goods from foreign producers, which undermines the society’s shift to the production

⁹ Although see Loriaux (forthcoming), who argues that a trade agreement can be unfair for domestic groups, particularly those at risk of unemployment. More generally on the importance of domestic distributional issues in trade agreements, see Dietsch (2017).

¹⁰ The policy space could be valued in economic terms, as in James’ position that states have refrained from opportunities for additional gains in national income. It could also represent terms of setbacks to the economic interests of the ‘losers’ from trade liberalization. See also Stiglitz and Charlton (2005: 85-6) on the requirement to respect poor countries’ policy space in trade agreements so that they can find their own optimal strategies for development.

¹¹ My account finds support from Dani Rodrik, who has said, ‘The time has come to embrace a different logic, that of “exchange of policy space,”’ (2016). Rodrik (2012) characterizes the value of policy space in terms of democratic sovereignty, while I separate the two values of ‘competency’ and ‘inclusiveness,’ which are present to some degree in non-democratic states as well as democratic ones.

¹² A comparable policy issue for rich countries is food safety standards.

of goods in which it has a comparative advantage. Any state regulations that have the effect of favouring domestic producers will hinder the state's shift towards specialization in the production to goods in which the society has a comparative advantage. Multilateral and mega-regional trade institutions require their members to harmonize their regulations and refrain from certain policy options that have the effect of favouring their domestic producers over foreign producers. Greater contributions of policy space typically correspond to greater economic gains: the EU's Single Market and Customs Union demand a high degree of policy coordination and produce significant economic benefits, while the policy coordination in the Trans-Pacific Partnership and its estimated economic benefits for members both will be less significant.¹³

This section has described three major positions in the scholarly literature on the function of trade agreements and trade institutions, and I have argued only the last can support the claim that a state has received a 'bad' deal for its citizens. This paper supplies an account of a 'bad deal' by appealing to the non-economic costs, in terms of a state's valuable policy space, incurred through its participation in trade agreements and institutions. I have in mind an objective standard of the value of policy space, rather than a view that particular interest groups assign high value to certain policy areas. Policy space matters when it contributes to the competence and inclusiveness of a society. Disadvantaged groups have a particular stake in their society's competencies, since they depend on its services, and in their state's commitment to including them in the benefits of prosperity. In the next section, I will argue that the WTO's norms of procedural fairness are best suited to answer a state's complaint about its 'bad deal' when we assume a mercantilist theory of trade, which is a discredited theory of trade not surveyed in this section.

2. Global procedural fairness in trade

Political leaders often complain that the WTO and mega-regional trade institutions are procedurally unfair, by way of explanation for how their state has received a 'bad deal' from its participation. The WTO's principles of 'reciprocity' and 'non-discrimination' are norms of procedural fairness that provide a response to this complaint. In this section of the paper, I will argue that the WTO's principles of reciprocity and non-discrimination are only adequate for responding to a state that views its 'bad deal' in terms of a mercantilist theory of trade. In making this argument, I draw from the work of several defenders of special and differential treatment for developing countries. Their criticisms can be taken further, in my view, because they provide the grounds for a thorough-going rejection of the WTO's principles of 'reciprocity' and 'non-discrimination.' While defenders of special and treatment have seemed reluctant to

¹³ For the U.S., there was an estimated potential benefit of 0.5% of GDP for participating in the Trans-Pacific Partnership, at the cost of policy space in food standards, technical barriers, and most controversially, regulation of services trade and investment (Petri and Plummer, 2016).

endorse unilateral and bilateral decision-making, their arguments provide grounds for a justification of these procedures.

According to the principle of reciprocity, when a member of the WTO agrees to lower its barriers to trade, other members should reciprocate with an reduction in their barriers to trade for that state's goods and services that has equivalent economic value. According to the principle of non-discrimination, a member of the WTO cannot lower its barriers to trade for foreign producers in some WTO member states but not others. All WTO member states are to be treated according to the 'Most Favoured Nation' principle, meaning that they face the same schedule of tariffs and non-tariff barriers to trade. These two principles, 'reciprocity' and 'non-discrimination,' represent fair procedures to resolve conflicts of interest between states that follow a mercantilist theory of trade.¹⁴ On a mercantilist theory of trade, a state wishes to retain its own barriers to trade in order to limit imports, while it would like its own exporters to enjoy favourable access to foreign markets. Lowering barriers to trade is viewed as an economically costly concession, and thus in a trade agreement, states agree to take 'reciprocal' measures to lower their own barriers to trade. When states lower their barriers to trade for producers from only some members of the WTO, they 'discriminate' against foreign producers that have higher barriers to access the state's markets, in comparison to domestic or other foreign producers.¹⁵

Many commentators have argued that developing countries do not actually enjoy 'reciprocity' with the rich countries. Granting access to the markets of developing countries has less economic value for producers in rich countries, in comparison to the significant economic gains at stake for developing country producers in gaining access to rich countries' markets. Due to differences in the economic value of access to markets, a formal principle of reciprocity fails to produce equivalent reductions in barriers to trade for rich countries and poor ones. Rich countries retain relatively high 'tariff peaks' on goods from developing countries, such as clothing and textiles, and significant non-tariff barriers to trade on goods in which developing countries could have a comparative advantage, such as agricultural products. This failure to achieve reciprocity in trade agreements in the WTO provides support for a suspension of the formal rule of reciprocity, in favour of special and differential treatment for developing countries.

Special and differential treatment has several elements, including permissions for developing countries to implement WTO rules and agreements on a longer time-frame, and assistance for developing countries to participate fully in trade negotiations. Since the Doha 'Development' round has failed, what is more interesting at present are the elements of special and differential treatment that apply to unilateral and

¹⁴ As previously mentioned, Bagwell and Staiger (2002) explain the function of these principles differently, but others have noted that their theoretical predictions yield equivalent observations if states are motivated to increase national income or if they are motivated solely to increase exports.

¹⁵ See Christensen (2015) for criticisms of the WTO's principles of formal equality.

bilateral trade. Special and differential treatment permits rich countries that are members of the WTO to unilaterally liberalize their barriers to trade for developing countries. It also permits developing countries to liberalize trade amongst themselves, without granting the same access to their markets to producers from rich countries. Defenders of special and differential treatment typically argue that it is compatible with the WTO's core commitments. Ethan Kapstein argues that special and differential treatment helps to create a 'level playing field' for poor countries to enjoy opportunities for economic growth (2006: 49-44). Joseph Stiglitz and Andrew Charlton appeal to procedural fairness and substantive fairness in prospects for development to justify special and differential treatment (2005: 87-105).

To illustrate the conflict between special and differential treatment and the WTO's principles of procedural fairness, I will describe what happens when a rich state makes a unilateral decision to lower its barriers to trade for a developing country. The developing country is not required to reciprocate with reductions in its own barriers to trade, and let's presume it does not reciprocate. This could be viewed as a partial step towards restoring reciprocity between rich and poor countries, because it reduces the excess in one rich country's barriers to trade with a poor country. However, as a result of the rich country's decision, another rich country's producers will find themselves at a competitive disadvantage in comparison to the poor country's producers, resulting in diminished exports for the second rich country. This provides a 'bad deal' for the second rich country, understood in mercantilist terms, and a 'good deal' for the poor country. The costs of the first rich country's decision, understood in mercantilist terms of balanced imports and exports, are not borne by it alone as it accepts greater imports from developing countries. The second rich country bears these costs as well, in terms of its diminished exports to the first rich country. Notably, the second rich country bears these costs even if it *also* has extended special and differential treatment to developing countries.¹⁶

Defenders of special and differential treatment are reluctant to justify unilateral trade liberalization on the part of rich countries or developed countries' retention of their barriers to trade, but their reasons are unrelated to principles of reciprocity and non-discrimination at stake in the scenario above. Stiglitz and Charlton argue that rich countries have not done enough to liberalize on a unilateral basis, because it is discretionary rather than enforced upon them. Moreover, it is cumbersome for developing countries to prove compliance with 'rules of origin' in the Generalized System of Preferences (GSP). Instead, Stiglitz and Charlton propose a rules-based system, which they call the Doha Market Access Proposal, which would require all WTO members to provide free market access to all developing countries 'poorer and smaller than themselves' (2005: 94-103). Stiglitz and Charlton also argue that

¹⁶ We can also substitute a second developing country for the second rich country. On developing country challenges to GSP, see Grossman and Sykes (2005).

developing countries ought to reduce their barriers to trade for their own benefit.¹⁷ Kapstein also expresses ambivalence over rich countries' unilateral liberalization: he views it as a small move towards 'diffuse reciprocity,' but notes it lacks reciprocation from developing states.¹⁸ He also notes developing countries would gain in their prospects for development and growth from reducing their own barriers to trade (2006: 69-71).¹⁹

Ultimately what seems to matter for defenders of special and differential treatment is that trade liberalization should take place in such a way as to extend poor countries' chances for growth and development. Reducing barriers to trade matters insofar as it contributes towards those ends. There is scope for disagreement (in light of current political conditions) about whether unilateral liberalization is a feasible strategy for improving poor countries' chances for development. What special and differential treatment defenders have rejected is the idea that reciprocal reductions in barriers to trade are a distinctive object of procedural fairness.²⁰ In other words, they set aside the mercantilist theory of trade that underwrites the WTO's principles of reciprocity and non-discrimination.²¹ I will argue now that defenders of special and differential treatment also offer the basis for a more general rejection of the WTO's principles of procedural fairness in trade.

First, defenders of special and differential treatment must believe that trade policy ought to discriminate amongst states on the basis of their level of economic development. The reason it is valid to take development into account is that it matters more for societies to enjoy the gains from trade (whatever these gains are) when societies have low levels of economic development.²² Special and differential treatment in unilateral and bilateral trade policy involves many differentiations among members of the general class of 'developing' countries, although it is a single category for the WTO. When a country receives special and differential treatment in GSP or preferential trade agreements, the country's particular conditions are subject to

¹⁷ They recommend that developing countries be afforded a longer time-scale, with greater allowance for their 'policy space' and the benefit of technical assistance. They recommend that 'South-South' barriers to trade should be reduced considerably.

¹⁸ Kapstein endorses 'diffuse' reciprocity with reference to the broader function of norms of fairness in supporting the perceived legitimacy of the international order (2006: 31-38).

¹⁹ For evidence that developing countries fail to reduce their own barriers to trade as a result of being beneficiaries of GSP programmes, see Özden and Reinhardt (2005).

²⁰ See Caney (2012) on the isolationist and integrationist approaches to issues of global justice. Defenders of special and differential treatment take an integrationist approach by viewing trade in terms of the larger aims of global distributive justice.

²¹ Brown and Stern (2012) argue that reciprocity fails to achieve equality of opportunity. See also Brown and Stern (2007) in support of equality of opportunity and distributive justice as principles to govern trade. Brock (2009: 227-232) argues that the WTO already realizes 'diffuse reciprocity' as Kapstein defines it, and she proposes a different principle to aim for. While I do not disagree with these views, my argument has focused on the mercantilist theory of trade that underwrites the principle of reciprocity in the WTO.

²² There are a plurality of reasons why it could matter more to benefit these states, including instrumental and intrinsic reasons (I describe both below).

scrutiny in light of the programme or the agreement's stipulated conditions for eligibility.²³ Once a division has been made between 'developed' and 'developing' countries, it seems valid to discriminate further by taking gradations in levels of development into account, although the WTO does not do so.

I believe there is another valid criterion for differentiation amongst developing countries in trade policy that is consistent with the justification for special and differential treatment. Some societies are politically inclusive, such that the gains from trade are more likely to be widely shared amongst its members. In addition, some societies have the institutional competences that permit them to take advantage of opportunities to specialize in their comparative advantage, increasing their income and perhaps even their chances to develop. Perhaps taking into account these forms of political differentiation, which I call 'competency' and 'inclusiveness' is a step further than defenders of special and differential treatment wish to go. However, they have opened up the possibility of such differentiations with their argument in favour of a distinction between developed and developing countries, against the WTO's principle that a state's trade policy should not 'discriminate' amongst WTO member states.

Second, I argue that special and differential treatment provides a precedent for the rejection of reciprocal procedures of decision-making in trade. Special and differential treatment do not restore reciprocal decision-making as a procedure for decision-making in the WTO, as Kapstein rightly notes. The permissions granted by special and differential treatment allow rich countries to address the *consequences* that result from the WTO's failure to achieve reciprocal procedures, namely, the failure to reduce barriers to trade for producers in developing countries. It permits rich countries to unilaterally select goods and services on which they will reduce barriers to trade for producers in developing countries, which Stiglitz and Charlton rightly note means that rich countries retain discretion. The reason unilateral liberalization is acceptable nonetheless is that it can be expected to produce economic benefits for poor countries. It may be true that many poor countries should reduce their own barriers to trade to aid their own development, but if they choose not to do so it remains an ethical duty for rich countries to liberalize for their benefit.

I have argued there are several respects in which defenders of special and differential treatment have departed from the principles of procedural fairness that govern the WTO. Defenses of special and differential treatment have rejected the mercantilist framework that underlies many political leaders' claims that their state has received a 'bad deal,' which are answered by the WTO's norms of procedural fairness. Special and differential treatment implies that it matters more to provide a developing country with the gains of trade than a rich country, which provides a justification for

²³ The WTO allows states to self-identify as 'developing,' and all states that are classed as 'developing' can be granted special and differential treatment. Within WTO negotiations, developing countries are increasingly voting and bargaining as a 'bloc,' despite the important differences in their interests (Narlikar, 2010).

discrimination on this criterion (to which I add political criteria I believe are also valid). While its defenders have hesitated to endorse this element of special and differential treatment, it does licence unilateral decision-making on the part of rich states for the benefit of poor countries. The next section of this paper will provide greater scrutiny and defense of the position that unilateral decision-making has risks, namely of the abuse of power, but is valuable nonetheless insofar as it brings about improvements in the global distribution of the gains from trade.

3. Global distributive equality

This section charts a path forward in navigating the competing concerns for domestic equality, global procedural fairness, and global distributional equality. While I agree with Tesón that it is ethically important to provide economic benefits to people in poor countries through trade liberalization, I will argue that full liberalization would require excessive contributions of a state's valuable policy space. Since states have only a limited imperative to liberalize trade, I will argue that they should carefully choose the states with which they will liberalize ('discriminate') on a unilateral basis (without 'reciprocity'). Relevant criteria for selection, in my view, include both economic development and their political competencies and inclusiveness. These political and economic factors are a valid basis for differential treatment, in order to direct the gains from trade to where they can go further to achieve global distributional equality. I will further note the limitations in the WTO, in order to describe the ways in which a state's unilateral and bilateral trade policies can do better (and the ways in which they are likely to do worse).

I endorse the position that unilateral trade liberalization on the part of rich states will result in economic gains for poor countries. While Tesón describes a duty of humanitarianism to provide economic gains to poor countries, many would endorse the duty as a requirement of global distributional equality. What I find problematic about Tesón's argument is that it cannot abide a limit on the duty of a state to liberalize trade. The heart of the economic case for a state to reduce its barriers to trade is that it is in the national interest to gain aggregate income, and no relevant costs.²⁴ Since it is costless for the rich state, and there are significant potential gains for poor states, it is required for rich states to liberalize trade as much as possible for reasons of both rationality and ethics. As I argued in the first part of this paper, there is no basis for a universal claim that a state has received a 'bad deal' from trade liberalization, when costs and benefits are defined solely in economic terms. The problem arises for all theories of justice in trade that define the function of a trade agreement in economic terms alone.

²⁴ The economic costs of trade liberalization are borne by domestic groups, who experience dislocations from exposure to foreign competition. Of course, the possibility of compensating these groups does not imply that they are actually compensated and in the kind of economic goods they have lost (such as jobs).

A state can receive a ‘bad deal’ from its participation in trade agreements because these provide economic benefits and require contributions of policy space that have non-economic value. I am not referring to a subjective valuation of the economic benefits and the policy space, in the view of the state’s political leaders or citizens. Prospective gains in national income are more valuable for a society at a lower level of economic development, in comparison to a society at a higher level of development. I mean to say that the same quantity of prospective gains in national income will provide a ‘better deal’ to the society at a lower level of development, even if the members of these societies do not see it this way. This is because the society at a lower level of economic development can do more with the same gains in national income to improve its members’ lives. The value of policy space is also objective, meaning that a trade agreement can represent a ‘bad deal’ because it requires valuable policy space, even if its political leaders and citizens do not perceive it to be so (and vice versa for a ‘good deal’). Fulfilling the core ‘competencies’ of a society—such as security, the rule of law, a functioning economy, and so on—or ensuring its ‘inclusiveness’ can be compromised by the state’s legal requirement to refrain from certain policy options, due to its participation in a trade agreement or institution.²⁵

It is not a requirement of rationality that a state should participate in a trade agreement or trade institution that involves full liberalization, due to the costs of valuable policy space. One objection is that the state still ought to fully liberalize on a unilateral basis, since this involves no binding legal commitment to refrain from certain policy choices. In my view, unilateral liberalization does involve a commitment of policy space, albeit to a lesser degree: there will be gains in national income only if market actors believe certain policy options will be off the table for an extended period.²⁶ Thus, the same tradeoff remains between the value of the economic gains at stake and the value of the policy space. To determine whether a trade policy represents a ‘good deal’ for the state, my account raises the following questions: 1) how much economic gain is at stake in this trade policy and how valuable is it, given the society’s level of development? 2) which policy options are removed from the domestic legislative process, and to what extent are these issues essential for the society’s competency and inclusiveness? My account sets out an appropriate framework for debate, for instance, about whether it makes sense for rich or poor states to press for a new round of multilateral negotiations in the WTO or if membership in the EU’s Single Market and Customs Union provides a ‘good deal’ for Britain.

²⁵ I would also include the fiscal commitments of the state’s participation in trade institutions, since high costs can undermine the state’s competences and inclusiveness. While the ‘Leave’ campaign for the Brexit referendum made specious claims that more money would be available for the NHS after leaving the EU, since the UK would no longer be obligated to make financial contributions to the EU, if the claim had been based in fact it would have been a valid argument. See also Banai (2017) on the costs to sovereignty from investor-state arbitration in trade and investment agreements.

²⁶ Policy options can be off limits for non-legal reasons as well, see Dietsch (2015) on the costs to sovereignty from the phenomenon of global tax competition.

My account supports a limit on the ethical duty of a rich country to reduce its barriers to trade. The value of the state's policy space is weighted against the prospect of national income gains for poor countries. Exactly how stringent a limit on the duty of trade liberalization cannot be specified here, since cosmopolitans and nationalists will disagree about the relative weights of these two values. However, the WTO seems ill-equipped to balance both. In the WTO, policy space is recognized as an important limitation on trade agreements and trade negotiations only for the sake of developing countries and only for the reason that it is essential to their development. On my view, all states contribute policy space through their participation in trade agreements, and this policy space has potential objective importance for maintaining competency and inclusiveness. This value should be recognized alongside the ethical imperative to help poor countries develop, whether it is for reasons of humanitarianism or global egalitarianism.

Since states have a limited imperative to liberalize trade, they should carefully choose the states with which they will liberalize ('discriminate'), even if it occurs on a unilateral basis (without 'reciprocity'). As discussed in the second part of this paper, defenders of special and differential treatment have provided the basis for a rejection of the WTO's principles of non-discrimination and reciprocity in the reduction of barriers to trade. Rejecting these principles allows a rich country, on a unilateral basis, to do more to liberalize trade with countries whose economic gains matter more from the perspective of global ethics. I have also indicated that relevant criteria of selection include a state's level of economic development, as well as its political competence and inclusiveness. It is better to direct trade liberalization towards countries that have higher levels of competency and inclusiveness, because these countries are better positioned to take advantage of the economic gains from trade liberalization.²⁷ From a cosmopolitan perspective, it is also better to direct economic gains to inclusive societies because they will share the gains from trade with disadvantaged domestic groups, such as their impoverished and working classes.

One competing consideration is that the WTO's norms of procedural fairness are useful for avoiding unilateral abuses of power. Binding multilateral rules prevent a state from employing arbitrary criteria for selecting trading partners, such as their political support. It is well known that rich countries tend to have preferential trade agreements with their political allies and, for European states, with their former colonies. Stiglitz and Charlton express concern that unilateral decision-making gives rich states the discretion to fail to liberalize substantially with poor countries, but they do not offer principled objections to unilateral decision-making as a procedure.²⁸ By contrast, the concern considered here is that unilateral decision-making grants discretion for rich countries to make liberalization conditional upon inappropriate features of their

²⁷ See Winters et. al. (2004: 77) on policies that may help trade liberalization promote growth, such as 'effective conflict resolution'; in my view, such policies presuppose certain competencies.

²⁸ See Limao (2006) in support of the view that multilateral liberalization offers superior prospects for economic gains to poor countries.

prospective trading partners.²⁹ While ideally rich countries would refrain from abusing their discretion over their poor country trading partners, it is obviously a drawback of unilateral decision-making in general that it is not rule-based.

Conclusion

This paper has identified several points of conflict between concerns of domestic equality, global procedural fairness, and global distributional equality. Trade liberalization is important for improving the economic prospects of poor countries, for humanitarian reasons and reasons of global distributional equality. However, a state's participation in a trade agreement can represent contributions of its valuable policy space, which can have the most importance for domestic disadvantaged groups. Finally, the WTO's principles of procedural fairness are at odds with special and differential treatment and with my recommendations for a state's unilateral and bilateral trade policy, which restricts a potential mechanism to achieve greater global distributional equality. A state should aim to: i) pursue gains in national income, without making excessive contributions of its 'policy space' on issues that matter for disadvantaged groups; ii) refrain from abusing its unilateral decision-making power over its trading partners; and iii) prioritize trade liberalization with poor countries that have the competencies to take advantage of economic opportunities and that are likely to share the benefits of prosperity with disadvantaged citizens.

One objection will be raised but not fully answered here: it is better to seek to reform multilateral trade institutions, rather than weaken them through unilateral and bilateral trade liberalization. I have taken as given that states represent an increasingly important site of decision-making on trade, and indicated the possibilities for improvements (and setbacks) in what matters about equality. This paper in no way detracts from proposals to reform the WTO and regional trade institutions, and indeed its account of the stakes of trade policy may be relevant for such proposals.³⁰

²⁹ On 'non-trade reciprocity' in the EU's GSP+ programme, see Ornelas (2016: 380-381).

³⁰ I agree with Bagwell, Staiger, and Bown (2016) that the WTO has continuing relevance, despite the proliferation of preferential trade agreements. One possible reform of the WTO that is compatible with my argument here is a shift to 'plurilateral' agreements.

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