

Deliberative trade policy: Rethinking global governance of international trade

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Abstract:

This paper picks up an argument that I developed in an earlier contribution (2007) in which I introduced the concept of ‘deliberative trade policy’. This approach analyzes the entire set of trade policy institutions and measures as means and media of communicating about preferences of institutional design. In this overview, I connect the concept with Amartya Sen’s conception of justice and his distinction between ‘transcendental institutionalism’ and ‘realization focused comparisons’. I show that the traditional economic view takes the former stance in focusing on efficiency as a standard for evaluating institutions. The deliberative view follows the second stance. A central analytical leitmotif is to track political externalities of democracy globally, and to develop criteria and measures of inclusiveness of trade policies aka internalization of externalities. I apply these ideas on preferential trading agreements and on WTO reforms.

Keywords: Sen’s theory of justice; deliberation; political externalities; inclusiveness of trade policies; regionalism; WTO

1. Introduction: The case for a ‘deliberative turn’ in understanding international trade policy regimes

The concept of ‘deliberation’ plays an important role in recent discussions about reforming the WTO and international trade policy (Nanz and Steffek 2004; McGrew 2011). The term mostly refers to broadening the inclusiveness of the trade policy process, especially with reference to civil society actors. My contribution broadens the scope of the term substantially in applying it both in a normative and a positive sense, and in extending its reach to include all aspects of trade policy. That means, I look at the institutions and practices of trade policy as a process of communication, information processing and of reaching collective agreements about the

institutions of international trade (my approach is therefore closely related to ‘discursive institutionalism’, see Schmidt 2008, 2011).

My starting point is the established economic theory of trade policy, which differs from political science approaches in many respects (for an overview of various disciplinary approaches, see WTO 2007). The latter can be easily integrated in my framework, so that I think that the approach of deliberative trade policy (DTP) is a powerful means of cross-disciplinary integration. This also applies for the legal literature, which is of central significance, given the legalization of trade policy after the establishment of the WTO (Weiler 2001). Indeed, the legal process and litigation can be conceived as a formalization of deliberation, and given the fact that many international agreements on trade and investment are incomplete contracts, and should adapt to the emergence of radically new economic and technological conditions (such as the rise of China or the revolution in information technology), the dispute settlement system in international trade is a pivot of the deliberative process as understood here.

In methodological terms, the DTP approach builds on institutional economics: Remarkably, institutional economics has been well received in political science and the international relations literature, but is neglected in the standard economic approaches to trade policy, which mainly adopt the rigorous analytical framework of general equilibrium theory (for a representative survey, see Bagwell et al. 2016). One of the most important conceptual bridges between the two views is game theory, in terms of assessing the information structure of international trade and policy interactions, and the role of actions versus communications in creating this structure.

On a most basic level, the DTP approach is the appropriate view for understanding how politico-economic actors navigate the ‘globalization trilemma’ as posited by Rodrik (2011). This trilemma states that it is impossible to combine the three goals of democracy, national sovereignty and globalization simultaneously, and that only two of them can be achieved in harmony, eschewing the other third. From the DTP angle, the centrepiece is democracy. Democracy creates specific problems for setting the institutions of international trade in the context of an ongoing process of globalization, because all measures of liberalization, simply understood here as the dismantling of institutional impediments to globalization, will create winners and losers within a certain period. Since the times of Adam Smith, economists have argued the liberalization will always generate improvements of national welfare in terms of consumer benefit: increasing the scope of the international division of labour will lower prices and enlarge the diversity of goods available, which is unambiguously a Pareto-improving aggregate welfare gain. In my discussion, I take this for granted. However, this argument only

applies in the long run and fails to recognize firstly, that there are distributive issues in the short and medium term resulting from the allocation of costs of adapting to liberalization among various groups in society, and secondly, that affected groups can and will influence the political process in their attempts to meet these challenges of adaptation. Democracy creates specific problems here, as the electoral cycles are often much shorter than the time needed for adaptation, and because democracy only operates in a national setting. That means, national voters may not take into consideration the effects of policies on citizens of other countries (Gerhart 2003).

In this chapter, I explore the potential of the DTP approach in analysing trade policy among democracies. I think that the Bretton Woods system was already an institutional design that explicitly aimed at resolving the Rodrik trilemma while preserving democratic principles on the national level. I claim that the WTO has continued with this trajectory of institutional development, and that therefore normative calls for reform based on the principle of deliberation dovetail with the results of positive analysis along the lines of the DTP approach. The chapter proceeds as follows. I start with further substantiating the case for a deliberative turn, followed by a more detailed conceptualization of ‘deliberation’. I continue with two sections that outline the two central theoretical notions guiding trade policy analysis in the DTP view, namely ‘political externalities’ among democratic countries and the ‘specialization dilemma’ as an endogenous source of market power and incentives for time-inconsistent policies. The next two sections concentrate on two more specific aspects of the trade policy regime seen as a framework of deliberation, that is preferential trading agreements and the issue of inclusiveness of the trade policy process. I conclude with a few thoughts about reforming the WTO from the DTP angle.

2. Beyond transcendental institutionalism

Standard economic approaches to trade policy typically adopt a Public Choice perspective in assuming that governments pursue a limited set of goals. In simplest terms, this would include the goal of maximizing national welfare, often represented by national income, and a political support function which reflects all actions taken by citizens to support electoral success of politicians. Via the political support function, the role of interest groups in trade policy is scrutinized (the canonical model was developed by Grossman and Helpman 1994, 1996; Rodrik 1995). Public Choice offers a wide and rich spectrum of hypothetical determinants of interest group formation and impact, such as explaining the relative size of groups and their political effectiveness in overcoming free rider issues of political mobilization. By these hypotheses, we

can explain why politicians may fail to pursue the general welfare objective and create distortions that cater to the domestic special interests.

However, when reflecting the economic literature, we notice that it adopts the general equilibrium perspective that continues to shape most economic theorizing about international trade. More specifically, the assumption of full and perfect information applies: Governments know about the alternative policy options, and maximize their own utility function accordingly. The DTP approach radically modifies this assumption in positing that politicians do not know the optimal institutions in advance, and that they also do not know the preferences of citizens about institutional alternatives (this corresponds to the evolutionary view in Public Choice, see Cantner and Wohlgemuth 2013). Hence results the meaning of ‘deliberation’ that I employ in this contribution: Deliberation is the process of communication and information processing by which citizens and political actors discover preferences about alternative institutions and their means of implementation (cf. Elster 1998). In comparison to standard Public Choice, the concept of deliberation includes the possibility (and even the need) to change preferences because of the deliberative discourse, and thus transcends the simple institutional design of voting with given preferences.

The broader theoretical framework of DTP is Amartya Sen’s (2009) distinction between two alternative ways to evaluate institutions: Transcendental institutionalism versus realization focused comparisons. The standard economic approach is transcendental-institutionalist. That assumes, in principle, that economics can identify the optimal institutions on theoretical grounds, and that it adduces empirical criteria by which ways of transition to the optimal institutions can be identified and evaluated. Thus, for example, we know on theoretical grounds that tariffs damage national and global welfare in reducing the scope of the international division of labour, and that therefore lowering tariffs is an optimal institutional choice. This view undergirded the ‘shallow’ approach to globalization in the old GATT. Further, the theory can be also communicated to politicians, so that they are fully informed about the welfare consequences of alternative policies. In this framework, distortions can only emerge and be sustained if special interests cater to the individual benefit of political actors, and all actors should be fully informed about these motives and their consequences.

If we look at the role of transcendental institutionalism in the real world, we notice that the requirement of full information and theoretical clarity can no longer be taken for granted in the context of the so-called ‘new issues’ in trade policy (Bollyky and Mavroides 2016). This points to the fact that international trade policy does no longer refer to border measures such as tariffs

exclusively, but to all kinds on domestic institutions that directly or indirectly affect international economic exchange (Jansen 2011). This came to the fore early in the context of non-tariff barriers to trade, but applies universally in the context of services trade, thus even requiring the creation of a separate institutional framework, the GATS. In more recent times, the scope of the issues has been extended to including even broader political concerns such as labour issues and human rights. In other words, the complexity of international trade policy has exploded. In this new setting, neither theory nor practice can provide reliable criteria for identifying optimal institutions in terms of a simple measure of general welfare. This is where transcendental institutionalism must fail, and realization-focused comparisons come into play.

Yet, having provided an historical reason for shifting the theoretical framework, Sen's original idea was based on theory exclusively. Suffice to notice the results of Social Choice theory about the impossibility of collectively defining a national welfare function (the Condorcet-Black-Arrow theorem) (Sen 2002). Despite these foundational results, the economic approach to trade policy continues to operate with assuming a general welfare function to identify policy distortions. If we recognize the Nirvana nature of general welfare, however, the only way to discover improvements of institutions is realization-focused comparisons. This means, that we envisage and practically design a political process in which all affected parties of institutional changes express their respective preferences about institutional changes and their evaluation of consequences, and that via public discourse an agreement would be reached that is not simply based on given preferences, but which also reflects changes of preferences of various parties that result from additional information generated by this process. This process is called 'deliberation', as opposed to simple choice among given alternatives.

Taking the two arguments together, DTP emerges the appropriate framework for understanding trade policy in the context of complexity and uncertainty about alternatives of institutional choice, and under the condition of diverse and evolving preferences over trade and institutions. DTP elucidates the role of realization focused comparisons in trade policy. This radically changes our view on interest-group politics: In transcendental institutionalism, interest group politics is always inefficient, as it necessarily creates deviations from the social optimum; in realization focused comparisons, interest group politics is one important channel how the political process can generate the necessary information about the distribution of institutional preferences in the population (compare Wittman 1995). In other words, we approach political competition as an evolutionary 'discovery procedure' about policy improvements, with no Archimedean point provided (Wohlgemuth 2002, Witt 2003).

3. Conceptualizing ‘deliberation’

My approach to deliberation goes beyond established uses of the term in two senses. The first sense is that I employ it in both normative and positive meanings. In the context of trade policy, the term is mostly used in the normative sense, as mentioned in the beginning, such as raising demands for expanding inclusiveness of the trade policy process. I follow this view, but also employ the term in the positive sense, that is, analysing trade policy in general as a process of communication and information processing with the aim of fixing policies: This is ‘deliberative trade policy’.

The second sense is that I extend the scope of communicative actions (Herrmann-Pillath 2007). Current uses of ‘deliberation’ mostly refer to the arena of rational discourse among different parties who present and discuss reasons for their demands and actions. However, this fails to recognize that an elementary problem in this communication is to establish truthfulness of information provided and create commitment to promises given. For this, mere rational discourse is not sufficient, as it may result in ‘cheap talk’ (Farrell and Rabin 1996). In economics, this relates to the large game-theoretic literature on signalling. That means, political discourse is embedded into a larger system of signalling by non-linguistic means. Especially, policy measures themselves have two roles, namely they aim at an effect, given the policy preferences of affected parties, and they send signals to other parties, with various intentions, such as explaining, threatening, cheating or nudging. For example, raising a tariff creates benefits to protected parties, but may also send a signal to exporting countries about the underlying political contexts and intentions. In economic approaches to trade policy, these fundamental aspects are mostly approached in terms of the distinction between private and public information on the one hand, and the possibility of hidden actions on the other hand (see e.g. Lee 2016).

The positive approach to DTP applies both domestically and internationally. On the domestic scene, political actors are incompletely and imperfectly informed about policy preferences among the citizenship. Citizens create and utilize organizational means to communicate their preferences to them, such as becoming members of political parties, establishing NGOs as pressure and advocacy groups, or participating in demonstrations, or, eventually, voting. However, this communication may not be truthful and imperfect, especially in terms of weighing trade-offs, and in expressing credible commitments to future obligations (such as providing political support in exchange for special treatment, see Maggi and Rodriguez-Clare 1998). For example, if citizens protest liberalizing trade in genetically modified products,

politicians cannot reliably assess how far these protests accurately reflect the real costs and benefits that would determine citizens' behaviour after changing the institutions. At the same time, citizens themselves may not even be fully aware of and informed about the trade-offs (the standard Public Choice argument of 'rational ignorance' may apply). In these contexts, political action also serves the function of signalling. In a similar vein, if politicians negotiate institutional changes with other countries, trade partners are not fully informed about the relative importance of political issues, and may not trust into the reasons verbally provided. For example, politicians may communicate concerns about green agriculture, but trade partners may just believe that this is disguised protectionism catering to the interests of national agricultural lobbies. Again, truthfulness of certain arguments may be established via signalling.

One fundamental insight of signalling theory is that costs of actions may operate as signal of underlying capacities or motives, also known as the 'handicap principle' in evolutionary theory (Zahavi and Zahavi 1997; Spence 2002). Whereas standard economics only conceives inefficiencies as costs that can and should be avoided, incurring costs may have strong signalling functions and therefore may be indispensable for achieving successful coordination. This also applies in the trade policy context: For example, a government that wishes to protect certain declining industries is concerned about the political costs, which, however, are only private information that cannot be verified by trade partners, in principle; incurring the inefficiency costs of lost consumer welfare may be the signal that turns this information credible, if communicated in trade policy negotiations (for a seminal related approach, see Feenstra and Lewis 1991).

If we approach DTP from this angle, we can easily extend the argument by referring to speech act theory in linguistics and philosophy of language (Green 2009). Then we can recognize the different functions that communication can have. Beyond establishing the truthfulness of information via signalling, communicative actions may also serve the purpose of threatening, convincing, promising and so forth. This multi-functionality of communicative actions implies that the information problem in policy coordination even includes opaqueness of motives and intentions of actors in communication, which affects the interpretation of the meanings of actions. The importance of linguistic conventions in trade policy is mostly overlooked by economists, but certainly recognized by lawyers. A case in point is the international system of tariff classifications, which plays a central role in applying legal terms such as 'like product' (Hudec 2001). The current system does not simply classify goods, but also communicates normative intentions, especially in terms of the exclusive focus on product characteristics, and

neutralizing differences of production processes. More recently, however, attempts are made to include process characteristics, especially with reference to environmental issues, thus reflecting newly emerging normative concerns (for example, in the current EGA negotiations). This is only one example where institutions of trade policy can be seen as linguistic conventions and means of communication.

Referring the considerations so far back to the globalization trilemma, we can now put DTP at the centre of both normative and positive analysis of its consequences. As said, the core issue is democracy, as ultimately the democratic process would decide whether, for example, full-scale globalization should be aimed at. The simplest alternative is a welfare dictatorship in which a sovereign country would indeed maximize national welfare, which would imply doing for full-scale liberalization. Hence, DTP is the theory of international trade that explores the consequences of the politics of democracy. In the end of the day, this expresses a fundamental normative commitment to democracy as the preferred political system. If we take democracy as a given, there are only two alternatives left of which one must go. One option immediately appears to be utopian, probably even on normative grounds, namely establishing a sort of federal world government, thereby giving up national sovereignty. Thus, we are left with limited globalization. Even in the standard economic context, this would leave us with second-, third- and n-th best welfare issues, since the optimum is no longer feasible. This drives the growing complexity of trade policy issues, and hence reinstates DTP as the proper analytical framework.

4. Political externalities in democratic systems

In the established economic approach to trade policy, the notion of externalities looms large, in the specific sense of terms of trade externalities (Bagwell and Staiger 2002). By this theoretical means, trade policy can be fully integrated in the general equilibrium framework. The argument is straightforward: If countries have market power in a specific industry or sector, they can cater to the specific policy preferences of domestic citizens, but partly can shift the costs to citizens of other countries via changing the terms of trade. This reasoning can be extended to including all national regulations as well, since eventually they are being reflected in changing relative costs of domestic production and imports. For example, domestic regulations may not create additional costs to domestic producers, but impose discretionary costs, such as fixed costs of market entry, for foreign exporters, if their domestic regulations differ (Jansen 2011).

The DTP approach considers this argument as being valid to an important extent, but does not impose the straightjacket of general equilibrium theorizing. Hence, we can extend the notion of externality to including all kinds of political externalities, whether they affect terms of trade or not (Gerhart 2003; Ethier 2004). Thus, we can posit that one important task for positive DTP analysis is investigating into the role of political externalities in international economic relations and the mechanisms of internalizing them. For this, we need an adequate understanding of international trade policy as an exchange embedded into a system of communication.

The other fundamental issue in trade policy, mainly responsible for generating political externalities, emerges from the temporal desynchronization of costs and benefits of institutional changes, accruing to different groups in society, and the time frame of political mechanisms in democracies. The latter includes the electoral cycle, but also other processes in time, such as the rise and fading out of political issues driven by social movements (on the role of ideational trends in trade policy, see Goldstein 1993). The international trade policy regime needs to include mechanisms that cope with the potentially destabilizing role of these processes, especially in the sense of increasing uncertainty about the future institutional setting (as it happens during the time of writing regarding US trade policies under the Trump administration). On the one hand, that implies that international institutions may serve the function of committing national policies to policies that eventually enhance national welfare. This is also well recognized in the established literature and is also explicitly seen as a goal of the WTO (http://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi05_e.htm). However, this again leaves the impression that democratic politics is inherently dysfunctional. On the other hand, therefore the international system must acknowledge that given the complex nature of trade policy issues, and their complicated time structure, changes in domestic democratic policies, even when constraining or even back treating from globalization, need to be acknowledged as legitimate policy options also by other democratic regimes negotiating with the deviant government.

Therefore, one of the fundamental issues in DTP is the internalization of political externalities of democracy. This applies already for the standard case of a tariff: If we follow the maxim ‘no taxation without representation’, a tariff is a tax on foreigners who do not have a voice in the domestic political process. But the same applies, for example, for domestic regulations on food safety, if they impose indirect costs on exporters in developing countries (on ‘regulatory externalities’ in the context of biotechnology, see Stewart 2009). Accordingly, international trade policy must be conceived as an institutional means of internalizing these political

externalities. However, absent a world government with democratic institutions, this can only operate via the representation of citizens by their respective elected governments. Hence, international trade agreements are concluded among governments exclusively. This creates another type of political externality, namely the externalities imposed by domestic electoral majorities on minorities, or, more specifically, by interests that are represented by the government and those which are not. Indeed, one of the most salient features of the current international trade policy regime is that it is formally geared towards representing producer interests, because it centres on issues of market access. Therefore, there is a systematic trend towards creating political externalities on domestic consumers.

If we look at the traditional Bretton Woods regime, finding a compromise between democracy and globalization was the basic tenet of ‘embedded liberalism’, hence can be conceived as a manifestation of DTP (Ruggie 1982). This system was designed to integrate the goal of liberalization with Keynesian democratic politics. This means, domestic policy preferences were mainly seen as being focused on macroeconomic issues, especially employment. The Bretton Woods regime created policy leeway for domestic democratic policies while enabling a decades long process of shallow integration via lowering tariffs. In this sense, GATT rounds are institutionalized processes of deliberation. Most importantly, it succeeded in creating a trade policy regime which is incentive compatible with the political economy of Keynesian democracy: this means that it allowed for much leeway in restricting trade while maintaining the goal of liberalization, in order to avoid political backlashes against liberalization (‘managed trade’, see Bagwell and Staiger 1990).

However, the scene has changed dramatically today. Facing the complexity of trade policy issues, the most fundamental change is that the macro-perspective does no longer suffice for designing and implementing DTP. In the traditional approach, lowering tariffs is conceived as directly enhancing consumer welfare, such that a direct involvement of consumers in fixing trade policy was not necessary. This resulted into the ‘diplomatic’ approach to trade policy that was prevailing at least until the Seattle events, and continues to shape international trade policy negotiations, such as in the context of PTAs, often attracting much criticism by civil society actors. The diplomatic approach assumes that governments represent national interests, and that liberalization boosts consumer welfare in the aggregate. In comparison, the new trade policy issues directly affect specific consumer concerns, such as in food safety, or ethical questions and demands: This is tantamount to a huge range of political externalities of trade policy. Hence, the nature of DTP needs to adapt to these changing political contexts, enabling deliberative

processes that directly involve citizens in the design of trade policy in specific fields. Basically, there are two institutional choices here: One is strengthening channels of voice in the domestic political process, where trade policy is often still treated as a technocratic issue left to the executive, the other is opening the international trade policy regime to civil society actors. DTP is the appropriate theoretical framework for guiding institutional design in this question.

5. The specialization dilemma and endogenous growth of complexity

As said, one fundamental feature of the traditional system that survives until today is its focus on producers and questions of market access. Given the theoretical presumption that liberalization automatically enhances consumer welfare, and should be therefore enjoy democratic support anyway, the challenge to trade policy is conceived as always emerging on the producer side, including both employers and workers, though not necessarily with convergent interests, as the Heckscher-Ohlin framework on the political economy of capital and labour easily demonstrates. Import-competing producers benefit from protection against foreign exporters, and in the democratic process many forces may result in that their interests prevail. Therefore, the established trade policy regime is an exchange of rights to market access (MARs, market access rights) for producers of different countries (Hillman and Moser 1996; Bagwell and Staiger 2001; Herrmann-Pillath 2008).

However, setting up a system of MARs exchange is also intrinsically necessary for the following reason. Traditional theory clearly states that unilateral liberalization is the optimal policy, with the only exception the optimal tariffs for large countries with market power (Bhagwati 2002). Establishing market power as the normal case is therefore the empirical centrepiece of the terms-of-trade theory of international trade policy (Bagwell et al. 2016). However, unilateral liberalization can only explain global liberalization if it is followed up by corresponding policies on part of all other countries: *Monad-like*, at least absent market power, this should happen automatically as well. But there is another issue, namely the so-called ‘specialization dilemma’, a variant of the Prisoners’ dilemma in the international division of labour (Hoekman and Kostecki 2001). This refers to the problem whether unilateral liberalization is credible, as it creates incentives for time-inconsistent behaviour. What comes into play here are issues of asset specificity that emerge in using MARs by foreign exporters. This is a problem that differs from the issue of market power, but has been mostly neglected in the established theory of trade policy, apart from the topic of regional trading agreements (McLaren 1997; though clearly recognized by institutional economists, see Yarbrough and

Yarbrough 1992). Whereas the terms-of-trade theory takes market power as a given, asset specificity explains its endogenous emergence. In addition, this view also highlights the fundamental dilemma of communicating over international trade policy: On the one hand, the post-war global regime succeeded in creating viable and reliable mechanisms of communicating over trade policy, such as via the tariffication of trade impediments; but on the other hand, this creates the incentives for finding and creating loopholes mostly via modification of domestic regulations to meet domestic demands for protection. This response undermines the global communication regime in further raising complexity and lack of transparency. Domestic regulation can create strong effects of international market power (e.g. via hegemonic standards) which feedback on the trade policy process.

As in the general Williamsonian analysis of asset specificity, the specialization dilemma points at the problem that unilateral liberalization needs to trigger the corresponding investments by foreign exporters in expanding their production capacities. In many cases, this also requires sinking costs, mostly as fixed costs of market entry (Melitz 2003). This problem looms especially large in the case of product-related regulatory diversity across countries, and is almost universal in services provision. This creates a hold-up problem: If unilateral liberalization is not credible, trade partners will not incur the necessary investments in exploiting the MARs freely offered. One standard solution to the problem is the exchange of hostages: In trade policy, this is the mutual exchange of MARs, which enables trade partners to sanction future policy reversals. This is a problem that is especially virulent in democratic politics, as all sides understand that temporary shifts away from globalization as domestic policy consensus may happen and may even be justified, given the costs and benefits for different affected parties. In other words, the exchange regime for MARs is a complementary institution to deliberative realization-focused comparisons on the national level.

The point is that this argument goes beyond the simple perspective on international agreements as measures of self-binding of national governments. After all, international trade policy institutions allow for much leeway in adapting to changing policy preferences. This includes not only safeguard clauses, but also indirect means such as antidumping procedures, and systematic approaches to regional as opposed to multilateral liberalization. The DTP approach views all these institutional structures as integral parts of a global process of realization focused comparisons, hence a system of communication enabling deliberation.

This problem is especially important against the background that international trade is a highly dynamic system, in which not only new products and new companies continuously emerge, but

also entire countries, such as the BRICs, as export bases and important recipients of investment flows. This creates fundamental political uncertainties, as well illustrated in the series of domestic political spats and tensions over the rise of Japan and China in the US over the past decades. In such contexts, temporary trade barriers created by different means play an important role in reaching compromises about policies via institutionally mediated deliberation. A typical pattern of results is the allocation of political costs of adaptation across countries (Sykes 1996; Schwartz and Sykes 1996). For example, anti-dumping procedures typically involve declining industries in importing countries, but rising and highly competitive industries on the exporting side. From the perspective of standard theory, dumping is a highly elusive concept, difficult to prove and even beneficial to the important countries' consumers. In the DTP perspective, anti-dumping allocates political costs: In the importing country, political costs of declining industries are probably higher than the political costs of temporary protection in dynamic rising industries. Hence, the temporary trade barrier may be a negotiated means to render the entire institutional framework of liberalizing trade politically sustainable. This is enabled via making domestic political evaluation of policy options more commensurable both domestically (between exporters and importers, for example), as well as internationally (such as establishing channels of perceiving and communicating shared interests among foreign exporters and domestic importers) (cf. Coates and Ludema 2001).

One central point is that the many exceptions to the principle of liberalization in the international trade policy guide policy actions into channels which turn private information public and hidden action more transparent. Anti-dumping may be an openly protectionist measure, but it is public and accountable, as compared to hidden actions, such as regulatory harassment. In addition, all these measures can be challenged via the dispute settlement procedure. Therefore, we can approach all these institutional arrangements as a complex deliberative process by which necessary institutional adaptations to the dynamic evolution of the global economy are negotiated and implemented. Hence, in the DTP perspective, we need to distinguish neatly between the level of institutions governing trade in goods and services and the institutions governing the international exchange of MARs. Often specific institutions play a role on both levels, and economic analysis focusing only on one level may be misguided: As in the example of anti-dumping, this may be inefficient on the level of trade, but efficient on the level of MARs exchange, because it is a substitute for regulatory harassment which is more transparent and negotiable.

6. Regional trading agreements

Approaching the institutions of international trade policy as enabling communication and information processing is also instructive in evaluating the tension between multilateral liberalization and regional and preferential trading agreements (PTAs), hence the contentious issue whether the latter are ‘stepping stones’ or ‘stumbling blocks’ on the way of global liberalization, which is central issue in contemporary debates about the future of the WTO. Critical views mainly emphasize firstly, the inefficiencies resulting from trade diversion, and secondly, their impact on domestic balances of interests which may lose stamina in demanding for multilateral liberalization. In particular, creating an PTA may simply shift political externalities on non-members, more or less in analogy to trade diversion. For example, establishing joint standards in an PTA might lower market excess for non-members while catching the efficiency advantages of the larger internal market.

The more sanguine on PTAs emphasizes its potentials in dealing with the growing complexity of international trade, a view which has gained ground recently even in the eyes of the WTO (WTO 2011). A core notion is the social, political and cultural proximity of countries, beyond mere geographical closeness (Herrmann-Pillath 2006). This can be labelled ‘regionalism’ as being different from PTAs, an idea that was widely acclaimed in the early stages of the APEC process (Ravenhill 2001). Regionalism implies lower political transaction costs in negotiating a trade agreement among member countries resulting from the interplay of many factors, such as better mutual understanding of domestic political and social conditions or closer pre-existing convergence of norms and standards. Typically, PTAs recently tend to include more broader trade issues in the ‘WTO plus’ and ‘extra’ sense, which can lead to solutions that act as templates for finding truly multilateral institutional designs. In the more abstract terminology of MARs, PTAs enable the more complex description and handling of MARs, beyond what can be cast into the language of tariffication prevailing under the auspices of ‘shallow integration’. However, the stalled project of the TTIP, the PTA between the EU and the US, also shows that this criterion can be very tricky even in the case of countries with similar level of development and close affinities in terms of political institutions. In the domain of highly dynamic technological changes, such as information technology and biotechnology, the two partners manifest often stark differences in values and attitudes, which find expression in civil society actions directed against the initiative. These actions aim at the two aforementioned deficiencies of the diplomatic approach to creating PTAs: They demand stronger involvement of civil society in the domestic political process, and they demand changes in the institutional set-up

that emerges from the negotiations. Thus, the DTP view reveals the need for re-designing the global institutional regime that governs the creation of PTAs as special arrangements of the international exchange of MARs.

Yet, such changes would not directly resolve the issue of political externalities of PTAs, especially in the case of ‘mega PTAs’ such as the transcontinental agreements, which might deeply affect non-members. By definition and design, PTAs are exclusive, although in principle accession can be possible. This creates another dilemma of trade policy, because the advantage of lowering political transactions costs of liberalization can co-exist with the emergence of market power vis-à-vis non-members. If these are mostly developing economies, there is huge potential for regulatory externalities, especially in dynamic technologies: If the PTAs are concluded among leading countries at the technological frontier, they might reach agreements that are suboptimal for the rest of the world, such as in imposing high costs of adaptation.

7. Inclusiveness of the deliberative trade policy process

I have mentioned previously that common uses of the term ‘deliberation’ in the context of trade policy refer to inclusiveness, especially regarding civil society actors. This demand must be seen against the restriction of participation at the WTO to member governments. We have seen that this also creates domestic political externalities.

One of the basic normative ideas of deliberative democracy is that the deliberative process needs to be as inclusive as possible. Indeed, if realization focused comparisons should apply in designing institutional changes, it is of utmost importance that all concerned parties can participate. As Sen (2009) has well established, this also includes bystanders and third parties, if an impartial judgment should be achieved.

A case in point for applying the inclusiveness logic is the question of plurilateral or even bilateral agreements, such as the PTAs discussed in the previous section. Recently, there have been diverse attempts at increasing the scope of more limited agreements among WTO members, which can apply in two different ways, namely firstly, as case-specific suspension of the ‘single undertaking’ principle (which would normally require agreement among all members of the WTO), yet would result into a plurilateral agreement for which the MFN applies (the so-called ‘critical mass agreements’); and secondly, plurilateral agreements which reach beyond current institutional arrangements in the WTO and need not to be extended to non-members. Both cases appear to be like PTAs in terms of enabling and intensifying deliberative

processes by limiting the number and type of actors involved. Yet, there is the fundamental difference that the former are open or even must be open to new members, if they wish to join, as opposed to the exclusive nature of PTAs. This idea has been early ventilated in the debate about ‘open regionalism’, which would install automatic or rule-based mechanisms for obtaining voluntary membership, which is so far never the case with PTAs which would always require the consent of incumbents (Liu 2003). This example shows that institutional arrangements governing inclusiveness should be a centrepiece of the international trade policy regime. A case in point are the complex procedures governing accession to the WTO, such as assigning roles to subsets of countries in achieving partial agreements with new prospective members, which are automatically extended to all members via the MFN clause.

The question of inclusiveness is closely related to the issue of capacity. This applies for both the capacity to participate in the trade policy process and to participate in international trade. Regarding the latter, there are increasing impediments to trade for SME, in particular of developing countries, resulting from the ever-growing complexity of national regulations and their diversity. Thus, we face a serious issue of discrimination that cannot be traced back to intentional protection, but mainly results from the fact that national regulation creates regulatory externalities for trade partners, because it only follows the preferences of the domestic electorate. Thus, regulatory convergence by different means, such as mutual recognition of standards and procedures, is a major policy instrument to improve inclusiveness of international trade. This is a central issue in governing inequality of development and growth in the world economy, since one pattern of international trade is the match between trading partners on different levels of development: Regulatory divergence and complexity correlates with levels of development, and hence impediments to trade are lower if countries are on similar levels (Hummels and Klenow 2005; Faijgelbaum et al. 2009).

The capacity to participate in trade policy is a problem that has been well recognized since the early years of the WTO. This has been further accentuated with the rise of regionalism. Less developed countries, and even emerging economies, may have limited capacities to negotiate and monitor trade agreements, or even enter trade disputes. This means that they cannot participate on an equal basis in the deliberative process of international trade policy.

Inclusiveness can be interpreted in two different ways, namely applying the same rules for all countries, or recognizing their diversity. The DTP view clearly favours the latter view, which stands in contradiction with the stance that guided the Uruguay round and the creation of the WTO, in terms of principles such as the ‘single undertaking’. The most prominent case in point

is the TRIPS agreement, that systematically imposes similar domestic institutions on all member countries, but imposes discriminatory costs of adaptation on countries on different levels of development (Finger and Nogués 2002). The problem with current PTAs is that this form of regulatory convergence is often imposed on weaker trading partners via the stronger economies in the deals, even going beyond TRIPS standards. However, even the TRIPS contains clauses that would allow for recognizing more diversity in defining and implementing IPR according to domestic needs.

This points to the central role of the dispute settlement process and the question of inclusiveness in terms of capacities. There are serious capacity constraints for less developed countries in monitoring international trade policy, let alone triggering and successfully concluding complex dispute resolution procedures. Apart from providing direct support to developing countries (as via the ‘Advisory Center on WTO Law’), specific institutional reforms of the institutions of deliberation may be necessary (such a Bown’s 2009 proposal to establish an independent ‘Institute for Assessing WTO Commitments’).

However, in the longer run one of the most significant challenges to inclusiveness of the international trade system is the growing role of private-sector standardization and regulation (Bernstein and Hannah 2008). Consumer preferences about specific aspects of trade, such as touching upon environmental issues or human rights, are increasingly channelled via non-governmental organizations into the creation of institutional regimes that are no longer agreed upon by inter-governmental negotiations, nor are they monitored and implemented by governmental authorities. This certainly meets the demands for larger participation of citizens in trade issues, but also means that possible conflicts, discrimination and inequalities resulting from these private regulatory regimes can no longer be regulated within the WTO setting. Accordingly, new forms of limiting the inclusiveness of the system emerge, since private standard setting may manifest its own issues of power balances and unequal distribution of capacities in participation.

8. Reforming the WTO: The DTP view

The standard approach to the economics of trade policy always faced difficulties in making sense of many real-world institutional arrangements and the linguistic conventions of trade policy (as case in point is treating measures of liberalization as ‘concessions’, see Krugman 1997). Although the terms-of-trade approach tries with all means to reconcile the practice of trade policy with the general equilibrium framework, many issues remain unresolved (such as

the differential treatment of export subsidies and import restrictions in WTO law) (Bagwell and Staiger 2011). The DTP perspective succeeds in making sense of them as means and media of deliberation. This applies for the traditional Bretton Woods institutions and the WTO in its current shape. In recent assessments of the WTO, opinions reach from diagnosing ineffectiveness and insignificance to praising its continuing relevance for the project of globalization. However, most opinions concur on the need of reforming the WTO. The DTP approach agrees with a more positive assessment of the WTO, once it is recognized that its institutional design aims at enabling deliberation among sovereign countries. At the same time, however, it also suggests the need for comprehensive reforms. Most proposals have been already suggested in the literature, but they can be more systematically justified in the DTP framework.

The two central principles are lowering the complexity of the deliberative process combined with enhancing the capacity of engagement and reducing the scope and intensity of political externalities. The most difficult issue is that measures in one of the domains may negatively affect conditions in the other domain. A case in point are all proposals and already existing initiatives that soften the principle of ‘single undertaking’. As we have seen, this is a major means to reduce complexity because it creates the possibility that similar countries may reach agreements in a specific area without requiring universal consent among all WTO members. However, it may also result in a persistent stratification of the multilateral system via creating political externalities on bystanders who cannot participate for reasons of lacking capacity.

One of the most important conditions for resolving such tensions is to enhance the role of the WTO as a coordinator and sometimes even arbiter of trade policy evolutions, hence strengthening its position as a genuinely supra-national organization. For example, the WTO would have the right and task to launch trade policy initiatives on its own, and may directly act as a complainant, both in the context of policy evaluations, but also the dispute resolution process. The precondition is transforming the Dispute Settlement Body DSB into a World Trade Court, following the precedents in the human rights domain. One of the major deficiencies of the current deliberative regime is the dispute resolution process. Although it enhances channels and intensity of deliberation, it also creates strong path dependencies of institutional developments, because it is based on case law, and hence requires actual complaints triggering the process. If there is no dispute, institutional developments may be stalled. For example, in the important area of biotechnology and genetic engineering there is the open question whether the SPS or the TBT regulations might apply. So far, the only relevant dispute was between the

EU and the US about the EU moratorium in approving new GMOs on the internal market, resolved in favour of the SPS, but there was no final Appellate body decision, and many legal experts would prefer the TBT as appropriate framework, with fundamental consequences for the balance between national policies and global convergence of standards (cf. Winham 2009). Therefore, an important reform of the DSB would open up ways for triggering the process by an independent authority, thus reducing the scope for path dependencies.

This reform of the DSB would strengthen the constitutionalist interpretation of the WTO and weaken the principle of sovereignty in trade negotiations: Claiming freer trade would be assigned to the status of an individual right, and no longer would be interpreted in terms of market access between countries (Petersmann 1997). Consequently, a World Trade Court would be open even for individuals as complainants, in the same vein as in the Human Rights case. This radical reform may appear to be utopian, but there are intermediate steps at hand. One important measure is strengthening the *Amicus Curiae* position in dispute resolution procedures, thus opening the process wider to the opinions of concerned, but not directly involved actors, in particular, civil society organizations (Charnowitz 2002). Increasing the inclusiveness of the dispute resolution mechanism is a most important means of improving the process of realization focused comparisons that is currently mainly channelled via this institution, apart from ongoing negotiations in the trade rounds.

This organisation of the trade policy process in terms of ‘rounds’ is another important issue, which certainly was an efficient organization of the exchange of MARs during the period when tariff issues were most pressing, and via tariffs automatically all trade partners would be affected. Given the ‘new issues’ in trade policy, one motivation for the rise of PTAs certainly is to free trade policy negotiations from the scheduling straightjacket of the trade rounds. This implies that a simple measure of improving the process of deliberation is to transform it into an ongoing process, with a stronger role of the WTO not only as moderator, but also as instigator and even autonomous initiator of trade policy discourses (Wilkinson 2011). Correspondingly, a strong case can be made for giving up the principle of ‘single undertaking’, hence enabling case-by-case policy discourses among concerned members (Bollyky and Mavroidis 2016). Again, existing institutions may offer points of departure. For example, WTO regulation of PTAs is legally possible, but so far has no bite. Strengthening the existing rules, while adding modifications that aim at resolving the issue of political externalities on non-members of PTAs would help to improve the inclusiveness of the system.

Although these measures would certainly not end up into a full-scale constitutionalization of the WTO, what can be achieved is an improvement of the deliberative processes under the conditions of national diversity and even legal pluralism (Kumm 2011). In fact, this can be seen as an advantage, because there are serious arguments against the possibility of a world government even in the limited domain of international trade, which must necessarily be the endpoint of any process of formal constitutionalization (Dunoff 2009). On this most general level, constitutionalism in trade policy again falls into the trap of transcendental institutionalism.

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