LINKING GLOBAL TRADE AND HUMAN RIGHTS

During the global economic crisis of 2008, countries around the world used national policy spaces to respond to the economic crisis in ways that shed new light on the possibilities for linkages between international trade and human rights. This book introduces the idea of policy space as an innovative way to reframe recent developments in global governance. It brings together a wide-ranging group of leading experts in international law, trade, human rights, political economy, international relations, and public policy, who have been asked to reflect on this important development in globalization. Their multidisciplinary contributions provide explanations for why the global landscape for national policy space has changed, clearly illustrate instances of this change, and project the future paths for policy development in social and economic policy spaces, especially with reference to linkages between international trade and human rights in countries from the global North as well as Brazil, China, and India.

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Linking Global Trade and Human Rights

NEW POLICY SPACE IN HARD ECONOMIC TIMES

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Free Trade Agreements and Global Policy Space after the Great Recession

Jorge Heine and Joseph F. Turcotte

INTRODUCTION: THE CRISIS AND CHALLENGE OF TRADE MULTILATERALISM

Bilateral and plurilateral free trade agreements (FTAs) have emerged as the policy tools of choice for states to assert their trade interests and further the project of global free trade and financial harmonization. In the wake of the Great Recession of 2008, global trade initiatives are questioned for their effectiveness and legitimacy as rising states and emerging economies assert their own interests and claim to represent the cause of the global South. FTAs are seen as a key instrument to assert domestic interests at the bilateral level and secure mutually beneficial results. Rather than viewing these agreements as barriers to optimizing conditions for a global trade regime, we argue that FTAs can be used as a way of asserting domestic interests and promoting growth within existing policy spaces while waiting for a multilateral breakthrough.

First, we discuss the international trade context in the post–Great Financial Crisis climate and explore the calls for protectionism that emerged following the crisis to determine what impacts this has had on the international trade regime. We then analyze the stalled Doha Round and the current state of FTAs. Finally we conduct a case study of Chile as it is the leading champion of FTAs.

INTERNATIONAL TRADE IN THE POST–GREAT FINANCIAL CRISIS CLIMATE

Following the massive stimulus packages applied after the London G20 summit in April 2009, many felt that the most serious threat facing the global economy since the Great Depression had been averted. Yet, although economic stimulus packages helped avert a financial collapse, they were unable
to kick-start global economic growth. Prior to the financial crisis, global trade grew quickly, at an average annual rate of 14 percent between 2000 and 2008 (UNCTAD, 2010). However, with the onset of the financial crisis, this growth was dramatically reduced, and in 2008 trade declined. Most worrying for the global trade environment were fears that the financial crisis might result in across-the-board tariff increases or other protectionist measures.

When the Great Financial Crisis first broke, there were concerns about a contraction in global trade. Initially these concerns proved true. In the immediate aftermath of the crisis, total world merchandise trade fell from US$16.52 trillion in 2008 to US$12.71 trillion in 2009, a 12.1 percent drop for trade with a 2.6 percent drop in global gross domestic product (GDP) (see Figure 3.1). This dramatic decrease of US$3.802 trillion was an abrupt departure from the previous decade, which saw a steady increase in global trade (see Figure 3.2). However, as we discuss later in the chapter, because of coordinated global efforts to avert the contraction of international trade and the rejection of protectionist measures, global trade has rebounded. In 2010, total world merchandise trade, at US$15.376 trillion, eclipsed 2007 levels but remained below the 2008 peak (see Figures 3.3 and 3.4). The WTO remained conservatively optimistic about global trade growth, forecasting an annual increase of 5.8 percent for 2011 (WTO Press Release, 2011).


Figure 3.4. World Economic Growth (2001–2010), GDP growth (annual %). Source: The World Bank Data Group, Database (databank.worldbank.org).
This decline in global trade and economic output resulted from the contraction in accessible credit and financial liquidity that followed the crisis, and was not the product of protectionist trade measures. To prevent a collapse of the global economy, governments “used an array of fiscal and monetary measures to boost their economies. These efforts mitigated the ferocity of the [2007–08] crisis...avoiding an economic collapse on the magnitude witnessed during the 1930s Great Depression” (Aggarwal and Evenett, 2010, p. 221). Most significantly for the international trade environment, these measures did not include significant increases in across-the-board tariffs (Evenett, 2010). Coordinated global responses, including domestic government interventions, helped prevent a collapse of the financial system. By maintaining and promoting policies that were in line with the international trade agenda, these coordinated responses buttressed the existing economic system. These efforts also demonstrated the necessity of having developed and developing countries work together to solve global problems.

MURKY PROTECTIONISM, POST-CRISIS

Past experiences with financial crises, most noticeably during the Great Depression, show that trade protectionism in individual countries or allies can stifle global trade and attendant economic activity. As Eichengreen and Irwin (1995) argued, protectionist policies during the Great Depression led to the breakdown of the multilateral trading system. These measures resulted from ill-advised macroeconomic policies designed to safeguard domestic and allied interests to the detriment of the multilateral system. As Eichengreen and Irwin show, trade protectionism differed greatly from country to country throughout the Depression, but the overall impact on the multilateral trade environment was similar. It led to a severe contraction in international trade.

The Great Recession did not result in anything comparable to that. International institutions such as the G20, the WTO, and the OECD reaffirmed their commitments to the multilateral trading system and the principles set out by the WTO agreements. However, as Aggarwal and Evenett (2010) have shown, this commitment to WTO principles has been accompanied by various forms of “murky protectionism.” One of the major responses to the Great Recession were pseudo-protectionist measures designed to safeguard domestic industries. Baldwin and Evenett (2009) have argued that subsidies and bailouts to help domestic firms and national interests were used in nontransparent and discriminatory ways. For Aggarwal and Evenett (2010, p. 224), “it is in this context that the suspicion that [the financial] crisis has created ‘murky protectionism’ is important, because it forces any evaluation of discriminatory state action
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to go beyond transparent state interventions, such as tariff increases.” This is especially true given that the measures taken in response to the crisis may not be breaking multilateral trade obligations set out in the WTO rules (Aggarwal and Evenett, 2010).

Trade protectionism following the crisis has emerged slowly in subtle ways, not with a vengeance (Sally, 2010). While less acute, this form of “murky protectionism” is no less real. The onset of the Great Recession demonstrated that “despite nearly 25 years of the Washington Consensus, widespread membership of the WTO and numerous trade agreements being signed, governments were not prepared to stand back and let market forces unfold” (Aggarwal and Evenett, 2010, p. 239). Aggarwal and Evenett suggest: “[T]he crisis has led to a revival of industrial policies, implemented using subsidies, biased government procurement policies, and some traditional trade policy instruments” (p. 240). Domestic political and economic considerations shaped these responses to the crisis, demonstrating that despite the existence of a multilateral trade environment, internal realities remain the prime motivator for individual governments when using new policy spaces.

Yet, this is the way it should be. As Rodrik (2011) has underlined, part of the reason multilateral trade liberalization efforts, from the Free Trade of the Americas (FTAA) project to the Doha Round, have come to a halt in the last decade is because we have entered the phase of what he calls “hyperglobalization.” This is best embodied in the much more intrusive and extended powers of the WTO, as opposed to those of the GATT. Far from limiting themselves to negotiating issues pertaining to trade, which is what trade agreements are ostensibly about, developed countries suddenly began to put a vast array of additional issues on the table in a classic case of self-defeating overreach. The list of now-fashionable issues included intellectual property rights (IPRs), government procurement, competition policy, and export subsidies. All of these reached deeply into domestic politics and policies. Unsurprisingly, this has elicited a considerable backlash, as countries found themselves in the extraordinary position of having to dismantle decades-old programs designed to enhance their productive capacity for the sake of abstract rules favoring ever-deeper globalization. Moreover, in practice these rules seem to benefit primarily large multinational corporations mostly based in the global North.

Still, the overarching ideal about international trade has restrained individual impulses from straying too far from the trade agenda. As Chia (2010, p. 245) points out, “new antidumping, safeguards, and countervailing duty investigations have increased, but still affect only a small share of world trade and are concentrated on China.” WTO data shows that the new anti-trade measures
instituted as a result of the Great Financial Crisis affect approximately 1 percent of overall trade (Sally, 2010). While Aggarwal and Evenett’s data show some 350 new forms of trade protectionism (Chia, 2010, p. 245), this appears to be minor and associated with specific domestic policies. These practices adhere to the WTO system, and in the Asia-Pacific region does not appear to be thoroughly serious (Kimura, 2010).

CAN THE WTO CONTAIN THIS ‘MURKY PROTECTIONISM’?

Global trade responses to the Great Recession of 2008 show that there is room for optimism regarding the continued evolution of the WTO system. Trade protectionism on the scale of the Great Depression did not materialize. The very existence of the WTO and buy-in from individual state governments to the tenets of free and open trade acted as disincentives to open protectionism. In a globally integrated trade environment, where domestic and international concerns and growth are highly intertwined, this is a significant advance. The Great Recession has demonstrated the willingness of international actors to look toward new tools for economic stabilization and growth. Multilateral and open trade is but one means of ensuring this. In times of crisis, “murky protectionism” has maintained important domestic industries and invaluable international trade opportunities. As Drache (2010, p. 48) noted elsewhere, “Fundamental changes in the world economy . . . require policy makers to accept the fact that governance requires a new agenda of global policy cooperation.” What is more concerning is the applicability and effectiveness of the WTO system in an increasingly dynamic trade environment. WTO rules are ill-suited for the realities of an accelerating and interrelated global economic situation that includes new actors and issues, which were not concerns when the WTO was established (UNCTAD, 2010, p. xi). In light of domestic responses to the global financial crisis and the emergence of “murky protectionism,” it is important to evaluate how the WTO system and its rules encourage and discourage forms of protectionism as well as maintaining domestic and international stabilization. This becomes especially urgent with the latest round of WTO talks – the Doha Round – at an impasse.

IS THERE LIFE AFTER DOHA?

Since its creation in 1994, the WTO has only had successful rounds of multilateral trade talks. This track record is now under threat. Much has changed in the international environment since the WTO was first established. The apparently universal acceptance of capitalist principles as necessary conditions for global economic growth and stability has generated a
multilateral trading environment based on market-based principles and objectives. Even the remaining holdouts to domestic capitalist economics – most noticeably China – have accepted and integrated minimum standards and characteristics (see Arrighi, 2007, 2009). With the end of the Cold War and the breakup of the Soviet Union, the times seemed ripe for establishing and extending market-based principles and free trade orthodoxies across the world.

Yet, in the early twenty-first century, discontent with economic and trade liberalization began to grow. The rejection of the Free Trade Area of the Americas (FTAA) in the mid-2000s signaled a shift away from the neoliberal approach. It also showed the growing assertiveness of developing countries as well as civil society (see von Bülow, 2010) in matters of global economic governance. The rise of the BRIC countries – Brazil, Russia, India, and China – and economic difficulties in the United States and Europe evidenced the emergence of a new international power distribution. The onset of the financial crisis has exacerbated this shift. Amid these changing conditions, global economic and trade discussions have become increasingly complex and contested.

**A FAILED DEVELOPMENTAL ROUND**

The history of the Doha Round trade talks illustrates this point. The Fifth Ministerial Conference, held in Cancún in 2003, showed an increasingly serious “north-south divide” (UNCTAD, 2010, p. 35, box 1) on a number of trade-related issues. As Sungjoon (2009, p. 1) argues, Doha’s “negotiation stalemate is symptomatic of the diametrically opposed beliefs on the nature of the Round between developed and developing countries.” Envisioned as a “development” round of trade talks, the North-South/developed-developing divide is best exemplified by the respective responses to it. From the perspective of developed countries, development is a matter of opening local markets to foreign investment and trade and leveraging this increased economic activity for development-related purposes. Developing countries – the BRIC countries and others – contend that a development focus must also take into account the specific domestic circumstances of various countries, as well as that policy flexibilities and exceptions should be granted accordingly. These divergent positions have complicated matters, with both sides reluctant to sign a “bad deal.” Because of this, “WTO members are split between two diametrically opposed Worlds. This stark philosophical divergence on the nature of the Doha Round is the main culprit for the negotiation deadlock” (Sungjoon, 2009, p. 2).

The perceptions of developing countries who view past WTO negotiations and decisions as having been implemented in an asymmetrical manner have contributed to this deadlock. Among developing countries, there is a belief
that the current WTO system is designed to serve the interests of developed countries. During the Uruguay Round, developing countries “raised a substantive concern that the Uruguay Round Agreements favored developed nations at their expense” (Dunoff, 2001, p. 981; emphasis in the original). This concern has remained throughout subsequent negotiations and contributes to an environment where one group of parties is reluctant to agree to terms that it deems unfavorable. Under these circumstances, the credibility of WTO trade talks as an effective means of addressing the domestic concerns of developing countries is undermined. Negotiating parties do not feel there is adequate space to assert their individual or collective interests.

TOWARD A MORE INCLUSIVE FORM OF GOVERNANCE

In recent years, the concerns of developing countries as well as of various domestic constituents have been picked up by nongovernmental and civil society actors favoring more inclusive and representative forms of trade-based governance. These nonstate actors are not necessarily aligned with developing countries but share the desire to create more accountable and responsive forms of trade and development (see Bradlow, 2001). While progress has been made in this regard, these actors remain on the margins of talks on these issues and, in turn, complicate their successful completion. Nonstate actors, which often seek to highlight and address human rights and other socioeconomic issues, have increased standing at WTO discussions but remain shut out of official proceedings. It is a challenge for an international organization in a state-based multilateral system such as the WTO to include nonstate actors. However, facilitating debate and input from these groups remains essential for fostering consensus.

Developing countries and nonstate actors have used various methods to advance their respective agendas. During the initial phases of the Doha Round, the divisive issues threatened progress; however, as a result of pressure from developing countries, the most contentious of these issues were dropped and negotiations continued (UNCTAD, 2010, p. 35, box 1). The ability to influence the WTO agenda and trade talks at a multilateral level remains a benefit of this form of diplomatic engagement and helps assuage concerns that these negotiations are one-sided. However, despite these advances, the Doha Round remains stalled. Concerns from developing countries have not dissipated.

KNOWLEDGE-BASED PROPERTY RIGHTS

The ways in which intellectual property rights are treated within the trade-based agenda of the WTO demonstrates this. The late twentieth and early
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The twenty-first centuries have been a time of increased focus on the ways that information and intangible aspects of the global economy are regulated and traded. With the rise of the “knowledge based economy” (OECD, 1996), intellectual property rights have risen in prominence in international trade, and global economic regulation and are now regarded as one of the most important issues around globalization (Stiglitz, 2008). Asserting trade-based aspects and implications of intellectual property rights, developed countries – led by the United States, EU members, and Japan – sought to insert intellectual property provisions into WTO negotiations. Alongside the establishment of the WTO in 1995 came the Trade Related Aspects of Intellectual Property (TRIPS) agreement, which linked intellectual property rights with the global trade agenda for the first time. Through the WTO, then, “TRIPS effectively globalizes the set of intellectual property principles it contains, because most states of the world are members of the WTO” (Drahos, 2005, p. 147).

Inserting intellectual property rights into the trade-based agenda of the WTO has been controversial. A number of economic, social, developmental, and cultural concerns are implicated within debates over IPRs. Because of the complex and dynamic nature of international intellectual property law, domestic industries are rarely satisfied with international intellectual property provisions and increasingly lobby their governments to enact policies that align with their business models and needs (Duttfield, 2006, p. 4). Domestic and business concerns vary from country to country, making global agreement and coordination a daunting prospect. This complexity adds another level of contestation to WTO negotiations as various stakeholders have differing opinions about appropriate levels of protection for intellectual property rights. In particular, developed and developing countries have markedly different perspectives on the protection of intellectual property and access to knowledge. Developing states that do not adhere to Western notions and systems of intellectual property protection, as well as states with development needs that contradict the values and methods espoused through the TRIPS agreement, can run into conflict with developed states – as was the case during the lead-up to the Doha Declaration on TRIPS and Public Health (see Abbott, 2002).

PUBLIC HEALTH NEEDS AND THE HISTORIC DOHA DECLARATION

The case of the Doha Declaration on TRIPS and Public Health serves to highlight the differing perspectives found within the Doha Round in general. From the perspective of developing countries, the creation of the TRIPS
Agreement has greatly restricted the ways domestic governments can approach the use and regulation of intellectual property rights–protected goods to address developmental concerns (Sell, 2003). Furthermore, the then-developing WTO seemed ill-suited for dealing with the myriad concerns over intellectual property rights (Drahos and Braithwaite, 2002, p. 84).

For these and other reasons, developing countries initially resisted plans to create the TRIPS Agreement within the WTO. However, facing trade sanctions and other measures, they eventually relented (Sell, 2003, p. 123). With the Doha Round, developing country concerns were again foregrounded. The issue of public health and access to affordable medicine became a focal point of disagreement during the negotiations. Developing countries argued that the TRIPS Agreement did not provide enough flexibility for cost-efficient forms of pharmaceuticals because of associated intellectual property reasons.

Stemming from this opposition, at the November 14, 2001 Ministerial meetings, participants adopted the Doha Declaration on the TRIPS Agreement and Public Health, which affirmed:

We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all. (WTO Ministerial Conference, 2001)

The success of developing countries in getting the Doha Declaration affirmed demonstrates the flexibilities built into the TRIPS Agreement as well as the WTO system more generally. The stalled Doha Round is troubling in that it prevents deliberation over, and creation of, further mechanisms that might be used to address specific concerns in the trading system. At the same time, there are some who argue that the WTO system is being undermined by increased attention to FTAs and other non-multilateral trade initiatives.

THE STATE OF FTAS TODAY: CHALLENGE OR OPPORTUNITY FOR THE WTO?

The recent global financial crisis and the turn toward “murky protectionism” demonstrates the need for a coherent set of international trade rules. Divergent perspectives and competing blocs over controversial issues such as IPRs highlight the tensions within today’s international trade regime. To this we must add an increasing shift toward free trade and other agreements.
Free Trade Agreements and Global Policy Space after the Great Recession

With the latest round of WTO trade talks permanently stalled, “the number of regional and bilateral FTAs – all of which are termed regional trade agreements in the WTO – has significantly increased particularly in the last five years. According to the WTO, as of February 2010, 271 regional trade agreements (which include bilateral FTAs) were in force. That trend suggests that the business sector is increasingly looking to FTAs as a more effective means of market opening than multilateral trade negotiations” (UNCTAD, 2010, p. 36; see also Figure 3.5).

While a more effective and expedient form of forging trade agreements, this turn to FTAs raises a number of concerns. One concern is that the proliferation of such agreements could undermine the international trade system. These issues hark back to the 1980s, when the United States and the European Community were expanding their own trading blocs (UNCTAD, 2010, p. 38). The creation of the North American Free Trade Agreement (NAFTA) as well as the European Union (EU) raised the specter of exclusionary trade practices between these groups. However, this shift toward regionalism “did not undermine the multilateral trading system” (UNCTAD, 2010, p. 38). On the contrary, it has been argued that these regional trade movements helped initiate and accelerate calls for the Uruguay Round of trade talks, as excluded countries looked toward multilateral forms of trade regulation as a means of overcoming or counteracting these initiatives (Baldwin & Evenett, 2009). These comparisons, however, overlook the very different ways these
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non-multilateral trade initiatives have taken place. Whereas the creation of NAFTA and the EU represented a form of regionalism, today’s scenario is one where there are “a large number of bilateral FTAs rather than between trading blocks (regional FTAs)” (UNCTAD, 2010, p. 38).

THE SPAGHETTI BOWL EFFECT

A more eloquent argument against the proliferation of FTAs is offered by Bhagwati (2008). A long-time critic of proliferating bilateral FTAs (Bhagwati, 1993), Bhagwati (2008, p. xii) argues that, “acting like termites, PTAs [his preferred term for FTAs] are eating away at the multilateral trading system relentlessly and progressively.”

Bhagwati (2008, p. 61) also argued against FTAs proliferation because of the resulting “spaghetti bowl” that is formed of the international trading environment. This systemic issue creates distortions in the international trading system as commodities are subjected to various tariff levels in different markets and “rules of origin” and relationships between trading partners are privileged.

Larger market and trading actors are able to assert their preferences and agendas through the international trade system. In particular, it is argued that countries such as the United States and the EU member states have used FTAs “as means of transferring the regulatory regimes of the EC and the US to other countries” (Horn et al., 2009). The inclusion of so-called WTO-plus is a way for larger countries to include controversial provisions from WTO negotiations in more amenable negotiating scenarios. So-called TRIPS-plus provisions, which extend the base levels of the TRIPS Agreement beyond the multilaterally agreed-on norms, are a growing concern for developing countries (see Sell, 2010; Drahos, 2007). This type of “hegemonic multilateralization” occurs when an economic power is able to disproportionately assert its own interests and models because of its size, and then extends these interests through subsequent bilateral or plurilateral agreements (Hoekman and Winters, 2007; see also Hoekman, 2008). As a result, developing countries are encouraged to enter into bilateral or plurilateral trade agreements to access other markets but may do so in ways that the broader terms of the agreements do not fully accord with their distinct domestic needs. By relying on FTAs beyond the scope of the WTO trade talks, the free and open nature of the WTO arena is systemically undermined and smaller actors are disadvantaged.

It is necessary to move beyond the false dualism created by debates over multilateralism versus FTAs. Dani Rodrik reminds us that there is “one economics [and] many recipes.” This remains a valuable lesson for proceeding
throughout the wake of the Great Financial Crisis. Just as domestically “the right way of thinking about industrial policy is as a discovery process – one where firms and the government learn about underlying costs and opportunities engage in strategic coordination” (Rodrik, 2007, p. 101), in the international arena domestic and international actors must coordinate strategically to ensure that policies are designed effectively. This requires recognizing the varied strategic and domestic interests of individual countries as well as the overall evolution of the global economy and international development. Policies designed in one country or from one perspective may not be universalizable. International trade systems should appreciate domestic specificity so that global coordination does not become a zero-sum game.

MEXICO AND FTAS: AN UNBALANCED TRADE LIBERALIZATION STRATEGY

Mexico’s experience using FTAs as a means of gaining access to international markets underlines areas of concern. Since the 1970s, Mexico has tried several strategies for export-led growth. Various stages of trade liberalization, including both multilateral trade through the GATTs and preferential FTAs (most noticeably the NAFTA with the United States and Canada), have given Mexican exports access to a number of foreign markets. Currently, Mexico has signed 30 FTAs with 80 countries (WTO, 2011). However, “Mexico’s various policies of opening and liberalization have made the country’s growth highly vulnerable to certain external constraints or ‘shocks’ since the late 1970s” (Blecker, 2009, p. 1274). Despite Mexico’s pursuit of FTAs, its exports remain highly skewed toward the United States, where more than 80 percent of exports are traded (Villarreal, 2010). Unbalanced liberalization policies have been unable to spur substantial long-term economic growth and development.

While successive Mexican governments have looked to trade liberalization as a means of alleviating chronic underdevelopment, the FTAs that the country has entered into have hindered substantive economic growth. While other countries in the global South have used trade liberalization as an effective means of development, the Mexican case demonstrates how opening a domestic market to unbalanced external trade measures can be counterproductive and detrimental to domestic policy initiatives. Under NAFTA, Mexico has experienced a trade ratio that is highly skewed to U.S. markets. Despite the country’s attempts to broaden its markets through subsequent non-U.S. trade agreements, Mexico’s export market remains highly skewed toward its regional neighbor. In the post-NAFTA environment, Mexican exports in terms
of GDP grew substantially; however, at the same time the country’s annual GDP growth per capita remained relatively consistent and was prone to external shocks resulting from U.S. economic pressures (Zepeda et al., 2009). In part, this scenario results from Mexico’s uneven distribution of external market orientations. While Mexico remained dependent on its partnership with the United States, the Americans began to explore and establish other trading partnerships with markets across the world. The United States’ willingness to enter trade agreements under the WTO system with rising states such as China has weakened Mexico’s comparative advantage and brought about further competition. In turn, Mexico has suffered from a detrimental trade imbalance, weak foreign investments, macroeconomic vulnerabilities, and slow job growth.

Adherence to the Washington Consensus has been a disappointment for domestic economic and development performance in Mexico. Policies to open Mexico’s domestic markets to external actors and trade have proven inefficient in that they are overly dependent on the country’s NAFTA trading partners. By becoming overly dependent on the United States and Canada as primary trading partners, Mexico has become vulnerable to situations where its NAFTA partners have opened their own domestic markets to further international trade liberalization. This sort of unbalanced approach has weakened the country’s economic standing and made it susceptible to losses resulting from trade policies enacted by countries competing for their market share.

IN DEFENSE OF FTAS

The case of Mexico’s unbalanced free trade initiatives demonstrates the pitfalls associated with an uncoordinated free trade regime. Despite the Mexican experience and the concerns identified by Bhagwati and others, FTAs remain an important tool for advancing the objectives of the WTO system and need not undermine it. An analysis of the rise of FTAs in the absence of successful multilateral talks highlights the various beneficial aspects of fostering bilateral and plurilateral relationships. While it is hard to argue against Bhagwati’s assertion that FTAs are discriminatory and preferential in nature, they are also carried out within the confines of the broader multilateral trading system and create benefits for the parties involved without leading to larger negative externalities for the rest of the world (Brown and Stern, 2011, p. 337). The creation of a complex and interdependent system of FTAs means that there is little room for various trading partners to exclude other partners, as
the multilateral nature of the world trade system entails shared responsibilities and constraints amongst its actors. Therefore,

What generates conflict between the multilateral system and these preferential agreements is not the trade liberalisation that occurs but is rather the instances of trade diversion. However, as noted, countries have often responded to the threat of diversion with their own offsetting countermeasures. But this is not to deny that trade diversion exists and can be very damaging for individual firms or industries in particular instances. More might be done therefore to lessen the possible conflict on this score between the multilateral system and FTAs. (Brown and Stern, 2011, p. 338)

The proliferation of FTAs has created broader adherence to the overarching free and open trade agenda among negotiating parties and within the world system.

MESSY MULTILATERALISM: A STEP FORWARD?

When compared to the “messy multilateralism” (Haas, 2010) found within WTO round trade talks, the relative ease at which FTAs can be negotiated and enacted allows the world trade system to progress while multilateral negotiations remain stalled. With fewer actors at the table, FTAs may “provide an easier framework within which the countries can find ways of accommodating their differences in the aims and purposes of the regulations relating to specific services” (Brown and Stern, 2011, p. 339). FTAs need not detract from the broader multilateral environment and can be used as a means for advancing these purposes while disagreements within the multilateral system are negotiated.

The use of FTAs also enables more concentrated negotiations between trading partners. As opposed to sensitive multilateral negotiations, FTAs can be used as a means of tailoring and addressing specific needs and circumstances. The restrictive nature of FTAs also means that “market opening by a partner or partners is more tangible and immediate than multilateral liberalization, especially when big markets like China and India are involved” (UNCTAD, 2010, p. 37). For this reason many developing countries – such as Mexico, Singapore and, as we will discuss later, Chile – have looked to FTAs as a means of creating greater trade access and “as a route towards the realisation of a universal free trade policy” (Brown and Stern, 2011, p. 334). FTAs are therefore a way of normalizing international trade between partners and within the global system while awaiting consolidation at the multilateral level.
THE CASE OF CHILE: EXPANDING ACCESS DESPITE STALLED MULTILATERALISM

Increased access to global markets provides opportunities for economic growth that can assist socioeconomic development. The rise of FTAs may be an area of concern for this multilateral agenda, but it need not be. From an economic perspective, which often approaches the world through abstract models and lenses that are removed from the realities on the ground, FTAs are messy, confusing, and suboptimal solutions. From this view, relying on FTAs is inferior to a case where countries, or at least the WTO member states, have a multilateral agreement to coordinate international trade measures. It is not surprising, then, that many economists are opposed to expanding FTAs. However, the real world (as opposed to the ideal projected by economists’ models) is complex, messy, and imperfect – meaning that global agreements and coordination are hard to achieve. An incrementalist, iterative approach like the one followed by Chile in terms of FTAs shows that these agreements can be deployed to gain market access and foster domestic growth in the context of globalization.

Chile’s internal market, with its population of 17 million, is relatively small, and its economy is therefore highly dependent on foreign trade. Moreover, the country’s development strategy since opening the economy in the 1970s and 1980s has been based on export-led development. In the past twenty years, Chile’s growth rate has averaged 5 percent a year, making it the fastest-growing economy outside Asia, and the fourth-fastest in the world. To achieve an overall sustained 5 percent annual growth rate over time, an export-led approach requires export growth of 7–8 percent a year. For a country such as Chile, this is not easy considering its exports are largely made up of mineral and agricultural commodities whose prices are highly dependent on the business cycle.

THE CHILEAN FREE TRADE STRATEGY

In 1990, with the return of democracy, Chile faced a number of challenges to its international trade policy. With its economy growing fast but highly dependent on exports, it was crucial to maintain open access to foreign markets. This situation entails a constant search for new markets by expanding current ones and creating new ones. It also necessitates export promotion policies at home, raising productivity to stay competitive, aggressive phytosanitary policies to protect the agricultural environment, and the cultivation of an export-oriented culture and mentality even among medium and
small-size enterprises. However, crucial to all of this is access to foreign markets.

This question generated a wide-ranging policy debate at the time. One position was that the way forward was to unilaterally lower tariffs to zero. This is very much how Ricardo (1971) put it: liberalization is good per se, and the very idea of mutual trade concessions is meaningless. The theoretical simplicity of this view has made it especially attractive to the neoliberal economists of the Chicago School. It started from the premise that the reduction of tariffs and other barriers to trade was a matter of domestic policy, not diplomacy. Yet, attractive as this notion may be, it fails to take into account the harsh realities of international relations. For example, what would happen if other countries, unaware of the principles of neoclassical economics, did not follow Chile in applying this “optimal” solution? What if they did not also lower their tariffs to zero and simply took advantage of Chile’s newly opened market? Such a naïve economic opening could be a costly experiment.

A second approach, very popular on the political left, has been to argue that Chile has to rejoin the various multilateral Latin American initiatives from which the military regime had withdrawn, and pursue greater integration with the region. However, this was by no means easy, or even viable. When it was founded in 1991, MERCOSUR had made special provisions for Chile’s access that ran counter to this push. Yet, to join MERCOSUR, Chile would have had to raise its external tariff from 6 percent to 14 percent, cancel all ongoing free trade negotiations, and eventually repudiate the bilateral agreements it had in place. This was not feasible, and Chile declined to join. However, Chile did become an associate member in 1996, and in 2000, the Lagos government attempted to have Chile become a full member, albeit to no avail (BN Americas, 2000).

Finally, a third approach has been, so to say, “multilateral is best.” This would mean engaging proactively in the ongoing multilateral negotiations, hoping that this would result in lower tariffs more or less universally. Yet, no one expected a quick breakthrough on this front, given that negotiations can take decades. What would Chile do in the meantime?

**CHILE’S PREFERENTIAL ACCESS TO MARKETS ORIENTATION: BUILDING TRANSNATIONAL POLICY SPACES**

In the end, Chile rejected all of these alternatives and came up with its own distinct response: a “lateral” approach to international trade policy. Acknowledging that some components of each of these alternatives were needed – some unilateral tariff reductions, some formal relations with the
various regional integration schemes, and a constructive role in the multilateral trade talks (all of which were undertaken), Chile needed something else: preferential access to its main markets. It pursued this relentlessly for twenty years.

As part of its bid for economic growth and greater market access, Chile has been an active player in the proliferation of FTAs. To date, Chile has signed agreements with fifty-eight countries, accounting for 90.3 percent of its total trade (ProChile, 2011). The expansion of FTAs has been an integral part of Chile’s economic development. Since 2001, Chile’s GDP has steadily risen to US$212.7 billion in 2010 (see Figure 3.6), with exports amounting to US$69.622 billion. Most tellingly, during the financial crisis, Chile experienced only a modest reduction of growth and continued to outperform larger trading countries. This growth has been based mainly on exporting commodities. Chile is the largest producer of copper in the world, the second-largest producer of fish meal, the largest exporter of fresh fruit in Southern Hemisphere, and also extensively exports wood and wood products, as well as wine (Heine, 2009). This growth and a demonstrated commitment to free trade and open markets made Chile the first South American country to join the OECD in January 2010.

Today, Chile is the country with the largest number of FTAs anywhere, its latest being with Turkey in March 2011. Its exports increased 7.5 times from 1990 to 2008 (from US$9 billion to US$68 billion), and its current FDI-stock-to-GDP ratio is 65 percent, one of the highest in the world (Heine, 2009; see also, ProChile, 2011). This long-term commitment to FTAs, and Chile’s extensive
experience negotiating them over two decades, facilitates our understanding of two key points:

- An incrementalist approach like the one followed by Chile (“one free trade agreement at a time”), with the aforementioned results, is demonstrably a fruitful way of gaining market access and fostering sustained economic growth.
- Extensive negotiating capacity. In the early 2000s, Chile was simultaneously negotiating FTAs with the United States and with the EU. According to theories of negotiating fatigue between North-South actors, this was not a wise thing to do. If one compares the number of expert negotiators Santiago has on any given product with those that Washington or Brussels can bring to the negotiating table, Chile would be vastly outnumbered. This could lead to a severe asymmetry during negotiations. Yet, even though this was by no means easy, simultaneous rather than sequential negotiations turned out to be the best way to proceed. Chile signed an FTA with the EU in July 2002. This became something of an embarrassment for a U.S. administration ostensibly committed to finalizing a Free Trade Area of the Americas (FTAA) by 2005, but on which little progress was being made. The pressure for a U.S.-Chile FTA was thus ratcheted up, and a year later it was signed. Tellingly, something similar happened a few years later in the negotiations on trade agreements between China and India.

SURVIVING THE GREAT RECESSION, DEFENDING SOCIAL PROGRAMS

Chile’s experience with FTAs demonstrates the practical application and success these agreements can generate. By devising a domestic policy goal that is in line with the country’s specific needs and desires, Chile was able to negotiate successive FTAs that increased its trade access and exports (see Figure 3.6). In doing so, its export markets flourished, helping raise GDP at a constant rate (see Figure 3.7). This economic stability, even in the face of the Great Financial Crisis, has allowed Chile to retain various social and development programs domestically and abroad. With a strategic commitment to FTAs and free trade more generally, Chile has created a situation in which it can benefit from international trade while waiting for multilateral negotiations to catch up to its own success.

Hand in hand with its international trade policy, Chile has developed a number of social policies that have allowed it to make considerable progress
in poverty alleviation. An aggressive social housing program, another one targeting the eradication of informal settlements, the introduction of unemployment insurance, and ambitious pension reform legislation have not necessarily made much progress in diminishing Chile’s considerable income inequality, but they have dramatically cut the poverty rate. The latter went down from 39 percent in 1990 to 13 percent in 2006 – a remarkable achievement by any account. This is also reflected in the Human Development Index (HDI) calculated on a yearly basis by the United Nations Development Program (UNDP), which regularly puts Chile at the very top in Latin America.

That said, Chile’s relatively small internal market makes it difficult for the country to develop the sort of domestic manufacturing industry that could be competitive abroad in contrast to larger countries in the same region, such as Argentina, Brazil, or Mexico. Therefore, Chile has not been in a position to aim for legislation stipulating, say, “domestic content” for foreign direct investment in manufacturing or otherwise attract large-scale manufacturing investment. It has therefore mostly counted on foreign markets to spur internal growth.

EXPORT-LED GROWTH AND BILATERAL DIPLOMACY

On the other hand, in its position as one of the leading mining countries in the world, as well as a significant agricultural producer, Chile is not seen as threatening established industries in the North or in other emerging economies, but rather as a provider of needed raw materials or out-of-season products.
Free Trade Agreements and Global Policy Space after the Great Recession

(in the case of fresh fruit, for example). Moreover, given the radical restructuring that the Chilean economy went through after the neoliberal reforms imposed by the military regime from 1973 to 1990, the country was ideally situated to make the most of FTAs. Many domestic market reforms, like those often demanded by United States Trade Representative negotiators for an FTA with the United States, were already in place.

In sum, Chile’s “lateral” international trade policy, based on signing as many FTAs as possible, served it well, but it is not necessarily a panacea. It provided Chile with expanded market access and with a clear goal for its “diplomacy for development” for some two decades. The main lesson to be drawn relates to the degree to which international trade policy, particularly in the case of countries from the developing world, needs to be crafted in a way that responds to local realities. Rather than just opening the floodgates to the waves of globalization, as in the cases of Ecuador and El Salvador, when they internationalized their monetary policy and adopted the U.S. dollar as the national currency, or aiming for a self-defeating policy of autarky like North Korea, in almost all areas of the economy, what is needed is an approach that calibrates the economy’s specific needs and proceeds accordingly. As in other areas of public policy – from telecom to infrastructure development, from public/private partnerships to FDI promotion – one reason Chile has done so well is because it came up with its own, tailor-made response to its international trade challenges.

CONCLUSION: FTAS AS A NEW POLICY SPACE

As we have argued throughout this chapter, FTAs play an important role in advancing the cause of multilateral international trade while awaiting progress at the Doha Round of trade talks. As a system built on the policy spaces of individual nation-states, the expansion of FTAs in recent years should not necessarily be seen as a negative development. Indeed, this expansion can be seen in countries like Chile as an opportunity to both fortify existing policy space and create conditions for new emerging policy space. This is significant because, while broader WTO negotiations remain stalled, the turn to FTAs demonstrates the buy-in that has occurred at the global level about the potential value of trade liberalization. Yet, to remain beneficial from the perspective of policy spaces, the expansion of FTAs must follow three basic principles.

First, FTAs must be conducted in accordance with WTO principles and the goals of more liberalized trade to foster economic as well as respect human rights. Second, smaller market actors must not be coerced into accepting trade-related measures that run counter to their domestic needs. Increased
trade should be a means of furthering development, not a constraint on social and economic development. Thirdly, increased engagement with bilateral and plurilateral processes should not distract from multilateral negotiations. The agreements and commonalities fostered during the negotiation of FTAs must then be addressed at the multilateral level to foster further economic growth and trade access. In doing so, the proliferation of FTAs in the global trading environment can become an opportunity for fostering like-mindedness and the adoption of multilateral norms for effective and efficient world trade that addresses the distinct needs of domestic development as well as global connectivity around human rights.

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