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Free Trade, Ethics, and Information: Reconciling International Trade with National Ethical Standards

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Increasing globalization and free trade agreements have generated a number of controversies. One significant issue is the potential conflict between free trade and ethical standards. While free trade in theory need not be antithetical to ethical standards, as defined in practice by major trade organizations free trade conflicts with national ethical standards for issues such as labor standards, environmental impact, and animal welfare. The concerns of trade organizations on this issue have some merit. However, the one-sided position of trade organizations is both flawed and politically unsustainable. A balance must be achieved between legitimate ethical issues and minimizing trade barriers. Guidelines or principles are presented for how trade organizations can balance legitimate ethical issues against free trade considerations. In addition, it is argued that the provision of *information* valued by consumers should be allowed as a matter of general principle. In fact, the rather than information provision being a trade barrier, the *prohibition* of information provision is in fact a trade barrier.

Increasing globalization and free trade agreements have generated a number of controversies. One significant issue is the potential conflict between free trade and ethical standards. This issue has received some attention, though the extent of the discussion has been very limited relative to other concerns about trade policy. While free trade in theory need not be antithetical to ethical standards, as defined in practice by major trade organizations free trade conflicts with national ethical standards for issues such as labor standards, environmental impact, and animal welfare.

The objective of this paper is to reconcile free trade objectives with ethical considerations. The sources of conflict and its relevance are described, followed by suggestions for possible solutions. Solutions include a set of guidelines for reconciling ethics and trade, as well as advocating a general rule in favor of the provision of full information.

The Problem: Why Ethical Standards and Free Trade Conflict

Conflict arises between nations' desire to regulate their own markets and trade organization rules when countries attempt to implement ethical standards or ethically-relevant labeling and these ethical standards are not related to the observable attributes of the final product. How something is produced matters for a variety of ethical reasons. It matters for the environment (e.g. pollutants, carbon emissions, and habitat destruction), for labor standards (e.g. child labor laws, wage levels, abuses of worker rights), animal welfare issues (e.g. tuna bycatch of marine mammals, minimum space standards in animal agriculture, agricultural practices deemed cruel), as well as other ethical issues.

While free trade in theory need not be antithetical to ethical standards, as defined in practice by major trade organizations free trade conflicts with national ethical standards for issues such as labor standards, environmental impact, and animal welfare. Trade organizations such as WTO, NAFTA, and GATT explicitly state that only final product attributes are relevant and production process is irrelevant. According to WTO rules, even labeling for process and production method information is not legitimate unless it is related to product safety (Hobbs, et al., 2002).

There have been some discussions relevant to this topic including Hobbs et al (2002), which discusses animal welfare regulations in relation to the WTO, and Gasiford et al (2001) which discusses the role of product attributes that are ethical rather than utilitarian in nature and notes that they have become more important lately. However, in general the discussion of the conflict between ethics and trade has been very limited relative to the amount of attention paid to numerous other concerns economists have expressed regarding trade policy. In fact, it appears likely that many economists in the area of trade policy have never given serious thought to this issue.

Generally, trade organizations have held that production process is irrelevant and cannot be a basis for regulation if the final product remains unaffected. Economists in general frequently appear to also implicitly assume that production processes are irrelevant if they do not affect the tangible attributes of the final product. Although most economists do not explicitly state that production process factors are *not* part of the relevant attributes of a good, the assumption is often implicitly made by exclusion when economists state what dimensions of a good *are* relevant. For example, when describing what qualities affect consumer demand for food products, Caswell and Mojduszka (1996) describe product quality as “a bundle of characteristics (attributes) that determine the product’s performance”. The authors draw their approach from a text on consumer demand (Lancaster, 1971). When discussing the validity of the contingent valuation methodology, multiple arguments are made in Hausman (1993) that ethical dimensions of value should be excluded from total value. But ethical dimensions of value do exist, and do affect demand even if they are not visible in the final product. Frank (2005) argued that ethical issues in the production process are valid attributes for consumer consideration even when final products are identical. If economists follow the principle “De gustibus non est disputandum”, then these attributes are relevant because consumers place value on them.

Even if an attribute does not affect a good’s performance, it is relevant as long as consumers care about it. The key test for whether an attribute is relevant is whether it would affect demand in a perfect information environment. For example, Teisl *et al* (2002) found “dolphin safe” tuna labels to be relevant to consumers, even though the product itself would be indistinguishable without the label. Yet despite the relevance of the dolphin safe label to consumers, it has nevertheless been ruled to be a “trade barrier”. Although the “dolphin-safe” attribute of the good cannot be observed without labeling or outside knowledge and though it does not affect the good’s performance, it is embedded in the good in the sense that it is associated with the process required to create and bring the good to market.

Embedded ethical attributes are much more common in goods than generally realized (Frank, 2005). For any good in which at least some consumers change buying behavior based on ethics, the market price of that good is at least partially ethically determined. Consumers boycott brands based on where they advertise, company dealings with certain other firms, union contracts or labor practices, environmental practices, testing of products on animals, country of origin, and countless other reasons. It is not unreasonable to say that the prices of the majority of goods contain an embedded ethical dimension.

People in the United States have been shown repeatedly in surveys to care about ethical factors in good purchases that may not be apparent in final products. A 1991 study by the Environmental Protection Agency (EPA) concluded that American consumers consider the environmental consequences of their purchase decisions (EPA, 1991) while USA Today poll found that 57 percent of people said they would pay 15 percent more for groceries package in recyclable material, and 52 percent of people said they had stopped buying from companies that they believed were polluting the environment (USA Today, 1990). RoperASW conducted a poll that found 33 percent of the population bases their spending in part on environmental values. A survey by the Natural Marketing Institute found that about 33 percent of the population takes environmental and social issues into account when making purchases (Cortese, 2003). In a 1983 survey, 15 percent of people said they had boycotted a company or product because they were believed to harm animals (DDB Needlam, 1983). In a Gallup poll, 62% of people said that there should be strict laws passed regarding the treatment of farm animals (Moore, 2003).

There are clearly some valid reasons for allowing nations to regulate trade based on their ethical norms. Even economists associated with a laissez faire perspective acknowledge importance of public ethical standards. For example, Milton Friedman is well-known to have argued that firms should only focus on maximizing shareholder value. But in order to do so and maintain some ethical standards within a nation, Friedman argued that ethical constraints must come from societal rules and consumer choices.

So if there are to be any ethics, society must be able to control market constraints.

Virtually all economists acknowledge that ethics outside of market forces have at least some place in society. This in turn implies that nations must have some legal control over ethical rules and standards.

At the same time, the concerns of trade organizations on this issue have some merit. A country could create a law ostensibly based on a moral principle as a method to limit foreign competition. Trade barriers can easily be created and legitimized under a facade of ethics. Strict labor policy or wage standards could exclude all developing world imports. For example, if the United States decided that it will only allow goods into the country produced by workers making at least $6/hour on average, it could position such a law as a moral issue based on labor standards while effectively eliminating competition from the developing world. Trade organizations do have a legitimate concern that ethics-based regulations do not get abused in order to intentionally create trade barriers. However, the one-sided position of trade organizations is both flawed and politically unsustainable. A balance must be achieved between legitimate ethical issues and minimizing trade barriers.

How to Balance Ethical Considerations and Free-Trade

A set of guidelines or principles are needed for how trade organizations can balance legitimate ethical issues against free trade considerations. The goal here is to create a set of preliminary guidelines as a starting point for further discussion and analysis. It is likely that trade organizations themselves will be responsible for judiciously weighing these competing factors. But this is not a new role for them. Just as trade organizations have taken the judicial role of “finders of fact” regarding, for example, whether genetically modified foods are a legitimate health concern, trade organizations must make more of an effort to judiciously balance ethical issues against free trade considerations.

There are probably many who would be skeptical of trade organizations’ ability to fairly balance these competing interests. The institutional structure of trade organizations arguably works against an equitable consideration of these issues. It is possible that an alternative organizational structure is necessary to address these topics. For example, an independent judicial process could be created with membership partially controlled by NGO advocacy groups on the ethical issues in question. The optimal organization of the judicial process is beyond the scope of this paper. However, some such process appears to be necessary to balance trade vs. ethical interests just as it is with a number of other issues where multiple valid goals at times conflict.

The control mechanisms that nations use regarding enforcing ethical principals can be divided into two basic categories: (1) Laws/Regulations, and (2) Consumer ethical preferences. In the case of laws/regulations, in order to have an effective ethical control mechanism, countries must be able to establish laws that make sure goods and services sold in their country conform to their prevailing ethical standards. This is source of conflict since trade organizations have ruled these ethical standards to be barriers to free trade. In order to have an effective ethical control mechanism through consumer ethical preferences, consumers need to have access to information regarding product attributes they deem to be relevant to their consumption choices. Once again, this is a source of conflict since trade organizations have ruled even the provision of information to be a barrier to trade when it cannot be proven to be related to product safety or quality (e.g., labeling of GMO's in products, labeling of dolphin-safe tuna, labeling of animal welfare standards) even when there is clear evidence that consumers value that information.

In the past, trade organizations have resolved this conflict using one-sided policies/rulings that give credence to eliminating barriers while giving no weight to ethics or consumer sovereignty. What should be done instead is a judicious balancing of free trade concerns versus the other conflicting values (as trade organizations in theory do on other issues such as safety). How this balancing should take place will be split into the two control mechanisms described above.

Balancing issues involving consumer ethical preferences/provision of information

When it comes to allowing consumers in a nation to express their own ethical preferences in the market place, there does not seem to be any valid economic argument against allowing this to take place. Since consumers are allowed to freely choose what they consume in the market, the issue comes down to the provision of information. In other words, are mandatory, or even voluntary, labels a barrier to trade. Trade organizations have taken surprisingly strong stands against providing consumers information that consumers clearly find relevant (such as labeling GMO foods, milk with growth hormones, etc.).

Generally, economists favor markets that maximize the information provided to agents. In fact, the welfare arguments for free and open markets both domestically and globally are strongly linked to an assumption that agents function with perfect information. The only counterargument to labeling is really one of consumer ignorance and irrationality, where providing more information to consumers will supposedly cause them to behave irrationally. For example, the debate regarding GM food labeling focused on whether food safety concerns were scientifically legitimate (Scandizzo, 2002). If the safety concerns were not valid, the argument was that consumers would use the label to "irrationally" decrease their consumption of these foods. Studies have found that the majority of the American public was found to be opposed to the use of both rGBH and

GM foods (Buttel, 2000 and Giannakas and Fulton, 2002). Therefore, the failure to label these facts goes against the concept of consumer sovereignty and assumes that consumers will act ignorantly against their own interests. Interestingly, the public is largely ignorant of the extent of the technology's prevalence, with only 43% of people in recent surveys even knowing that genetically modified food was available in U.S. supermarkets (Scandizzo, 2002).

A conclusion that consumers are acting ignorantly simply indicates that a group of institutionally defined "experts" disagree with the opinions of consumers. Experts can be wrong, both due to human error and due to the influence and interests of the institutions that support them. Furthermore, the consensus of experts in different countries on topics such as GM foods can differ substantially. Consumers have a right to disbelieve a particular panel of experts. They also have a right to extend a greater precautionary principle on safety issues when it comes to their own safety or other issues. While a case could be made for providing consumers with more accessible information on what experts have to say, there is very little economically valid basis for keeping consumers ignorant of facts they believe to be relevant. The idea that consumers are so irrationally that we must keep important (to them) facts about food out of their hands also runs strongly counter to the entire argument for free trade in the first place. If consumers are this irrational, then any economic argument that reducing trade barriers unequivocally raises welfare has no theoretical validity.

There is some evidence that information overload can be a problem. For example Jacoby *et al* (1974a & 1974b) found that agents can make worse decisions if they get too much information. However an experiment by Grether and Wilde (1983) do not find this to be true. If information overload is a serious consideration, then this suggests that we should be scientific and thoughtful in how information is provided; it is not a valid argument for leaving consumers uninformed regarding issues they find relevant.

In conclusion, regarding labeling and provision of information, the consumer sovereignty argument is overwhelming. There appears to be no valid counterargument why consumers should not be allowed to choose based on any information they deem valuable. While it is important to minimize the potential for misleading the public with labels and other information sources, the way to do this should be to expand information provision rather than to restrict it. Rather than being a barrier to free trade, providing consumers with relevant information is consistent with free trade—in fact it is the definition of free trade. The provision of *information* valued by consumers should be allowed as a matter of general principle. Rather than information provision being a trade barrier, the *prohibition* of information provision is in fact a trade barrier.

Balancing issues involving ethics-based regulations

For national laws and regulations, the answer is not as clear cut as it is for information considerations. Some judicial process must balance legitimacy of ethical considerations against de facto trade barriers. This should be done through a set of guidelines to aid in the balancing act. Among the factors that should be included in the judicial balancing act are: (1) Evidence of a strong ethical norm, (2) Scope of ethical norm, (3) Depth of belief in ethical norm, (4) Specificity of norm, (5) De facto barrier impact, and (6) Presumption of national sovereignty in ethical standards.

Evidence of a strong ethical norm: Generally, the stronger an ethical norm is for a nation, the more weight it should be given relative to the competing consideration of free trade. A number of sub-factors go into defining the strength of an ethical norm. One is the *history of that ethical norm*. Has it been existing or evolving in society for a considerable length of time (such as growing concern about child labor laws in the last century)? Does it show consistency over time? *Evidence of strong advocacy groups* is a sub-factor that suggests a strong ethical norm. Strong advocacy groups are a sign that public concern over an issue is legitimate. Furthermore, when these advocates are largely independent of those with interests in restricting trade, this lends further credence to the concern. For example, if labor organizations whose members are likely to benefit financially from restricting trade are the dominant advocates of a restrictive rule, then this is less credible than advocacy by a party that has no other interest in the outcome of trade (such as an animal advocacy group trying to prohibit imports of dog and cat fur). An additional sub-factor relating to evidence of a strong ethical norm is the presence of *evidence of evolution toward norm in internal law*. If a nation seeks to prohibit imports of products of a certain type, if the ethical concern is genuine (rather than merely an excuse to restrict trade) there is likely to be internal laws at a national or local level preventing a practice that grow in strength and prevalence over time. A final sub-factor suggesting a strong ethical norm is *evidence of internal sacrifice to meet norm.* In other words, if firms within a country suffered significant costs to meet a standard and then that standard is extended externally, or both internal and external firms would suffer from the restriction if it is added simultaneously, this is more credible than if primarily foreign firms would suffer from a rule being put in place, and domestic firms would have used an alternative production process anyway.

Scope of ethical norm: An ethical norm that is widely held within a country is more credible as the basis for a law than one which is based on a value that is only held by a small group.

Depth of belief in ethical norm: An ethical norm that is deep-rooted and central to the belief system of many people in a nation is more credible as a basis for a law than one which is of minor concern.

Specificity of norm: A rule that is closely tied with the production process of a good or service is more credible than one that is more general. For example, a regulation that is about the general practices of a country such as boycotting all products in South Africa when apartheid was in practice may have an ethical basis but it is also quite clearly an intentional barrier to trade. On the other hand, a prohibition that is limited in scope to a specific production process or labor practice is more tightly defined, and can be consistent with free trade in general.

De facto barrier impact: The impact of a regulation on trade is also an important factor to weigh. This involves several sub-factors. The first sub-factor is *how much of international competition is excluded?* Rules that have less impact on the quantity of international trade are less of a de facto barrier. A second sub-factor is *which international competition is excluded.* Does the rule cut out imports from all of developing world for example while leaving developed countries unaffected, or does the impact cut across categories? A final sub-factor here is *whether international competition can reasonably adjust to meet new standard.*

Presumption of national sovereignty in ethical standards: One of the most important principals here is that the burden of proof is on those seeking to stop implementation of an ethical standard. There is a presumption of national sovereignty, and unless the trade barrier impact is clearly stronger than the ethical basis for a rule, then the rule should be allowed. This is just the opposite tendency from that currently practiced by trade organization, which have a strong presumption against any national laws or practices that impact trade in any way. The impact as a de facto trade barrier should clearly outweigh its importance as a legitimate ethical standard for an international body to step in and overrule the presumption of national sovereignty. There are many legal principals parallel to this logic, but one similar practice in US courts in criminal trials is judges weighing the prejudicial value of evidence being possibly presented against its probative value when considering whether to exclude evidence. Evidence is generally allowed in unless the prejudicial value clearly outweighs its probative value.

Furthermore, even if a practice creates a temporary barrier to trade, this is not an adequate basis to prevent a law if producers can reasonably be expected to adjust. Producer adjustment while maintaining competitive balance must be unreasonable to expect for a trade organization to act to prevent a nation from establishing a law based on genuine ethical standards. Also, the consumer sovereignty principle should be held to overrule expert opinion. In other words, consumer beliefs are taken seriously in determining whether a law is appropriate, regardless of whether a majority of experts disagree.

Conclusion

This discussion has argued that ethical factors matter to consumers, even if they only affect the production process and not the tangible characteristics of the final product. Trade organizations have often acted to prevent nations from establishing certain ethical rules for products sold within their borders, and have even discouraged the flow of information rather than encouraged it. From an economic perspective it seems quite clear that public policy on this issue should push for the full provision of relevant information to consumers, and it is difficult to think of a case where requiring information can legitimately be considered a real barrier to trade. On the other hand, laws that seek to outright prohibit a practice require judicious review, balancing the ethical issues and the trade impact. A number of factors to consider have been provided here, but the presumption should go in favor of national sovereignty. A very strong case that a law primarily creates a barrier to trade and that this outweighs any ethical value should need to be required in order to overrule the will of a nation.

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