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Deliberative Trade Policy

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Abstract

Trade policy is normally evaluated according to the standards of allocative efficiency. In contrast, this paper tries to understand trade policy as a solution to the problems of international communication among governments. Basic categories of speech act theory are applied on political action, which I merge with the “cheap talk” paradigm. As a result, I distinguish between trade policy being negotiated via verbal and non-verbal communication, and trade policy as a non-verbal means of deliberation among governments. I apply this approach on a number of recent empirical studies on trade policy, and I draw normative conclusions for the communicative design of international trade policy.

Handelspolitik wird gewöhnlich nach der Maßlatte allokativer Effizienz beurteilt. Im Gegensatz hierzu interpretiert dieses Papier Handelspolitik als eine Lösung von Problemen internationaler Kommunikation zwischen Regierungen. Ich wende einfache Theorien der Sprechakt-Theorie an und verbinde diese mit dem „cheap-talk“ Ansatz. Dementsprechend differenziere ich zwischen verbaler und nicht-verbaler Kommunikation über Handelspolitik einerseits, und Handelspolitik als ein nicht-verbales Medium der Deliberation zwischen Regierungen andererseits. Ich wende diesen Ansatz auf eine Reihe neuerer Studien zur Handelspolitik an und ziehe normative Schlußfolgerungen für das kommunikative Design der internationalen Handelspolitik.

1 The dilemma of endogenous politics in normative trade analysis

Trade economists are well aware of the systematic contradictions between trade theory and trade policies. The main reason is the peculiar synthesis of positive and normative economics in the core statements on trade, as in the law of comparative costs and its ramifications. The fundamental theorems of trade theory explain why trade actually occurs, and at the same time they justify why any restriction on trade is harmful to general welfare in terms of a necessary loss in consumer rent. In that sense, trade theory plays a double role as a theoretical reference for trade analysis and as a normative argument providing reasons for a particular policy stance.

The problems with this conceptual merger are well known.

- Since real trade policies often contradict the theoretical assumptions, trade theory is wedded with a special interest group approach to politics, in which deviations between reality and theory are always explained as political failure.¹
- There is the important single case with an internal contradiction between normative statements and the underlying rationality assumptions of the theory, namely the optimum tariff argument. Since the empirical issue of elasticities in international trade is not finally resolved in favor of the “small country” conditions, the margin between cooperative and non-cooperative trade policy seems to be very thin.²
- As long as empirical deviations from theory are explained by political economy reasons, the only theoretical progress is possible via the en-

¹ This is a phenomenon which cannot only found in the context of trade policy, see Wittman (1995).

² In his magisterial survey of the history of free trade, Irwin (1996, Chapter Seven et 222f.) emphasizes that the optimum tariff argument originally proposed by Torrens is the only powerful justification of deviations from a free trade regime. In their recent elaborations on the analysis of trade institutions, Bagwell and Staiger (1997, 1999) regard Terms-of-Trade externalities of bilateral trade agreements as a fundamental issue which exerts a deep impact on the shape of institutions.

dogenization of politics (for a survey, see Ursprung, 2000). Endogenous policies, however, leads economics into the trap of the “determinacy paradox”. In a complete politico-economic equilibrium, normative statements are no longer possible, because the realized policies already take account of all relevant interests.³

These problems are by no means unique with trade theory, but are related to general problems of equilibrium welfare theory when juxtaposing observed politics to theory. The determinacy paradox seems to assume a special role here, because it highlights internal problems of basing normative statements on equilibrium concepts. Similar difficulties occur in general welfare theory. In this context, one solution proposed by Sen (e.g. 1995) was to make the process of social communication explicit that actually leads toward a social consensus regarding certain policies. This is tantamount to trying to explain the social preferences not merely by aggregating individual preferences according a certain mechanism of voting for policies, but to envisage an interaction between individual preferences and social communication, with the result that social preferences emerge from a set of communicatively evolving individual preferences.

Recently, this alternative foundation of welfare statements has been coined the “deliberative approach” (e.g. Elster, 1998b). In this paper I wish to investigate whether a deliberative approach is useful to solve certain puzzles of trade theory in relation to trade policies. I begin with a brief characterization of the deliberative approach, reaching the conclusion that policy research must be based on the analysis of political economy as a system of verbal and non-verbal communication. Importing some insights from linguistics and philosophy of language, I proceed with a taxonomy of acts and objects of communication in trade policy and venture to explain observed

³ One of the most systematic works on this is Magee et al. (1989) who show that in a manifold of scenarios of politico-economic equilibrium external advice is no longer possible. The term “determinacy paradox” originated with Bhagwati, a good survey can be found in the Economics and Politics volume 9(3), with O’Flaherty / Bhagwati (1997), amongst others.

trade institutions as solutions to problems of communication both over and through trade policy. From this, I deduce a new criterion for assessing trade policy in normative terms.

2 Deliberation and language

2.1 Deliberative politics: the evolving collective interest

The deliberative approach posits that social preferences are the result of a convergence of individual preferences through a process of social communication. Individual preferences are not a given, but change under the impact of opinions that emerge during communication. In this process, the crucial act is giving reasons for one's own opinion, and to listen to other people's opinions (Elster, 1998a). Hence, the deliberative approach is based on a fundamentally distinct notion of rationality, if the standard approach in economics is considered: a rational decision is one for which good reasons can be provided, which are strong enough to resist counter-arguments, and which can be agreed upon by the community of discourse (Viskovatoff, 2001). Although this is frequently related to Aristotelian philosophy, the deliberative approach also seems to be close to the Popperian piecemeal thinking in terms of continuous criticism, falsification and melioration of arguments. In other words, in deliberation people regard their own preferences to be falsifiable statements, which are first submitted to the scrutiny of argument and counter-argument in social discourse, only to take their final shape in the very moment when a joint decision is reached. In a nutshell, deliberation is about achieving consensus, whereas traditional public choice is about majority vote.

From this observation follows, that one of main normative concerns of the deliberative approach must be the rules governing the process of communication: How do actors participate in communication, which kind of argument is acceptable, what are the rules governing the rights to raise opinions and so forth. There is no direct way to evaluate the outcome of a delibera-

tive procedure according to the original preferences of the individuals, as in the notion of Pareto optimality.

In this paper, I wish to add a peculiar twist to the deliberative approach in emphasizing the crucial role of language in communication. The deliberative approach emphasizes rational discourse, however the uses of language in social and especially political communication are much more diverse than to provide sound and convincing reasons for action. This enlargement of the scope of the deliberative approach is done with having the fact in mind that in trade policies one of the major issues is the use and abuse of language by special interests. In that context, language is also used to cheat, to threaten or to mediate, and not merely to convince by rational argument. Indeed, language is the medium in which one of the most conspicuous activities in trade policies is mediated, namely legal conflict resolution. In that context it seems revealing that one of the main methodological issues in trade policy is the coordination of cognitive stances between trade economists and trade lawyers, which is foremostly a difference in the language and the underlying cognitive schemes used to analyze trade issues.⁴

There are two steps that need to be taken in order to achieve a workable framework for understanding deliberative trade policy:

- First, we need to distinguish the different functions of communication which are related to the emergence of a common view on policies and hence, a viable collective social preference both within a country as between trading nations.
- Second, we need to distinguish neatly between verbal and non-verbal communication. Whereas the standard deliberative approach focuses on rational argument and hence, verbal communication, I broaden the view to include what economists commonly call “signaling”, and I propose

⁴ For example, many legal institutions of international trade simply defy an economic rationale. Anderson (2002) takes a closer look at the GATT rules governing retaliation, which flatly contradict economic reason. For example, retaliation reduces the welfare in the country imposing the sanctions, and it does not hit the groups in the foreign country, which received the benefits of the protectionist measure.

that we should approach trade policy as a system of communication by a diversity of means, of which verbal communication is only one of the forms, and, though being important, sometime of less power than non-verbal communication.⁵

From this, the important distinction emerges between

- trade policy being a process of deliberation and
- deliberation being mediated via trade policy.

In the first case, we ask for the way how trade policy is actually communicated, justified and eventually agreed upon. In the second case, we ask how trade policy can be a part of a broader deliberative process taking place between national and transnational actors.

2.2 Speech acts and cheap talk

Turning to the different functions of communication first, let us begin with the observation that all policies firstly and foremostly consist of verbal statements. Whereas economists mostly focus on the language of contracts, possibly including threats in the context of strategic interaction, I follow the classical distinction of speech acts to grasp the different dimensions of communication in trade policy (and other policies).⁶ Searle's (1976) original proposal is to distinguish between:

- representative,
- directive,
- commissive,
- expressive,
- declarative,

⁵ One related approach has been proposed by Wohlgemuth (2004). Deliberation is frequently linked up with Habermas' theory of discourse. Wohlgemuth compares the Hayekian idea to regard the market as a knowledge processing system and, hence, a specific way to communicate over means, ends and values. In a similar vein, we argue that the category of communication encompasses a much larger social realm than the use of language in discourse.

⁶ For a very good survey on the theory of speech acts, see Allen (1998).

speech acts, and to analyze them in four dimensions, namely illocutionary intention, direction of fit between words and world, the expressed psychological state, and propositional content. For example, a commissive speech act expresses the willingness (*expressed psychological state*) to adapt a state of the world to the intention of the speaker (*direction of fit*) who wishes to commit herself to a particular action (*illocutionary intention*), and therefore makes a statement with a certain propositional content, aiming to cause the hearer to believe that the speaker actually will commit herself to the content of the speech act. These behavioral consequences on part of the hearer are the perlocutionary effects.

The complex scholarly debate of Searle's proposal raised considerable doubts concerning the completeness, coherence and applicability of the classification (e.g. Ballmer, 1979), so that we only use it as a first approximation to our question. However, even a quick glance may reveal that the classification is related to important policy problems in economics, as, for example, time inconsistency, which relates to commissive speech acts, or setting institutions, which relates to declarative speech acts etc.

If we apply the classification on deliberation, we realize that the rhetoric of giving reasons is an amalgamate of these different speech acts, depending on the issue involved. However, there is a fundamental aspect common to all these acts, that is whether the speech act is truthful or not (or, as Austin, 1962, had it, it must be sincere). In that sense, every speech act is related to a propositional statement that the speaker truthfully exerts the act, in the sense of the statement "I say: [speech act]" claiming to be truthful.

With this observation, we can directly relate the concept of speech acts with the "cheap talk" paradigm which gained some prominence in economics since the early Nineties (Farrell / Matthew, 1996). Speech acts are cheap in the sense that to make them the speaker does not consume much resources. Whether they are regarded as truthful statements by the receiver of the message, will depend on the perception of the incentives underlying the acts of the speaker. If the receiver believes that there are strong incentives

to cheat, she will not trust into the speech act, even if the speaker acts truthfully. Hence, depending on the context of a speech act, the same and truthful speech act can yield different results, such that the general conclusion follows that policy analysis always is situational analysis in the Popperian sense.

The “cheap talk” paradigm implies that in collective deliberation there are always two levels of communication which are rarely made explicit. The first level is to communicate about the incentives and the definition of the situation, which may, but need not establish a common frame of reference between the parties involved, and the second is the speech act proper which aims at achieving a certain result in terms of a state of mind of the receiver, her possible action and hence, a new state of world. Very often, speech acts are embedded into communicative behavior which at the same time communicates the frames of action. Misunderstanding and lack of trust often result from a lack of coordination of frames.⁷ In everyday life, communication of frames frequently occurs via non-verbal communication, like body language. Thus, a crucial issue in policy analysis is to identify functional equivalents to these kinds of non-verbal communication which enable the actors to put themselves into a common frame, or, to create common knowledge.

Merging the speech act concept with the cheap talk paradigm, I propose to distinguish speech acts from communicative acts. Communicative acts include both verbal and non-verbal communication, and they operate on both the levels of frames and the acts. Deliberation consists of a series of communicative acts, which can manifest the following modes, as in Searle’s classification of speech acts:

⁷ Indeed, speech act theory goes back on Wittgenstein’s (1958) original analysis of meaning in natural languages, which has highlighted the role of “forms of life” in “language games”. In speech act theory, frames are mostly referred to as “preconditions” of a speech act. In economics, the importance of frames has been re-discovered in the context of experimental economics, see e.g. Thaler (1994). Yet, there are still very few contributions that actually relate the economic concept of

- In the representative mode, deliberation is based on the communication of certain views of reality, including the basic description of the state of the world, as well as possible future consequences of action taken in that state. States of the world include complex things like contracts and institutions, the essence of which consists of a set of speech acts themselves. Hence, in the representative mode, complex issues of self-referentiality are involved.
- In the directive mode, deliberative argument attempts to enforce an opinion on the receiver. This can be done with and without reasons. Referring to reasons can enforce an argument if the parties have agreed on certain rules of conduct, as in judicial decisions, i.e. they become “compelling reasons”.
- In the commissive mode, the speaker commits herself to a certain action in the future that causes a particular state of the world. This can be a crucial part of an argument that convinces the receiver to take appropriate action on his own.
- In the expressive mode, the speaker reveals his state of mind and confers information about his values and preferences to the speaker. The expressive mode is important for communicating about frames.
- In the declarative mode the speaker changes a state of the world by fiat, mostly being explicitly legitimized by a certain institutional arrangement. This entails a binding force on others, because different from the commissive mode the declarative mode refers to the behavior of other individuals, too.

In a process of deliberation, actors use these different communicative acts to articulate their opinion and their preferences about states of the world with the explicit aim to influence the states of mind and the behavior of others. However, because of the dilemma how to utter credible communicative acts, verbal communication might not be sufficient, such that deliberation becomes a complex web of interrelated speech acts and action. The

frames to the philosophy of language, see e.g. Finch (1997) or Priddat (1999).

final aim of deliberation remains the same, though, namely to try to mutually influence perception, evaluation and behavior, in order to achieve a coordinate or joint decision making of the different parties involved.

2.3 Non-verbal communication and dear talk

From the viewpoint of economics, our classification should be conjoined with a special consideration of costs and benefits of speech acts. That is, every speech act can be analyzed according to notions of efficacy and efficiency, in particular from the position of the speaker. The speaker will assess the result of every speech act according to whether it served as an effective means to achieve his ends, and he will take consideration of the costs involved, as, for example, the time and effort needed to convince the receiver of the validity of a certain statement. Thus, the process of deliberation is governed by certain economic principles, as, for example, in the regular case that time is limited to achieve an agreement. Rules of deliberation might explicitly observe these constraints, as when avoiding the costs of complete consensus.

Having introduced the category of costs, we can follow the fundamental insight of the theory of signaling that these costs may serve as a non-verbal signal on its own sake, so that communication obtains a complex multi-level structure of nested and self-referential signals. This poses essential analytical difficulties for policy analysis, because the first-level efficiency criteria can be suspended by the argument that precisely costly communication might be necessary to convey the message.⁸

This type of non-verbal communication, however, is only a special case, where economic categories refer to economic categories. The general case

⁸ I cannot go into the details here. The theory of signaling has been mostly developed and applied in labour market theory, however seems to have much broader relevance beyond standard economics. Suffice to say that in biology, the theory of signaling has been considerably broadened to a general paradigm of the evolution of communication, see Zahavi and Zahavi (1997). Skyrms (1996) has an evolutionary account of the emergence of meaning in systems of interaction.

is the embedding of verbal communication in other categories of non-verbal communication. In policy analysis, this can be related to the general concept of policy linkages. For example, trade issues might be linked up with security issues, where non-verbal signals like military strength play an important role for behavioral coordination. For example, in international political economy the hegemonial theory of liberalization can be regarded as a theory of embedded trade policies, in which the hegemon is able to convey his messages about policy preferences in a much more effective way than a small country.

When considering non-verbal communication, an important point is that policies themselves can be interpreted as communication, which turns the argument on its head. That is, we need to distinguish neatly between two roles played by non-verbal communication:

- First, policies might be communicated non-verbally or might need to rely on non-verbal media if verbal messages alone result in mere “cheap talk”,
- Second, policies might be an act of non-verbal communication themselves, and this might be true for other policies, which are communicated via complementary policies, as for the policy proper.

The last point is another instance of a self-referential phenomenon, because every policy might be interpreted to be an action and a communicative act about this action.⁹ For example, every policy might also be perceived as a message communicating the underlying interests: In a nutshell, the action is a signal of the action. This leads us back to the role of costly signaling. Consider a policy that is optimal from the viewpoint of Pareto-optimality, and which is also supported by a special interest. Obviously, this policy cannot serve as an unequivocal signal to communicate the existence of the special interest. Only policies that exclusively work in favor of the special

⁹ Self-referential statements are a neglected phenomenon in economics, because economics generally leaves language out of sight. A general concept to grasp their nature is “reflexivity”. For a concise overview, see Davis and Klaes (2003).

interest and against the general interest can be used as a signal. Thus, only distortions can be effective signals.

Hence, the perspective of speech act theory allows to relate single policy actions to different “illocutionary points”, depending on the main purpose of the action. This in turn increases the range of possible “perlocutionary effects” depending on the interpretation of the policies by the affected parties. The relation between policy and result becomes multi-valued because of the degrees of freedom created by communication.

2.4 Interim conclusion

With the conceptual distinctions introduced in the previous sections, we arrive at a view of deliberation that transcends the narrow confines of organized social discourse about politics. Deliberation consists of a complex series of communicative acts which are embedded into a system of verbal and non-verbal communication, and in which self-referential signals play an important role. In economic policy, this means that policy is not only the result of a deliberative process, but actually cannot be separated from it. Indeed, one of the reasons for the dilemmata of traditional trade policy analysis is the view that the stages of decision making and of implementation can be separated from each other. In fact, policies themselves are an inalienable part of deliberation, because they, amongst other reasons, may be a signal that is necessary for the successful communication about the policy, or because the policy is the only way how deliberation can actually proceed, given the limits to verbal communication. This is particularly true for international political economy, where the assumption seems less warranted that actors speak the same language.

3 Understanding trade policy as a system of communication

Based on the very broad sketch of a deliberative approach to politics, I will now try to develop a direct application on trade policies. Based on recent empirical research on trade policy in different policy areas, I try to offer an

alternative interpretation of their results. As a general point, I take trade policy for granted in empirical terms, i.e. I do not start with any normative presumption for or against trade policy per se.

There are some problems that are common to all the different fields that I will touch upon. Most generally spoken, one is to observe the actions and the state of the world of the other, as well as perceiving the respective perceptions of the other and to understand her intentions truthfully.¹⁰

For example, democratically elected governments need to mutually acknowledge the constraints under which their representatives act, which implies that a full commitment to a certain policy is not credible that might do future harm to an important group in the electorate, thus endangering re-election and hence, the very base of the political agreement. Therefore, in international trade among democratic governments a system of rules is needed that allows for exceptions, safeguards etc. From this, however, the fundamental problem arises,

- first, how to describe the state of the world which allows a government to invoke a certain exceptional right,
- second, how to observe this state independent from the description given by the government invoking the exceptional right,
- third, if the government invokes the exceptional right, how to prove that her intention is truthful, and to exclude the possibility that the true effect of the policy might serve other interests.

In a world with imperfect and incomplete information, these are fundamental problems that might impose narrow limits on successful communication. Subsequently, we want to analyze several institutions of the international trade system in the light of the question how they enable the actors to communicate successfully. We offer a brief survey of different kinds of com-

¹⁰ Trade economists have emphasized this problem for long, as, for example, in Hungerford's (1991) or Riezman's (1991) analysis of triggers in trade policy, which serve as indirect indicators of unobservable states in the foreign country.

municative acts and conclude this section with an exemplary analysis of trade policy as a vehicle for transnational deliberation.

3.1 Representative communicative acts: describing market access rights

I begin with one of the fundamental tasks of trade policy, namely to create, secure and to exchange rights to market access, and through this to draw a line between “us” and “them”, depending on different policy aims (as, for example, security, protection or taxation).

From this perspective, trade policy needs to rely on communicative means:

- to describe market access rights in sufficient detail, such that the mutual expectations of the issuer and the user coincide,
- to describe valuations of rights in a way that is commensurable between the parties,
- to describe the states of the world in sufficient detail, such that violations of rights can be identified exactly, and such that the responsibility for violations can be ascertained correctly,

From the economic point of view, trade policy faces a trade-off between lowering transaction costs ex ante and ex post. Basically, any market access right is a complex phenomenon with fuzzy boundaries in terms of the

- delimitation between border related and beyond border determinants of effective market access,
- delimitation between the fundamental transaction and complementary, trade-enabling transactions (trade-related services).

In the development of post WW II trade policies, the gradual shift of emphasis from tariffs/quotas to non-tariff barriers and to services exactly mirrors a shift from ex ante transaction costs minimization to ex post minimization. That is, tariffs and quotas can be described with propositions on which a convergent interpretation is easy to achieve, however, these leave

out large leeway for deviating action, and hence, rent extraction.¹¹ Rent extraction reveals the information in which areas a more detailed description is needed, such that trade policy moves forward into these fields. Hence we can interpret the GATT / WTO as an open system of communication which explicitly opens up a process of discovery of relevant communication devices, and which is driven by economic interests in terms of the discovery of potentials of rent extraction. This is as true for the broader issues of trade negotiations as for the narrow field of conflict resolution. In other words, when designing the GATT the parties involved actually set up a system of rules governing the communication through which the form and content of market access rights evolves.

An interesting evidence supporting this viewpoint is the fact that in the GATT language there is a considerable distance between the possible and reasonable economic interpretation and the actual legal and political use of terms. To take a core concept in the application of the Most Favored Nation clause, the “likeness” of products is not primarily assessed according to the theory of relevant markets and competitive substitutability, but according to the role played by product classifications in achieving a balanced exchange of market access rights. Robert Hudec (2001) argues convincingly that in the two substantial, yet different roles played by the concept of “like product” in the GATT, articles I and III, only in the latter on national treatment the concept is used in the economic sense, because the issue of internal market distortions is involved. In contrast, Article I deals with basically permissible trade interventions like tariffs. In this case, the concept of “likeness” can be adapted to the needs of fine-tuning the tariff classification according to the principle of reciprocity. For example, in the famous *Unroasted Coffee* case the Spanish position was rejected that different kinds of

¹¹ The important role of description in contracts has been especially emphasized in Barzel’s (1989) theory of property rights, which does not need the assumption of explicitly opportunistic behavior. The mere fact of the limits of full description will give rise to entrepreneurial discovery of potentials for rent extraction. For a theoretical treatment of costs of description, see Anderlini and Felli (1999).

coffee beans are competitively different, which is a sound economic proposition. The presumed reason was that the tariff distinction in fact made a difference between countries of origin, which failed to pass the reciprocity criterion.

This example shows how a technical part of the international trade system, the product classification, actually can be interpreted as a reservoir of communicative devices. The main function is representative (to describe market access rights), yet at the same time the tariff classification operates in the declarative mode, as the mutual acceptance of a particular tariff classification actually means that a reciprocal agreement has been settled. The tariff classification is a means to describe rights to market access, which can be used in specific communicative acts. Their illocutionary point can be very different from the superficial appearance of the technical aspects of tariffs, i.e. in fact regulating reciprocal exchange.

3.2 Directive communicative acts: commands without words

An essential legal fact in international political economy is the sovereignty of nations, which implies that governments formally cannot give binding directives to other governments. However, this does not preclude governments from using other means to enforce a certain action on other governments, the most conspicuous of which is the use of trade policy as economic sanctions. Economic sanctions can be analyzed on both levels of communication, i.e. according to their immediate effect on the target country, and according to the welfare costs that the sanctioning country actually suffers, and which might work as a costly signal to convey the sincerity of the aims pursued by the policy.

As economic sanctions are only an exceptional policy measure, in our context it is more interesting to search for other ways how governments do directive communicative acts. In recent times, the most important means seem to be anti-dumping measures. Trade economists are not weary to pinpoint the economic nonsense of anti-dumping, which sanctions ordinary price competition in international trade by imposing welfare losses on the

implementing country, too. The interesting additional point is that anti-dumping measures frequently are imposed even without a strong impact of domestic interest groups, such that governments might not seriously lose a significant political support by rescinding the measures or avoiding them at all (Cunningham, 1998).

A possible explanation is, hence, to conceive of anti-dumping as ersatz communicative means to give directives to other governments. A supporting evidence of this interpretation is the fact revealed by recent empirical research that anti-dumping measures exert a considerable impact of trade even if they fail to be accepted by the national authorities. The mere announcement of filing an anti-dumping case suffices to change the behavior of the target exporters (Prusa, 1999). The entire setting of an anti-dumping institutional regime can systematically affect macro-variables like the real exchange rate and, thus, impose a pattern of behavior on the foreign countries (Knetter / Prusa, 2003). Thus, we can regard anti-dumping as a directive communicative act with certain perlocutionary effects.¹²

Giving directives very often presupposes a certain basis of legitimacy and power, which entails that a directive needs to be implicitly connected with a threat to sanction the addressee if she does not follow. As has been well acknowledged in the analysis of strategic behavior, threats gain in credibility if the threatening actor is bound to the action by certain fixed investments. In recent contributions to trade policy analysis, the role of fixed investments in political organization has been highlighted in the context of interest group politics. For example, Mitra (2002) argues that the actual trade policy outcomes are determined by the distribution of fixed investments across different potential interest groups. We add that incurring the

¹² Interestingly, there are even more complex communicative uses of anti-dumping, see Cassing / To (1999). Strong market incumbents can reject to underwrite a petition for an anti-dumping procedure, even though it may be successful, in order to signal to the competitors that they are strong enough to withstand price competition. In this case, the failure to launch an anti-dumping case is just the signal that keeps competitors away.

investment sends a costly signal to the government, and may be even observable by other governments, such that their behavior is guided towards the direction of interests and their representation. For example, in agricultural policy farmers' organizations invest into their political campaigns, and the government might set up special ministries or branches dealing with the farmers' issues. The accumulating fixed investment in political organization and the resulting effects on capital formation under protection send strong signals to foreign governments to yield to the status quo, because threats become more credible.

3.3 Expressive communicative acts: dear talk discriminates

The WTO / GATT have never pursued a complete liberalization of world trade, as the member governments mutually acknowledge their right to intervene into international trade. The main objective is to minimize the negative effects on global welfare and to make policy predictable. Given the many degrees of freedom left by the GATT, one fundamental problem is how to assess the legitimacy of a certain trade policy. Considering the previous consideration that democratic governments need to acknowledge the right to take exceptional action to safeguard their voters' interests, a major problem seems to communicate the valuation of a certain interest in domestic politics.

Descriptions of the world always have a subjective component as far as valuations are involved. Governments might not be able to communicate their assessment of the politico-economic value of a certain policy in a credible and reliable fashion. How can governments actually communicate that their policy is legitimate in the sense that they honestly claim to put high political stakes on the policy? In an important paper, Feenstra and Lewis (1991) argued that governments can only credibly communicate their private perception of political pressure if they are ready to bear a cost, as in our previous discussion of fixed investments in lobby formation. However, costs can also be a category that is difficult to be observed: For example, the high costs in agricultural lobby formation might mislead the

perception of the actual economic and political costs of agricultural trade liberalization. Hence the most effective way is to transfer a benefit to the foreign government which is directly observable by definition, and which therefore operates as a reliable signal indicating the sincerity of the policy. Feenstra and Lewis argue that tariff quotas might be a workable solution, because tariff quotas allow to distribute economic rents among selected recipient governments. In a similar vein, voluntary export restraints shift rents from the importing country to the exporters. In both cases, economic theory would reject these measures because they violate the Most Favored Nation principle, which implies that even if a protectionist measure is taken, a non-discriminatory tariff would still allow the most efficient supplier to prevail in market competition. However, from the viewpoint of communication such an indiscriminate message would be a failure. Thus, discriminatory policies can be interpreted as an expressive communicative act which reveals true information to the receiver, given the constraints of “cheap talk” in international communication.

Hence, the analysis of trade quotas from the allocative point of view fails to recognize the nature of the quota as an communicative act with a special illocutionary point, namely to tell the receiver of the message that the underlying political valuation of the interest is very high. The institution is the message.

3.4 Commissive speech acts: doing alone does not work

We have already mentioned that in economics the problem of time inconsistency can be directly related to commissive speech acts. For time-inconsistent policies, there are fundamental limits to the ability to do commissive speech acts. Many of the solutions provided in the economic literature therefore can be interpreted as rules enabling the governments to communicate successfully to overcome time inconsistency (Staiger, 1995).

The fundamental problem with commissive speech acts in international trade policy can best be illustrated with the “specialization dilemma”, which refers to the general hold-up problem that occurs when firms need to

incur specific investments to open a particular foreign market (Schmidtchen / Schmidt-Trenz, 1990; Yarbrough / Yarbrough, 1992). As a result, a mere unilateral liberalization does not suffice to reap all the potential gains from the international division of labor, if there is uncertainty about the future behavior of government. This is particularly true for democratic governments, who therefore might be simply unable to achieve the intended result with a mere commissive speech act. In the GATT, there are two institutional rules to increase the power of the commissive statements. One is the link with mutual liberalization through the reciprocity principle, because reciprocal liberalization offers a hostage to the foreign government, and the other is the binding of commitments with the related right to retaliate if the commitment is rescinded.

The reciprocity principle is of particular interest here, because most economists regard this as an atavism of mercantilism. In a famous paper, Krugman (1997) argues that trade negotiations are fundamentally misled by the norms of reciprocity which actually imply that imports are regarded as the cost of export expansion. However, even free-trade practitioners like the former WTO General Secretary Mike Moore (2003) believe that reciprocity is a powerful way to achieve successful trade talks.

Looking at the ideal policy proposal by economists, unilateral liberalization, it is easy to recognize why the real issue is with the inability to do a successful commissive communicative act. In a world with sovereign governments, future trade policy remains uncertain unless the foreign governments control a determinant of behavior independently, which is a market access right of the domestic government. Therefore, the real issue in reciprocity is the exchange of sanctioning opportunities, and not of export opportunities. For example, following Bagwell and Staiger (1997) Bown (2002; 2004) argues that a crucial issue in trade negotiations is the balancing of terms-of trade externalities between trading partners, because a country can be regarded as more powerful which is able to impose larger ToT-losses on a trading partner when restricting imports. Without reciproc-

ity, these sanctioning potentials will be distributed unevenly and will thus create incentives for the more powerful government to cheat *ex post*, which Bown actually observes in his data pool on trade conflicts.

The important conclusion seems to be that “autistic” policies cannot work effectively, such that reciprocal exchange necessarily needs to be embedded into a workable regime of communication. This is the main reason why in the GATT there is a peculiar mix between rules and bargaining.

3.5 Declarative speech acts: agreeing about the value of rights

One of the major requirements for successful communication about the exchange of rights is to enable the parties to establish a common frame for evaluating rights. This is difficult, because there is a trade-off between *ex ante* and *ex post* approaches. In tariff negotiations, it is possible to agree on a simple quantity measure, however, such measures do not reflect the politico-economic valuation of market access from the negotiating government’s point of view. There are two limits to reach an unequivocal agreement: First, the value is determined by the complex political economy of interest groups and voter politics, and second, even if this were accessible to some valuation, there would be serious difficulties in communicating this valuation credibly to the other party. Hence, in trade policy there are fundamental limits to agree about the values of rights and, hence, to make declarative speech acts on a particular bargaining scheme.

Sykes (1996) and Sykes and Schwartz (1996) have argued in important papers that several of the exceptions and safeguard regulations of the GATT actually serve to induce a behavior of the parties which does not only lead towards certain actions, but at the same time signals a certain politico-economic valuation, and implicitly make a convergence of valuations possible. They point out that the GATT regulations actually avoid the use of economic criteria to define the regulation of exceptions and deviations, and that the use of non-economic descriptive frames is a powerful way to communicate politico-economic values. For example, the GATT allows to deviate from agreed trade policies if there is a supernormal surge of imports

from a particular country. From the economic point of view, protection against these imports does not make sense, because these seem to be highly competitive and hence, offer the largest welfare gains in terms of consumer rent. However, this rule makes sure that the underlying valuation of the market access right might converge: The importing country signals the readiness to bear substantial costs, which conveys the message that the politico-economic value of protection is high, whereas in the exporting country the expanding industry might not suffer to the same degree from a mere reduction of the rate of growth.

The most important area where declarative communicative acts are done is in the setting of institutions. It is interesting to observe the difficulties in extracting the “spirit of the law” from the written word. Most economists believe that the GATT and the WTO is an implicit, though not explicit agenda to free the international price mechanism from government interference. However, the true nature of the system might differ from this theory because of the communicative character of the institutions: Precisely because the institutions themselves work as communicative means, they sometimes might contradict the very idea which they are supposed to realize.

In their “theory of managed trade”, Bagwell and Staiger (1990) proposed that governments might implicitly agree to restrict trade below a certain volume in order to minimize the incentives for protectionism. This is a simple device to coordinate mutual perceptions: Given certain basic assumptions about the incentives working on democratic governments and their decision making procedures, governments agree to create an environment where their behavior is predictable. In that sense, trade policy is the substitute for a declarative speech act, which aims at creating a viable open trade regime. This cannot be achieved by a mere verbal agreement, because this cannot be matched to a predictable relation between trade environment and government behavior. Hence, the need to stabilize a certain joint perception of the situation implies that the trade regime shows vestiges of a

quantity management., which flatly contradicts the general aim to let the price mechanism work freely. In a similar vein, Dixit (1996) argued that in a world where only trade-related sanctions can be used to stabilize a cooperative trade relation, free trade cannot be a stable solution, because it would abolish precisely the medium through which free trade is approximated. Thus, we might interpret the seemingly deficient institutional shape of the GATT / WTO as a viable solution to make joint declarative communicative acts among the member governments.

3.6 Trade policy as deliberative process

Let us now pull the different strands of the argument together and analyze one particular example of trade policy as deliberative process in which a series of verbal and non-verbal communicative acts is created. The central problem is how a cross-border deliberative process can take place at all, when a common reference system for valuation and agreement is missing, and when there are serious obstacles against the development of mutual trust. The most simple solution to this problem, of course, would be the creation of such a system which allows the governments to communicate successfully in terms of agreeing about reasons for policy action by verbal means exclusively. This would presuppose a complete agreement about the standards according to which the legitimacy and quality of reasons are assessed.

One of the most conspicuous examples is the reference to scientific judgment which can be found in the regulations on technical and environmental standards. This is a very straightforward regulation on deliberative trade policies in the narrow meaning of the term, because it directly relates to the reasons provided by the parties to justify a certain policy. In that sense, the TBT and the SPS Agreements try to distinguish between “good” and “bad reasons”. This, of course, is at the same time a major constraint on a deliberative process, because given the limits of science, there is no absolutely reliable standard according to which scientific and non-scientific judgments

can be distinguished.¹³ Furthermore, in democratic societies even scientific statements cannot be used to overwhelm a majority opinion, as far as the social sciences are concerned. Therefore, even though the actual procedure of trade conflict resolution frequently attempts to refer to scientific standards, the real issue is how the procedure can support a deliberative process among the governments representing the diverging opinions.¹⁴ This is even more valid for the case when the divergent opinions cannot be based on scientific judgments exclusively, as in the case of ethical decisions (child labor, genetic engineering etc.).

In the case of policies where a common frame of reference for the evaluation of reasons is missing, the problem with communication is a two-level one.

First, each government faces substantial difficulties in discerning the true preferences of the population, because in trade there is a potential free-rider problem in ethical behavior. For example, if consumers dislike child labor, they may nevertheless buy the cheaper goods, because they fear that other consumers might free-ride on their own ethical behavior, if they were to support non-child labor by buying more expensive goods - or, vice versa, because they themselves act as the free riders. That is, the market might not provide sufficiently strong signals to the foreign producers to avoid child labor, which also weakens the informational base for the domestic govern-

¹³ For a much more detailed treatment of this issue, see Pauwelyn (1999) and Kelly (2003). The standard for distinguishing between “good” and “bad” reasons is closely linked with a special approach towards risk assessment, see Quick / Blüthner (1999). Gaisford and Kerr (2001: 130, 159) emphasize the limits of scientific judgement. In the WTO context, the solution is to delegate the scientific decision to special standard setting bodies like the Codex Alimentarius. In their organizational environment, however, new problems of communication emerge, because the internal decision making procedure opens up scope for arbitrary decisions as well, see Sykes (1995: 61).

¹⁴ For example, in the case of the EU-US Hormones dispute Charlier and Rainelli (2002) argue that a possible indicator of a non-protectionist care for consumer concerns is that a government imposing a trade ban on supposedly dangerous food increases the investment into scientific research on the issue. This costly investment is a credible signal to continue with the deliberation.

ment. From this, the typical situation occurs that governments very often adopt a vicarious attitude towards the consumers, that is they follow some “public opinion” mostly shaped by a certain minority, i.e. ethically outspoken citizens. This reflects the fact that consumers might be able to do successful expressive communicative acts, but be unable to do commissive acts.¹⁵

Such a market failure in signaling preferences might also occur because consumers cannot trust into institutions of labeling, such that the market for ethical and non-ethical goods can only converge toward a pooling equilibrium where there is no truly reliable way to distinguish between the two kinds of products (Gaisford / Kerr, 2001: 151). A certifying organization might be costly to establish, and transaction costs of proving authenticity might be high. As a result, the market for ethical goods may collapse because of a “lemons” problem.¹⁶

Thus, if the government acts vicariously, it happens that the market behavior and public opinion do not coincide. This causes considerable impediments to communication between governments. The government representing the ethical position will try to convince the other government to establish regulations to suppress the unethical production. Yet, this raises the suspicion that the true motivation is protection, so that the direct communication between governments suffers from the “cheap talk” dilemma. This is the second-level of communication where impediments to successful agreements emerge.

Given the complex situation, trade policy can assume the role of a medium of communication transcending verbal messages. Consider that both gov-

¹⁵ Hence, governments may act as “political entrepreneurs” and “issue entrepreneurs” in the sense of Wohlgemuth (2002) . In more detail, see Herrmann-Pillath (2004: Chapter Two).

¹⁶ The argument that we used so far can be applied on many kinds of goods where the properties in question cannot be directly observed on inspection of the good, as, for example in the case of GMO. For a general analysis of the “lemons” problem in international trade, see Beaulieu and Gaisford (2002).

ernments cannot directly establish formal channels of communication with the other party's electorate: The ethically-minded government cannot directly convince the producers in the other country to introduce ethical standards. One possible solution is to trigger a domestic political debate in the foreign country. Trade policy can serve as a signal and trigger for an autonomous discourse about the issue in the other country:

- Trade policy is a costly signal for the sending government because of the welfare losses caused to their consumers, and is a more reliable signal of sincerity .
- trade policy triggers the formation of interests groups in the affected countries, because it directly affects their benefits from trade,
- interests groups need to articulate their position to their own government, which might launch an internal process of deliberation about the respective value judgment,
- at the same time, the ethical government sets a focal point for the formation of the domestic public opinion: The trade policy is an attempt at overcoming the free-rider problem in autonomous civic action, and at the same time triggers a domestic debate because new interest groups might emerge. The clash over trade policy can further develop the ethical standards, perhaps finally overcoming the free-rider problem.

In the possible agreement on the institutional regulation of the ethics of trade, an important question is whether an arrangement can be found that at the same time communicates the ethical intentions and gives a credible signal that protection is not the main objective. One solution might be that the ethical government subsidizes the certifying organizations in the foreign country and pays for the expenses of the labeling process.¹⁷

¹⁷ Engel (1999) argues that there are no reliable economic indicators of non-protectionism unless the allegedly protectionist government transfers benefits to the affected country, such that a full internalization of the policies take place. Another way is to transfer market access rights to other countries, such that the importing country evidently does not protect its own producers. This happened in the EU-US hormones dispute, see Kerr and Hobbes (2002). It is significant that our recommendation is exactly the opposite of recommendations based on a criterion of allocative

Hence, trade policy is one of the ways how two domestic deliberative processes can be linked up with each other in a way such that the pitfalls of cheap talk can be avoided. As a result of the process, the two governments might agree to set up a joint certifying body, allow NGOs to do the job etc. The process and its results cannot be separated analytically from each other, i.e. the policies are part and parcel of the political communication that supports the policies, and vice versa. We see how different communicative acts are linked up with each other. Ethical consumers are not able to do commissive expressive acts, and the ethical government vicariously produces an expressive and a directive communicative act which helps the consumers to overcome the free-rider problem in ethical behavior. Both governments may start a discourse about the legitimacy of this action, which includes a series of representative communicative acts that aim at a clear and consensual description of the situation. The decisive point of our argument is that without the policy this communication could never have proceeded, because of the problem of ethical cheap talk. This is deliberative trade policy in action.¹⁸

4 The normative approach to deliberative trade policies

One of the major consequences of the deliberative approach to trade policies is to eschew the concept of allocative efficiency as a normative criterion, in the exclusive sense at least. Allocative efficiency is a criterion that can be applied by an exogenous observer who would be able to implement policies without costs, however, if used as an endogenous criterion, it ends

efficiency, see Crespi and Marette (2003). From the viewpoint of allocative efficiency, welfare losses are minimized if the costs of the labelling process are not borne by the country with the majority of consumers rejecting the unethical good (or, GMO etc.).

¹⁸ Our example was motivated by Pahre's (1998) comment on Srinivasan (1998). Pahre argues that bad policies can be credible signals, along the lines of our previous theoretical considerations. Srinivasan took the traditional position arguing that income transfers to poor countries will leave the decision market-driven whether child labour is allowed or not. This, of course, simply does not take into consideration the possibility that a government may be ethically committed to take direct action against the allegedly immoral behavior.

up with paradoxa as the determinacy dilemma. The deliberative approach only treats allocative efficiency as a possible reason that can be adduced as an argument in a process of communicating about trade policy. On the normative level, the deliberative approach asks for rules governing the communicative process. However, within the context of economic theorizing there is still some room for a criterion that is closely related to the efficiency criterion, namely minimizing the social costs of communication.

Thus, our first criterion just starts out from the general point that “cheap talk” might be the best way to communicate, if it can be made workable, because social costs of communication are at a minimum. This presupposes that governments can get more reliable information about the true intentions of the other government. From this perspective, the diplomatic principle to exclude all other actors from negotiations and conflict regulations is a failure, and the trend of the recent decade to broaden the scope of participant actors is a way to meliorate the conditions for deliberation. Most basic, of course, is information as such, which has been recognized by the WTO in establishing the Trade Policy Review Procedure (Laird, 1999). However, this does not yet include independent sources of information like the full formal inclusion of important NGOs in decision making councils etc. Furthermore, one can think of setting up special institutions for supervising the international communication process, in a similar way as international standardization is an object of the work of special bodies (cf. Perdakis et al., 2001). In sum, deliberative trade theory is a theory of the design of communication about trade, as opposed to the standard theory of an institutional design for trade proper.¹⁹

Hence, the transition to a stakeholder approach in international trade policy does seem to have some merit, which had been triggered by the Seattle events. However, broadening the channels of communication raises the

¹⁹ In the literature, a clear argument in favour of this approach can be found in Hoekman and Kostecki (2001: 92ff.). One should emphasize that the simple lack of information and data is very serious, if not scandalous in important areas as trade in

costs of communication. Thus, a mechanism is needed that introduces some economizing force upon the communicative process. One way seems to be the introduction of competing institutions, which is evident first and foremostly in the increasing importance of regionalism since the Nineties. One of the interesting effects of regionalism is to allow different communicative processes to emerge, which may compete for public attention, and in which different messages, values and understandings might emerge, depending on the political, cultural and social context of the regional arrangements. Hence, regionalism can be evaluated as a necessary complement to a poli-centric deliberative process in terms of deliberative trade policy. For example, the APEC process was launched as a deliberate attempt at creating an “Asian” approach to trade policies, and the EU needs to balance internal and external market liberalization in the context of special value issues like the treatment of animal diseases (cf. Beeson / Jayasuriya, 1998).

One important condition for all deliberative processes is to set up a system of rules of communication. In this regard, it was frequently observed that the procedural rules of the GATT and the WTO might lead towards a misrepresentation of the real constellation of interests in the results of international trade negotiations. The most important example, of course, are the difficulties for developing countries to participate in complex communicative processes, in both the context of negotiations and in conflict resolution (Hoekman, 2002). With the advantage of hindsight, landmark events like the conclusion of the Uruguay Round show the tarnishes of unequal communication, as e.g. in the unbalanced deals over the intellectual property rights regime and agricultural policy, where developing countries clearly suffered disadvantages, and where general welfare was not maximized (Panagariya, 2000; Finger / Nogués, 2002).

As we see, viewing trade policy as deliberative process helps to focus our attention on the conditions how certain policies emerge, as opposed to the result-oriented approach of allocative efficiency. The most basic normative

services, see Anderson / van Wincoop (2004).

claim of deliberative trade policy is to minimize power differentials among countries. This leads to a new definition of “free trade”: Free trade is not necessarily equivalent to the absence of trade impediments, but is the approximation to the ideal of an equal distribution of power among countries to participate in the creation of a global economic order.

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