

RATIONAL IRRATIONALITY: WHY PLAYING THE WORLD TRADE ORGANIZATION AS A SCAPEGOAT REDUCES THE SOCIAL COSTS OF ARMCHAIR ECONOMICS

*Joseph Siprut**

INTRODUCTION

The World Trade Organization (“WTO”) may be one of the most reviled institutions on the planet. If so, then this villainous role is one that the WTO should happily continue to play. This Article proposes a theoretical model of the political economy of international trade that conceives of the WTO as something more than a mere institution administering multilateral trade agreements. Like any regime of multilateral agreements premised on reciprocity, the WTO promotes free trade by mobilizing export interest groups to counteract the pressures of domestic producer interest groups, thereby making tariff reductions politically feasible.

But the WTO may serve the free trade cause in a less obvious manner. As illustrated below, because the average voter believes that unrestricted free trade produces negative consequences, politicians may treat adherence to the multilateral treaties administered by the WTO as a “necessary evil” to achieve alternative goals deemed more acceptable by voters. Because adherence to multilateral trade agreements will nevertheless increase the social wealth that flows from free trade, politicians enjoy the best of all political worlds. Not only can politicians take credit for an increasingly wealthy economy by reference to particular domestic policies, but to appease voters who dislike free trade and simply refuse to think otherwise, politicians can plead deference to the WTO. Accordingly, supporting free trade agreements will remain, on balance, perfectly consistent with self-interested political behavior.

* Joseph Siprut is a Chicago-based litigation attorney. Special thanks are owed to John O. McGinnis, Bryan Caplan, John Hasnas, and William Mock, Jr. for insightful discussions on this topic.

To provide the theoretical underpinning for this model, this Article proceeds as follows. Part I explains how free trade is an outgrowth of human nature and makes the specialization of labor possible. As the principle of comparative advantage illustrates, more wealth is created when individuals and nations specialize in what each does best. By contrast, protectionist policies undermine the benefits that flow from free trade, and pose a threat to increased societal welfare.

As Part I illustrates, however, the true nature of democratic systems is such that harmful legislation is often passed because of the disproportionate influence of the interest groups that stand to benefit from the legislation. In the context of international trade, protectionist tariffs may be erected because of the concentrated lobbying efforts of the domestic producers who face competition from foreign imports. Although this legislation may impose social costs, the politicians who are in a position to support such legislation will do so if it advances their personal interests — i.e., if it increases the odds of reelection or enhances personal stature.

Part II examines the nature of the WTO, which, it is argued, operates as a solution to many of the problems canvassed in Part I. The WTO makes tariff reduction politically feasible because, under a system of reciprocal tariff reductions, export interests have an incentive to mobilize. As Part II points out, however, voters may firmly believe that free trade produces negative consequences in the aggregate. Indeed, the theory of “rational irrationality” posits that, not only do voters lack incentives to purchase information in order to stay informed on political matters, but, when the private costs of error are *de minimus*, voters will indulge their bliss beliefs and maintain positions which are downright irrational. Because voters may therefore cling to these anti-free trade beliefs even if information or evidence to the contrary is freely disseminated and is otherwise obtainable at minimal cost, self-interested political actors therefore have less incentive to repeal protectionist legislation. Part II concludes by arguing, however, that by treating adherence to the WTO as a necessary evil to achieving ends more popular with voters, the pursuit of increased market access remains politically feasible behavior.

I. THE PROBLEM

A. *What Are We Fighting For? The Benefits of Free Trade*

Any attempt to adequately canvass the body of literature demonstrating the beneficial effects of free trade would certainly be in vain.¹ But to establish the theoretical base for subsequent sections of this Article, it is useful to discuss some of the classic arguments for free trade and the costs of protectionism.

By their very nature, human beings “are motivated by utility-maximizing considerations,” and “when an opportunity for mutual gain exists, ‘trade’ will take place.”² Like other animals that live in groups, humans gain resources by exchange.³ Declining marginal value motivates our exchange, and if the exchange is consecrated, both parties gain.⁴

Accordingly, if opportunities for exchange are maximized, wealth increases because individuals gain incentives to create

1. See, e.g., DENNIS C. MUELLER, PUBLIC CHOICE II 238 (1989) (“Few issues elicit greater agreement among economists than the proposition that society’s welfare is maximized when there is free trade.”). For economically sophisticated arguments against free trade, see ELHANAN HELPMAN & PAUL R. KRUGMAN, MARKET STRUCTURE AND FOREIGN TRADE: INCREASING RETURNS, IMPERFECT COMPETITION, AND THE INTERNATIONAL ECONOMY (1985); PAUL R. KRUGMAN, RETHINKING INTERNATIONAL TRADE (1990). For a further sampling of anti-free trade literature, see Jim Chen, *Globalization and Its Losers*, 9 MINN. J. GLOBAL TRADE 157, 159 (2000) (arguing that “[t]o the extent that globalized society must choose, it should systematically favor the environment over jobs and even culture”); WILLIAM GREIDER, ONE WORLD, READY OR NOT (1997) (arguing that global capitalism is reproducing the “terrible exploitations” of the industrial era). For a scathing review of *One World*, see John O. McGinnis, *Keynesian Capers*, NAT’L REV., May 5, 1997, at 54 (“[Greider’s] solution to economic dislocation is to take every social theory that has failed at the level of the nation-state and globalize it.”).

2. MUELLER, *supra* note 1, at 267.

3. See John O. McGinnis, *The Origins of Conservatism*, NAT’L REV., Dec. 22, 1997, at 32 (“Because of innate reciprocal altruism, exchange is thus as natural to man as song is to a songbird.”).

4. For example, if Jones has one hundred apples and Smith one hundred oranges, by hypothesis, the value of an additional apple to Jones is worth less than the value of an additional apple to Smith. If Smith and Jones agree to exchange an apple for an orange, therefore, both are better off despite the absence of any raw production. Jones will continue to trade with Smith until the marginal value of additional oranges to Jones is no more than the marginal value of additional apples.

what others demand.⁵ Moreover, if individuals compete with one another to supply a particular set of goods, each gains an incentive to produce the product as efficiently as possible and to sell the product as cheaply as possible.⁶ The consumer ultimately votes for the winner of this contest with his pocketbook.⁷

Moreover, because humans function as group animals and exchange goods and services with one another rather than attempting to gather all life-sustaining materials individually, individuals are afforded the opportunity to specialize in "producing" certain goods, and then trading those goods for other necessary goods for which that individual may lack a comparative advantage. This is the insight at the heart of David Ricardo's principle of comparative advantage⁸ and Adam Smith's theory of division of labor.⁹ Put simply, two individuals will both gain by trade by producing the goods for which each has a comparative advantage. Smith has a comparative advantage over Jones in producing a good (X) if Smith's cost of producing X relative to the cost of producing other goods is lower than Jones'

5. John O. McGinnis, *The Political Economy of Global Multilateralism*, CHI. J. INT'L L. 381, 382 (2000). Professor McGinnis also notes, however, that humans also have innate tendencies toward gaining wealth through organized hierarchy, which facilitates outright expropriation to the benefit of those higher in the "pecking order." *Id.* McGinnis views this as a fundamental argument for constitutional structures — both on the national and international level — that maximize opportunities for exchange and constrain hierarchy.

6. This insight, of course, is far from new or original. See GRADY MILLER, *THE LEGAL AND ECONOMIC BASIS OF INTERNATIONAL TRADE* 1 (1996) ("[T]he extensive networks and practices of export trading were probably more firmly established as a concept two millennia ago than they are today. In fact, many of the trading and legal traditions in use today were perfected in a far earlier age.").

7. See ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 461 (Edwin Cannan ed., 1937). Smith notes:

In every country it always is and must be the interest of the great body of the people to buy whatever they want of those who sell it cheapest. The proposition is so very manifest, that it seems ridiculous to take any pains to prove it; nor could it ever have been called in question, had not the interested sophistry of merchants and manufacturers confounded the common sense of mankind.

Id.

8. See generally DAVID RICARDO, *THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (J.M. Dent & Sons 1965).

9. See generally SMITH, *supra* note 7, at 7–16.

cost of producing X relative to Jones' cost of producing other goods.¹⁰ Or, by way of example, suppose that Smith can produce both more apples and more oranges than can Jones — say Smith can produce either 20 apples or 40 oranges, while Jones can produce, at most, either 10 apples or 10 oranges. Smith enjoys a comparative advantage, relative to Jones, only in the production of oranges; Jones enjoys a comparative advantage over Smith in the production of apples. The reason is that each orange produced by Smith costs him $\frac{1}{2}$ an apple, while each orange costs Jones one full apple. But each apple produced by Smith costs him two oranges, while each apple produced by Jones costs him only one orange.

Accordingly, even though one individual may be superior to another in producing all goods, both individuals will nevertheless improve their lot by producing only the goods for which each enjoys a comparative advantage, and then trading with one another.¹¹

10. DAVID FRIEDMAN, HIDDEN ORDER 69 (1996). Friedman notes:

The error of confusing *absolute advantage* ("He can do everything better than I can") with comparative advantage typically shows up in the claim that because some other country has lower wages, higher productivity, lower taxes, or some other advantage, it can undersell our domestic manufacturers on everything, putting our producers and workers out of work. This is used as an argument for *protective tariffs* — taxes on imports designed to keep them from competing with domestically produced goods.

....

Here, as in many other cases, thinking in terms of money obscures what is really happening. Trade is ultimately goods for goods — although that may be less obvious when several countries are involved, since the Japanese can use the dollars they get from us to buy goods from the Germans, who in turn send the dollars back to get goods from us. If we measure costs in goods, the Japanese cannot be better at producing everything. If it costs them fewer computers to produce a car (translation: If the cost in Japan of all the inputs used to produce a car divided by the cost in Japan of all the inputs used to produce a computer is smaller than the corresponding ratio in the United States), then it costs them more cars to produce a computer. If they trade their cars for our computers, both sides benefit.

Id. (emphasis in original)

11. The gains from trade are not limited to wealth creation. As John Stuart Mill noted:

If these principles are valid with respect to individuals, then they are valid with respect to individual nations.¹² But just as individual trade may make certain individuals worse off in the short term, so too may international trade. In the primitive example above, where individuals acquire goods in exchange for producing a good or providing a service that others desire, supply may exceed demand. The specter of competition, which on the one hand creates incentive for each producer to produce efficiently and to sell his goods cheaply, may also result in at least some producers no longer being able to find consumers interested in those producers' goods. Were this not the case, no incentive would exist to be efficient, and the driving force of free trade would be undermined.

In the context of international trade, therefore, uniform free trade will not necessarily make everyone within a nation better off — at least not in the short term. In any industry where the comparative advantage for a particular product lies abroad, it will become cheaper to import the goods than to pay for domestic production. Consequently, the same goods are passed on to

[T]he economical advantages of commerce are surpassed in importance by those of its effects which are intellectual and moral. It is hardly possible to overrate the value, in the present low state of human improvement, of placing human beings in contact with persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar.

JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY 581 (1909).

12. For a plethora of formalistic economic arguments analyzing free trade on the international level, see PETER H. LINDERT & CHARLES P. KINDLEBERGER, INTERNATIONAL ECONOMICS 17–110 (7th ed. 1982) [hereinafter LINDERT & KINDLEBERGER]; THEORY, POLICY, AND DYNAMICS IN INTERNATIONAL TRADE 75–130 (Wilfred J. Ethier et al. eds., 1993). *But cf.* Charles K. Rowley, *The International Economy In Public Choice Perspective*, in THE ELGAR COMPANION TO PUBLIC CHOICE 645, 645–46 (2001) [hereinafter Rowley, *The International Economy*]. Rowley notes:

Issues of international trade commonly are framed in terms of nations and not of individuals....Yet, this use of language, while undoubtedly economical, has some problematic features. In reality, individuals trade, not nations, a fact of considerable importance for understanding international economic relations, yet one that is widely ignored. Models that construe trade as between nations and not as between individuals stem from notions of economic nationalism that characterized the mercantilist era.

Id.

consumers more cheaply than would have been possible before. However, domestic producers must accordingly lower the resale price of their product to compete with the foreign imports. Consumers win, but domestic producers in this particular industry are, from their own vantage point, worse off than they were before¹³ — at least in the short term.¹⁴

B. The Problem of Interest Groups

Although the gains from trade in the aggregate far outweigh the costs, the benefits are diffuse: an influx of foreign imports in a particular industry will afford a potentially broad base of consumers the opportunity to buy the industry's goods at a relatively cheaper price. The cost of these imports, by contrast, is heavily concentrated: domestic producers may see profit margins reduced, jobs cut, or their doors closed entirely. Moreover, individuals *specialize* in production, not consumption.¹⁵ Producers in industries adversely affected by free trade¹⁶ will accord-

13. See John O. McGinnis & Mark L. Movsesian, *The World Trade Constitution*, 114 HARV. L. REV. 511, 522 (2000) ("Workers often cannot change industries easily because they have nontransferable skills. Owners' capital, moreover, may not be mobile because the owners have invested it in industry-specific assets. As a result, workers and owners in industries that lack a comparative advantage stand to lose a significant portion of their income.").

14. *But cf. id.* at 522 ("[F]ree trade may make many of these workers and owners better off, as open borders create higher-paying jobs and higher returns to capital.").

15. LINDERT & KINDLEBERGER, *supra* note 12, at 227. The authors provide the following example to illustrate the importance of production to an individual over his consumption:

If an import barrier would raise the price of all automobiles by ten percent, an auto worker would know which side of his bread has more butter. The barrier brings a 10 percent markup in the product from which he derives all of his earnings. To be sure, it also means that a car would cost him 10 percent more, but the cost of owning a car is only, say, 6 percent of his yearly expenses....So the import barrier would only raise his cost of living by $.10 \times .06 = 0.6$ percent, while giving him a share of an auto-industry pie that is 10 percent larger. For an auto consumer not employed in the auto industry, the barrier simply means a 0.6 percent loss in real income.

Id.

16. This Article repeatedly discusses the benefits of, and from the perspective of particular groups, the costs of, "free trade." In reality, of course, there is no choice between unrestricted free trade and total protectionism; rather, in the context of political markets, the choice will invariably concern erecting

ingly try to persuade the government to erect protectionist barriers to trade in furtherance of their own self-interest.¹⁷ If the costs of mobilization are not prohibitive, these domestic producers will invest the resources necessary to lobby for a tariff that will bestow benefits to these groups in excess of the costs necessary to effectively endorse the legislation.¹⁸ Put another way: interest groups that face organization costs of less than one dollar in order to gain one dollar of benefits from trade regulations will be effective demanders of those regulations.¹⁹

By contrast, the individuals that stand to gain from free trade in any given industry will find that the costs of mobilization often outweigh the benefits of free trade — i.e., the benefits that flow from foreign imports. In other words, the benefits to a particular individual of a cheaper product will almost certainly be outweighed by the costs any one person must incur to fight a protectionist measure²⁰ — flying to Washington to meet with a

some protectionist barrier or removing one. For simplicity's sake, however, when this Article describes how "free trade" might impact a particular industry, and the incentives such an impact generates, it is meant to refer to relaxing whatever protectionist measures might already exist in that particular industry (or refusing to erect new ones).

17. See, e.g., ROBERT Z. LAWRENCE & ROBERT E. LITAN, *SAVING FREE TRADE: A PRAGMATIC APPROACH* 23–24 (1986) (arguing that when faced with competitive threats, interest groups will invariably pressure the legislature to pass protectionist measures).

18. See Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies, and Theft*, 5 WESTERN ECON. J. 224, 228 (1967) [hereinafter Tullock, *The Welfare Costs of Tariffs*] ("One would anticipate that the domestic producers would invest resources in lobbying for the tariff until the marginal return on the last dollar so spent was equal to its likely return producing the transfer.").

19. PETER MOSER, *THE POLITICAL ECONOMY OF THE GATT* 19 (1990). Robert B. Ekelund, Jr. & Robert D. Tollison, *The Interest-Group Theory of Government*, in *THE ELGAR COMPANION TO PUBLIC CHOICE* 357 (2001).

The interest group theory of government seeks to explain governmental behavior on the basis of the costs of organizing interest groups in order to seek wealth transfers through the aegis of the state (or, what is analytically the same thing, the costs of organizing interest groups to resist governmental expropriation of wealth).

Id.

20. See LINDERT & KINDLEBERGER, *supra* note 12, at 228.

The costs of getting organized are usually greater for large and diffused groups than for smaller concentrated groups. As anybody knows who has tried to gather support among many people with individually small stakes in an issue, there can be acute problems both in

Congressman, drumming up support, or even taking the time to write a letter of protest, notwithstanding the fact that such measures, in isolation, are unlikely to have any effect in the first place.²¹

reaching them and in getting them to commit effort to the common cause....By contrast, more concentrated groups find it easier to get together and contribute to a common lobbying effort. Each member, being a sizable part of the group's total membership and resources, knows that his participation does indeed make a difference....

Id. (emphasis in original) See also McGinnis & Movsesian, *supra* note 13, at 523-24. McGinnis notes:

As concentrated groups, workers and owners can obtain substantial benefits from government action. Consequently, these groups have strong incentives to provide campaign contributions and electoral support in return for protectionist policies. In contrast, groups that benefit from free trade, such as consumers, are diffuse, and their gains, though large in the aggregate, tend to be small on an individual basis. These groups have comparatively few incentives to contribute time and money to lobby for free trade policies. Moreover, they face high agency costs in monitoring legislators to determine whether their representatives are yielding to interest groups at the expense of society as a whole.

Id. (citing to MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 145 (1965)).

21. A recent example of this principle in action that made national headlines is the furor surrounding President Bush's decision to impose tariffs on steel imports. See James Cox, *Bush Slaps Tariffs on Steel Imports*, USA TODAY, Mar. 6, 2002, at B1. The picture accompanying the article captures an impassioned group of protestors outside the White House in Washington, D.C., holding a sign that reads: "You don't have to blow up a blast furnace to destroy a steel mill; illegal foreign imports are doing the job." These steel workers, as noted above, have a strong incentive to mobilize and invest the resources necessary to campaign for protective barriers.

To its credit, Cox's article actually recognizes the direct effect of imposing the tariff in a subheadline: "Consumers will pay more...." and later identifies the costs of tariff imposition to include, in addition to increased consumer prices, lost jobs for manufacturers that purchase steel (who will now find its operating costs increased after steel prices rise), political retaliation, and undermining the Bush administration's "free-trade message." *Id.* Not surprisingly, however, there were no reports of individual consumers outside the White House that day protesting against tariffs. But see James Cox, *Steel Tariff Ruling Tests Bush*, USA TODAY, Nov. 11, 2003, at A1 (noting that a WTO appellate panel "upheld an earlier ruling that Bush violated trade rules in March 2002 with three-year tariffs on imported steel"). See also Paul Wiseman & James Cox, *Competing Interests Tangle Textile Policy: Bush Pledged to Help Pakistan, but U.S. Industry Fought Plan*, USA TODAY, Apr. 2, 2002, at B1 (noting that President Bush handed Pakistan only one-third of the

Accordingly, the potential winners of free trade, who are the victims of protectionist policies, nonetheless lack incentive to engage in individual lobbying efforts because the costs are prohibitive relative to the diffused costs of a particular protectionist measure (or diffused gains from the lack thereof).²² In the

trade concessions Pakistan had requested in the wake of a post-September 11th economic slump after U.S. textile producers vehemently protested granting any relief to Pakistani imports).

At base, however, the request for "protection" is nothing more or less than a request for a transfer of wealth. Cf. Tullock, *supra* note 18, at 226 and accompanying text (noting that the social costs of tariffs far exceed a mere transfer of wealth, and that the costs of tariffs are equivalent to a government mandate that an industry run itself inefficiently). The cries of steel employees to erect protectionist tariffs may effectively be translated as: We want an extremely large group of people to each pay a small amount of money (the increase in the price of goods) to us. See also ROBERT NOZICK, ANARCHY, STATE AND UTOPIA 272 (1974) ("The illegitimate use of a state by economic interests for their own ends is based upon a preexisting illegitimate power of the state to enrich some persons at the expense of others.").

In fairness, lobbyists and interest groups are not necessarily willful "rent seekers." See generally Daniel Klein, *If Government Is So Villainous, How Come Government Officials Don't Seem Like Villians?*, 10 ECON. & PHIL. 91 (1994) ("In most cases, people do not perceive themselves to be rent seekers..."); Gordon Tullock, *Future Directions for Rent-Seeking Research*, in THE POLITICAL ECONOMY OF RENT-SEEKING 477 (Charles K. Rowley et al. eds., 1988) ("The student who did not understand the arguments against protective tariffs, and who is later hired as a lobbyist by the cotton textile industry, probably operates with a good conscience when he retains false economic arguments.").

22. See Robert W. McGee, *An Economic Analysis of Protectionism in the United States with Implications for International Trade in Europe*, 26 GEO. WASH. J. INT'L L. & ECON. 539, 541 (1993) [hereinafter McGee, *Protectionism in the United States*]. As Professor McGee notes:

[S]pecial interests — auto manufacturers, steel companies, the textile industry, and others — have much to gain by enlisting the aid of government to protect them from foreign competition. On the other hand, the large majority of the population, comprised of unorganized consumers, has little to lose by any particular protectionist legislation, and may not even know that the measure is costing it money in the form of higher prices.

Id. McGee proceeds to quote Vilfredo Pareto to succinctly sum up the state of affairs: "A protectionist measure provides large benefits to a small number of people, and causes a very great number of consumers a slight loss. This circumstance makes it easier to put a protectionist measure into practice." *Id.* (quoting VILFREDO PARETO, *MANUAL OF POLITICAL ECONOMY* 379 (Ann S. Schwier & Alfred N. Page eds., Ann. S. Schwier trans., Augustus M. Kelley Publishers 1971) (1927)).

aggregate, however, the social costs of protectionism are enormous.

While it cannot be denied that a free flow of foreign imports may result in a loss of domestic jobs in the *particular* industry in question, and that erecting protectionist barriers therefore “saves jobs” to an extent in *that* industry,²³ the net effect of protectionism may well be to reduce the *total* number of jobs.²⁴

23. This threat of competition is, of course, the primary reason why the groups that face a competitive threat from free trade would be acting in their self-interest to expend resources in an attempt to erect protective barriers. See *supra* Part I.A.

24. Empirical data suggests that “[t]he argument that imports cause a decline in net employment is not only wrong; it is the exact opposite of the truth.” Dan Griswold, *Trade, Jobs, and Manufacturing: Why (Almost All) U.S. Workers Should Welcome Imports*, TRADE BRIEFING PAPER No. 6, Cato Center for Trade Pol’y Stud., Sep. 30, 1999 at 2, available at <http://www.freetrade.org/pubs/briefs/tbp-006.pdf>. Griswold notes that the statistical correlation between job growth and import volume has been a “strong .89.” *Id.* at 3 (citing to the *Economic Report of the President 1999*, Bureau of Labor Statistics). See also ARTHUR T. DENZAU, HOW IMPORT RESTRAINTS REDUCE EMPLOYMENT 2 (Center for the Study of Am. Business Pub. No. 80, 1987) (noting that the voluntary restraint agreement placed on steel in 1984 increased employment by 16,900 jobs in the steel industry, but destroyed 52,400 jobs in industries that use steel); McGinnis & Movsesian, *supra* note 13, at 525. McGinnis notes:

The trade restrictions secured by protectionist interest groups are particularly deleterious to social welfare. It is well established in economic theory that the most effective way to increase the income of disadvantaged groups is through direct transfer payments. For instance, direct transfer payments are preferable to rent control as a method of improving housing for the poor because direct transfers lack the substantial deadweight loss that accompanies rent control. Instead, it is better to provide the poor with housing vouchers. Similarly, with the wealth generated by free trade, society can provide transfers to people with less income, including those for whom trade provides no advantage or even a net disadvantage. For example, instead of pressuring the Japanese automobile industry to adopt voluntary export restraints in the 1980s, the United States could have paid cash compensation to American autoworkers. This strategy would have cost far less than the \$3 billion that American consumers ultimately spent in higher car prices.

Id. (citations omitted). See also Barbara Hagenbaugh, *Steel Tariffs Catch Some in Middle*, USA TODAY, July 24, 2002, at B1 (noting that the imposition of tariffs on steel imports has caused many “mom-and-pop” manufacturers, who “use steel to make goods that go into everything from cars to ovens to batteries,” to worry that they will have to close their doors).

Moreover, in any situation where a particular industry is protected from more efficient competitors²⁵ through government legislation, the government may be said to be subsidizing inefficiency.²⁶ It makes little sense to "force consumers to spend an extra \$160,000 a year in the form of higher prices to protect a job in the auto industry that pays roughly \$30,000 or \$40,000 a year."²⁷

25. This point assumes the competition is "more efficient" because the same product is offered for lower prices than the domestic competition. Were this not the case, domestic producers would not face a competitive threat.

26. See McGee, *Protectionism in the United States*, *supra* note 22, at 545. Professor McGee also cites to studies illustrating that trade restrictions raise the cost of imported goods in the United States by 20% on average, and raise the price of comparable, domestically produced goods by 10% to 14%. *Id.* at 553 (citing Alan Murray, *A Free-Trade Bastion, U.S. Isn't Half as Pure as Many People Think*, WALL ST. J., Nov. 1, 1985, at A1. McGee continues:

Trade restrictions on automobiles, clothing, and sugar cost U.S. consumers \$14 billion in 1984, which amounted to a 23% income tax surcharge for families with incomes under \$10,000, but translated into only a 3% surcharge for families with incomes over \$60,000. Protectionism in the textile industry alone has been estimated to cost poor families almost 9% of their disposable income. Another study found that textile quotas cost the poorest fifth of the U.S. population 3.6% of their income, but resulted in a 0.3% increase in income for the top fifth.

Id. (citations omitted). See also Rowley, *The International Economy*, *supra* note 12, at 665-66 (noting a study by Hufbauer and Elliot in which the potential gains to consumers from removing all tariff and quantitative restrictions for the year 1990 alone were calculated to be \$70 billion). Cf. Paul Wiseman, *China's Low-Cost Labor Lures More Japanese Companies*, USA TODAY, Nov. 21, 2002, at B1 (noting the Japanese fear of cheap Chinese labor, but observing that now "with gusto, Japanese executives are descending on Chinese boomtowns...spending their nights crooning into the karaoke machines of local bars and their days scouring the industrial landscape for factories they can do business with.").

27. McGee, *Protectionism in the United States*, *supra* note 22, at 545. See Rowley, *The International Economy*, *supra* note 12, at 645, 668. Rowley notes:

It is often argued that trade protection preserves jobs in the United States (the so-called 'Perot effect'). If so, the cost to consumers of preserving such jobs is extremely high. In a quarter of the 21 sectors scrutinized by Hufbauer and Elliot (1994), the cost per job saved was in excess of \$500,000 per annum even ignoring rent-seeking costs...Thus, consumers expended more than six times the average annual compensation of manufacturing workers to preserve jobs through import restraints, even ignoring rent-seeking costs. Once rent-seeking costs are accounted for, consumers expended more than

A detour through formal economic theory will illustrate this point more explicitly. Figure 1²⁸ shows a commodity that can be produced domestically at the cost of P_1 and imported at P_0 . With a given demand and no tariff, Q_0 units will be purchased at a price of P_0 . If a protectionist tariff is imposed, then Q_1 units will be purchased at a price of P_1 . Consumers will consequently be paying a higher price for the commodity than they otherwise would in the absence of the protectionist tariff, so the increase in price is a transfer of wealth from some members of the community to others. The corresponding welfare loss — a transfer more than outright loss to the economy — is represented by the shaded triangle.

ten times the average wage earned by a worker in such a protected job.

Id. See also James P. Miller, *Steel Tariffs Paint Bush into Corner*, CHI. TRIB., Sep. 19, 2003, at 3-1 (noting that “[e]ver since the tariffs were put into effect...U.S. makers of everything from barbecue grills to auto parts and bulldozers have complained loudly that the tariffs have disrupted steel supplies, raised their costs and made it harder than ever to compete with offshore competitors.”).

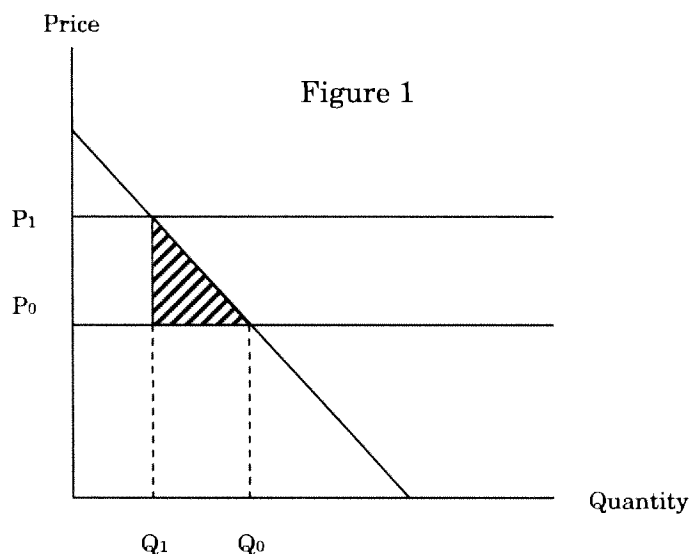
For an argument based entirely on first principles against any such redistributive scheme, see NOZICK, *supra* note 21, at 272 (“The illegitimate use of a state by economic interests for their own ends is based upon a preexisting illegitimate power of the state to enrich some persons at the expense of others.”); Rowley, *The International Economy*, *supra* note 12, at 668. Rowley notes:

Although the large majority of economists view the issue of free trade versus protection exclusively in utilitarian terms, the issue should also be viewed from a rights-based perspective. Free trade follows as an inevitable implication for any individual who endorses the philosophy of John Locke as it does for any individual who endorses Jasay’s principles of *first, avoid doing harm and when in doubt, abstain*.

Protection violates the economic freedom of those who wish to engage in trade, encroaching as it does upon their property and contract rights. Any government that imposes trade restraints in the absence of the unanimous consent of those who are thus coerced commits a tort and should be exposed to potential civil suits to compensate those who suffer harm.

Id. (emphasis in original).

28. The graph in Figure 1 appeared in Tullock, *The Welfare Costs of Tariffs*, *supra* note 18, at 225 fig. 1.

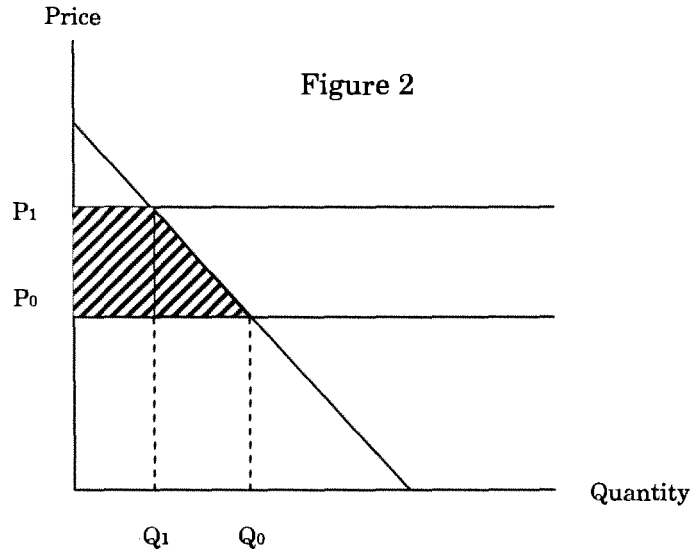


There are, however, a number of significant costs ignored by this analysis. The actual effects of the tariff would be much more far-reaching. Because the domestic producers are now engaged in producing a commodity that, absent the protectionist tariff, could be produced and imported more cheaply, resources are being inefficiently utilized. As Gordon Tullock has pointed out, the situation is therefore indistinguishable from any situation in which the government forced a domestic industry to abandon an efficient method of production and adopt an inefficient one.²⁹ Thus, the real welfare loss incurred by the tariff would not just be the wealth transfer represented by the shaded triangle in Figure 1, but rather the entire area to the left of the triangle (bounded vertically on both sides by P_1 and P_0). In other words, "a tariff shifting production from the production of export goods to import-replacement goods where the country has a comparative disadvantage is, in fact, a governmental requirement that the goods be obtained in an inefficient manner...."³⁰ Accordingly, the cost of a protectionist tariff is the shaded triangle "plus the difference between domestic cost of

29. Tullock, *The Welfare Costs of Tariffs*, *supra* note 18, at 226.

30. *Id.*

production and the price at which the goods could be purchased abroad,³¹ represented here in Figure 2.



Moreover, as discussed above,³² governments do not simply impose protectionist tariffs unilaterally. Domestic producers will expend resources to hire interest groups to engage in political lobbying, and foreign exports will likely expend resources attempting to counteract the effects of domestic special interest lobbying. These expenditures, which may ultimately offset each other in part, are pure waste in terms of social wealth.³³ They are spent, not increasing wealth, but in attempts to transfer or resist the transfer of wealth.³⁴ The opportunity costs of failing

31. *Id.*

32. See *supra* notes 16–19 and accompanying text.

33. See Charles K. Rowley & Robert D. Tollison, *Rent-Seeking and Trade Protection*, in *THE POLITICAL ECONOMY OF RENT-SEEKING* 222 (1988) [hereinafter Rowley & Tollison, *Rent-Seeking*] (“Clearly, societies characterized by widespread monopoly and dissipative rent-seeking will, *ceteris paribus*, be significantly less wealthy than those that are not.”).

34. See Tullock, *The Welfare Costs of Tariffs*, *supra* note 18, at 225; Jonathan R. Macey, *Public and Private Ordering and the Production of Legitimate and Illegitimate Legal Rules*, 82 *CORNELL L. REV.* 1123, 1144 (1997) (“Special interest legislation is undesirable because economic actors expend vast amounts of resources to obtain rent-seeking legislation, to comply with it..., to avoid having to comply with it,...and to prevent it from being enacted in the

to invest these same resources elsewhere in the economy (where they might actually create wealth) therefore imposes additional societal costs.³⁵

The effects of special-interest lobbying become clearer by examining the "supply side" of public legislation, i.e., the incentive structure of politicians and bureaucrats. What might be deemed the "high school civics"³⁶ conception of the relationship between legislators and their constituents is one of agency. We expect that our legislators will act on our behalf, and, in questions of policy, will consult our interests and behave accordingly.³⁷ But in fact, this model of the legislator-constituent relationship paints a far rosier picture than reality will bear.

"Economics treats the individual actor as the fundamental unit of analysis,"³⁸ and derives its predictive power based on a fundamental conception of human nature.³⁹ In ordinary markets, the individual actor is

first place."). See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965).

35. And not least of all, any tariff involves expenditure on administrative costs necessary to maintain the tariff — for example, "customs inspectors...who do the actual collection and coast guards who prevent smuggling." Tullock, *The Welfare Costs of Tariffs*, *supra* note 18, at 225.

36. The "high school civics" label was borrowed from Donald J. Boudreaux, Review Essay, *Was Your High School Civics Teacher Right After All?*, 1 INDEP. REV. 111 (1996).

37. See Mark L. Movsesian, *Are Statutes Really "Legislative Bargains"?* *The Failure of the Contract Analogy in Statutory Interpretation*, 76 N.C. L. REV. 1145, 1175 (1998). Nevertheless, the author concedes that the issue of whether a legislator should consult the interests of his constituents and behave accordingly on issues of policy has been the source of a "longstanding debate on the nature of political representation." *Id.* at n.186.

38. William F. Shughart II & Laura Razzolini, *Introduction: Public choice in the millenium*, in THE ELGAR COMPANION TO PUBLIC CHOICE xxii (William F. Shughart II & Laura Razzolini eds., 2001) [hereinafter Shughart & Razzolini, *Introduction*].

39. See, e.g., JAMES BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT* 18 (1962). The authors stress the focus on the individual actor in economic theory by emphasizing that:

[E]conomic theory does not try to explain all human behavior, even all of that which might be called 'economic' in some normally accepted sense of this term. At best, the theory explains only one important part of human activity in this sphere....No economist, to our knowledge, has ever denied that exchange takes place which is not "economic"....The theory requires for its usefulness only the existence of

a person who, as a consumer, strives to maximize his own sense of well-being, given the constraints imposed by a limited budget and the prices of available goods, who, as a worker, strives to maximize his income, given his native talents, the skills he has acquired, and his tastes for work and leisure, and who, as a business owner, strives to maximize his profits, given the constraints imposed by technology, by the costs of inputs and the tastes and preferences of buyers. No matter what role he plays, however, the individual actor is assumed to be guided largely by self-interest.⁴⁰

The central tenet of public choice theory⁴¹ is the emphasis of the methodological individualism of economic analysis (traditionally reserved for the study of market actors) in the study of politics and political actors.⁴² Once the rational actor model is applied to the realm of politics, several insights become immediately obvious. Public choice rejects the construction of vague, ambiguous collective units, such as "society," the "people," or the "national interest."⁴³ Actors in the public sector have the same self-interested incentives as market actors; the "public interest," however defined, is no longer the guiding light of po-

the economic relation to a degree sufficient to make prediction and explanation possible.

Even if the economic forces are not predominant enough in human behavior to allow predictions to be made, the formal theory remains of some value in explaining *one* aspect of that behavior and in allowing the theorist to develop hypotheses that may be subjected to conceptual, if not actual, testing. Reduced to its barest essentials, the economic assumption is simply that the representative or the average individual, when confronted with real choice in exchange, will choose 'more' rather than less.

Id. (emphasis in original).

40. Shughart & Razzolini, *Introduction*, *supra* note 38, at xxii.

41. *See generally id.*

42. *See* Shughart & Razzolini, *Introduction*, *supra* note 38, at xxii.

While for model-building purposes 'self-interest' is frequently construed narrowly to mean wealth maximization, the rational actor model is in fact much more general. Economists assume that individuals pursue the maximization of utility, of which money wealth is only one component, thereby allowing for the fact that human action is guided by a variety of goals and objectives....

Id.

43. *Id.*

litical behavior.⁴⁴ Elected officials will strive for reelection, and appointed officials will strive to secure larger agency budgets and to advance their careers.⁴⁵ If a political actor supports legislation at the behest of particular interest groups, he will be rewarded by these groups with increased campaign contributions or promises of large blocs of votes.⁴⁶ Policy proposals will there-

44. Lest it be said that these tenets of public choice theory paint an unduly pessimistic view of human nature (as is asserted in Steven Kelman *Public Choice and Public Spirit*, 87 PUBLIC CHOICE 80, 80-94 (1987)), it should be noted that:

[P]ublic choice no more denies the existence of 'public spirit' than economics denies the existence of altruism. Specialists in neither field have ever argued that self-interest is the *only* motivator of human action. Rather, the shared assumption of economics and public choice is that self-interest is the *most important* of the many and varied forces that animate the behavior of complex individuals.

Shughart & Razzolini, *Introduction*, *supra* note 38, at xxvi (emphasis in original). The basis of this assumption, therefore, is not a cynical view of human nature, but the recognition of "repeated empirical testing showing that models based on self-interest do a better job of explaining observed behavior than models based on alternative behavioral assumptions." *Id.* On a similar note, commentators have also advanced the following explanation for the utility of adopting such an assumption:

Compared with the more standard works in political science, our analysis may seem to involve a "pessimistic" view of human nature. For scientific progress, however, it is essential that all conceivable assumptions about human behavior be tested. If our models provide some explanations of real-world events, and we believe that they do, our assumptions must have some empirical validity, quiet apart from the "attractiveness" of the human characters that inhabit our hypothetical model world.

BUCHANAN AND TULLOCK, *supra* note 39, at 266.

45. Shughart & Razzolini, *Introduction*, *supra* note 38, at xxii; LINDERT & KINDLEBERGER, *supra* note 12, at 226. Lindert and Kindleberger point out, however, that the reelection-maximizing assumption need not imply the cynical view of politicians

who will stop at nothing to get reelected and who care only about the glory, salary, and power that come with retaining office....The incumbents may in fact be motivated primarily by their own loftier vision of the national interest and how they would serve it with some key steps if reelected.

Id.

46. See McGinnis & Movsesian, *supra* note 13, at 523 n.59 ("[I]nterest groups may exercise great leverage over legislators through campaign contributions or independent political expenditures." (citing Daniel H. Lowenstein,

fore be evaluated by the extent to which a politician's odds of reelection (or personal stature) are enhanced or diminished by implementing the policy.⁴⁷

C. High School Civics Fails Again: The True Nature of Democracy

Thus far this Article has shown that trade is as natural to humankind as is "song to a songbird,"⁴⁸ and that free trade allows individuals to reap the benefits of comparative advantage and specialization of labor.⁴⁹ It has also demonstrated, however, that while the benefits of free trade are often diffuse, those adversely affected by competition will bear heavily concentrated costs.⁵⁰ Consequently, these groups have a strong incentive to lobby for protectionist measures to forestall competition. Consumers who might otherwise reap the benefits of open barriers, by contrast, lack incentive to mobilize in lieu of organization costs and will therefore not wield any significant degree of influence over political markets relative to organized interest groups. Political actors, for their part, will act in accordance with their own self-interest by attempting to implement policies that benefit interest groups willing to reciprocate with campaign contributions or votes of gratitude at the next election. The protectionist legislation that will potentially emerge from this process, however, imposes enormous societal costs in the aggregate.

None of the foregoing, however, explains why, if political actors are truly self-interested, efforts to promote socially harmful legislation for the benefit of a privileged few is truly a self-interested act. After all, if the majority of voters (consumers)

Political Bribery and the Intermediate Theory of Politics, 32 UCLA L. REV. 784, 826-28 (1985)). Cf. Jonathan Weisman, 'Pork' Noses Into Non-Profits, USA TODAY, Apr. 22, 2002, at A1 (noting a trend in which "members of Congress are establishing their own charities, funding them through the House Appropriations Committee and taking pork-barrel politics to a new level").

47. See, e.g., LINDERT & KINDLEBERGER, *supra* note 12, at 227 ("Any incumbent knows that to get reelected he needs to approach each individual issues asking, 'How can I maximize the votes and campaign backing of those people for whom *this* is the issue that is key to their election sentiments?").

48. See McGinnis, *supra* note 3 and accompanying text.

49. See *supra* Part I.A.

50. See *supra* Part I.B.

will end up paying higher prices for particular products as a result of protectionist legislation, then surely they will penalize the politicians who supported the legislation by withholding their votes in the next election. This, of course, is one of the central virtues of democracy: well-informed voters replace government officials who fail to serve the public interest with officials who better serve the public interest,⁵¹ and therefore "prevent government from being a toady to special-interest groups."⁵² Much the same way that actors in private markets self-interestedly absorb information and act accordingly, voters will monitor the politicians they vote into office to ensure that these politicians do not support harmful interest-group legislation.

This conception of political markets constitutes what might be deemed the second tenet of high school civics.⁵³ Much like the first tenet, however, it must be condemned as grossly naïve and simply not consistent with reality.⁵⁴ Private-property markets and political markets are fundamentally distinct in that "there is no such thing as a voiceless private-property market participant."⁵⁵ Every action of a private market participant

51. For a recent and highly sophisticated exposition of this view, see DONALD WITTMAN, *THE MYTH OF DEMOCRATIC FAILURE* 5 (1995).

52. Boudreaux, *supra* note 36, at 115 (criticizing Wittman).

53. The "first tenet" of high school civics was discussed above at *supra* Section I.B (arguing that politicians do not scrutinize laws by the extent to which they benefit the public, but rather by the extent to which supporting such laws will earn the favor of interest groups who can increase the politician's odds of re-election).

54. See Rowley & Tollison, *Rent-Seeking*, *supra* note 33, at 224. The authors note:

[The standard] theory concludes that once governments are informed of the clear net benefits of unilateral trade liberalization, they will do away with trade protection, compensating losers, if necessary, via a non-distortionary tax/subsidy intervention. Much of the international trade literature seems to be dedicated to this process of information transmission. However, governments patently do not respond as the pure theory predicts they will. Public choice explains theoretically why governments accept generalized wealth destruction by maintaining and even extending trade protection policy even in a well-informed political market.

Id.

55. See Boudreaux, *supra* note 36, at 116. A simple example may be used to drive home this distinction:

conveys information about the value a participant places on a particular product. In the aggregate, this information combines to create the pattern of prices existing at any moment. Moreover, because every individual who participates in a private market will bear the cost of his actions, or reap the benefits thereof, private market participants have a strong incentive to purchase information and use it to guide their decision-making.

Political markets, by contrast, possess neither of these characteristics. Even if voters are well-informed,⁵⁶ the sheer volume of issues on the table during any particular election precludes registering approval or disapproval for any individual issue. As Boudreaux puts the point,

[i]ssues from abortion to school choice to government provision of medical services to farm subsidies to child-welfare policies to tax rates to...you name it, government has some potential say over them. Literally tens of thousands of issues are at stake in every national election (with almost as many issues at stake in state elections). And yet, each voter during each six-year span has a maximum of nine ballots to cast in four national elections. During any six-year period...each voter is allowed to vote twice for a president/vice-president team, four times for a U.S. Representative, and a maximum of three times for a U.S. senator...[These] are the only windows of opportunity for American voters to speak politically on national issues.⁵⁷

Accordingly, the claim that voters will register disapproval of attempts to pass harmful interest-group legislation with their votes is naively optimistic. A voter cognizant of his Congressman's support for various protectionist legislative proposals may decide that the politician's positions on abortion, campaign

Every time we buy or sell something — or refuse to buy or sell something — we communicate with property owners around the world by adding our “voice” to the market. If you purchase a new Honda Accord today, you reveal to the market that you value such a car by at least the price you pay for it. If you sell some labor services today, you reveal to the world that you will perform such services for a wage at or above the amount your employer pays you.

Id.

56. For a discussion of the incentives of voters to acquire and digest political information, see *infra* notes 58–62 and accompanying text.

57. See Boudreaux, *supra* note 36, at 117.

finance reform, or the environment take precedence over harmful protectionist legislation.⁵⁸ Put simply, commercial policy is not formed by direct public referenda.⁵⁹

Moreover, the second tenet of high school civics posits that voters have a rational incentive to acquire and digest political information. This incentive is presumably a corollary of the view that voters recognize their duty to operate as a check on (costly) self-interested political behavior. In practice, the excessive level of noise in political elections precludes registering approval or disapproval of specific attempts to pass harmful interest-group legislation. What is more, on balance, citizens have a strong disincentive to pay the cost of acquiring and digesting political information. Thus, not only are voters precluded in practice from checking harmful political behavior because of excessive political noise; voters are ill-equipped to identify interest-group legislation in the first place.

If the average voter watches the evening news or occasionally skims a newspaper, she may know if a particular candidate is a Democrat or a Republican, and that between two candidates of each major political party, one is more likely to be further "to the right" than the other.⁶⁰ This knowledge in itself, however, is largely useless. For voters to deter opportunistic political behavior they must be informed of specific proposals or attempts to support specific legislation. In reality, however,

[h]ow many American voters know that the national government subsidizes sugar farmers and peanut farmers? How many Americans understand the consequences of deficit financing? How many can distinguish the government's budget deficit from the so-called trade deficit? Indeed, how many vot-

58. See Boudreaux, *supra* note 36, at 118 (further noting that "[i]nterest groups can obtain a great deal of pork if such pork is bundled with other government programs and policy issues").

59. See LINDERT & KINDLEBERGER, *supra* note 12, at 225. The authors continue: "Voters are not given the chance to go to the polls and vote for and against, say, 'Proposition P: The import duty on motorcycles shall be raised from 5 percent to 10 percent ad valorem: Yes...No.'" *Id.* at 225-26. It should be noted, however, that private markets — including, e.g., markets for residential location — face some of the same bundling problems, albeit to a lesser extent. When an individual purchases a home, to take one example, many variables are undoubtedly at play: proximity to family, proximity to grocery stores, crime rates, local school systems, and so forth.

60. See Boudreaux, *supra* note 36, at 117.

ers know most federal regulations can be looked up in the Code of Federal Regulations — a document of double-columned small print that now gobbles up almost twenty feet of library shelf space? I suspect very few.⁶¹

It is highly improbable that the average citizen could possibly monitor the number of actions taken by incumbents to act as a sufficient check on socially harmful behavior, or comprehend the full implications of any proposals championed by other candidates, *even if he wanted to*. But what is more, not only does the average citizen have a strong disincentive to pay the cost of acquiring political information because she is unlikely to understand all of it in the first place; the odds of any citizen's "research" paying off *for that person* are infinitesimal. In other words, if the odds of a single vote changing the result of an election are mathematically zero, and if voting is the one method by which citizens register their voice in political markets,⁶² then a strong disincentive to pay the costs of acquiring information exists.⁶³ Voters will therefore remain rationally ignorant. By contrast, since private-market actors must bear the full costs — or reap the full benefits — of their actions, a strong incentive exists to acquire information. Accordingly, the analogy between private and political markets simply cannot be maintained. The "problem of interest groups" lives.

61. Boudreaux, *supra* note 36, at 122.

62. My assumption here that the average voter may "express his voice" only in elections follows from the previous discussion of the costs of mobilization as prohibitive, *supra* Part I.B.

63. These same premises also lead to the conclusion that individual citizens may choose not to vote *at all*. See, e.g., U.S. Census Bureau, Current Population Survey: Voting and Registration in the Election of November 2000 (Feb. 2002) (noting that nineteen million registered voters did not cast ballots in the 2000 presidential election, and that of the nineteen million non-voters 20.9% of voters reasoned they were "too busy," 14.8% refrained from voting because of "illness," and 12.2% were "not interested"), available at <http://www.census.gov/prod/2002/pubs/pb20-542.pdf>. See GORDON TULLOCK, ON VOTING (1998), for more formalistic arguments concerning the nature of voting behavior.

II. THE SOLUTION

A. *Leading By Example: The United States Constitution as a Model for International Federalism*

In the context of international trade,⁶⁴ the principal task of trade institutions like the WTO should be to “restrain protectionist interest groups and thereby promote both free trade and representative democracy.”⁶⁵ The American political structure, through the United States Constitution, offers compelling instruction on how institutions can simultaneously promote free trade and democratic governance.⁶⁶

Much the same way that interest groups lobby for protectionist tariffs at the federal level, such groups may attempt to lobby for entry barriers at the state level. Perhaps the most famous exposition of the danger of interest groups was set forth by James Madison in *The Federalist No. 10*.⁶⁷ There, Madison recognized that individuals and groups would try to use the power of government to further their own interests.⁶⁸ Several institutional mechanisms of the United States Constitution reflect this concern. For example, the large Republic described in *The Fed-*

64. The foregoing discussions of the nature of interest groups and the fallacy of “high school civics” are not, of course, confined to the context of free trade.

65. McGinnis & Movsesian, *supra* note 13, at 536.

66. *Id.* (“The original Constitution established mechanisms that restrict protectionist interest groups, and subsequent generations have developed further structural limitations. These constraints have made representative democracy more reflective of majority will, improved regulatory efficiency, and promoted economic growth through trade.”).

67. See *The Federalist No. 10*, at 45–51 (James Madison) (Clinton Rossiter ed., 1961).

68. See BUCHANAN AND TULLOCK, *supra* note 39, at 25 (“[Madison’s] numerous examples of legislation concerning debtor-creditor relations, commercial policy, and taxation suggest that perhaps a better understanding of Madison’s own conception of democratic process may be achieved by examining carefully the implications of the economic approach to human behavior in collective choice.”); John O. McGinnis, *The Origins of Conservatism*, NAT’L REV., Dec. 22, 1997, at 34 (“...Madison observed that the greatest problem for any political structure is how to protect the ‘unequal faculties for acquiring property’ from government interference.”). McGinnis argues that “Madison recognized the very inequality that makes this prosperity possible also makes the protection of the different abilities to acquire property more difficult because it exacerbates the danger that the government will be used as a mechanism for redistribution from one faction to another.” *Id.*

eralist No. 10 decreased the power of local factions by "pitting them against one another in a more extended polity."⁶⁹ Generally, bicameralism and the separation of powers both operate to frustrate interest groups by imposing more powerful barriers to rent-seeking legislation than simple majoritarian structures.⁷⁰ Moreover, the Commerce Clause of the United States Constitution is employed to strike down state legislation that discriminates against, or unduly burdens, interstate commerce.⁷¹ Thus, the creation of an open national market encourages competition among the states for the investment of resources.

The WTO fosters an international trade regime that replicates this brand of federalism. In the same way that forcing state governments to compete for "the capital and skills of a national citizenry imposes substantial limits on a state government's ability to expropriate, the emerging free trade regime performs the same essential function, tempering the enduring and inevitable avarice of the government and its rulers on a global scale."⁷²

69. McGinnis & Movsesian, *supra* note 13, at 526–27.

70. *Id.*

71. See U.S. CONST. art. 1, § 8, cl. 3 ("The Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."). See *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979) for the modern commerce clause test. It should be noted, however, that the dormant commerce clause power is merely inferred from the affirmative grant of federal power found in the commerce clause itself. See generally Richard A. Posner, *The Constitution as an Economic Document*, 56 GEO. WASH. L. REV. 4, 17 (1987) ("A number of provisions of the [U.S.] Constitution seem to have an implicit economic logic. This is perhaps the clearest with respect to the "negative" or "dormant" commerce clause...").

72. John O. McGinnis, *The Symbiosis of Constitutionalism and Technology*, 25 HARV. J.L. & PUB. POL. 3, 9 (2002). McGinnis further argues that:

International federalism is appropriate for our time because individuals still have the attachments to their nation-states to resist regulatory regimes being imposed by world government. Thus, an international federalism can plausibly be created because the World Trade Organization and other global economic organizations can police the conditions for regulatory competition among nation-states while citizens in those nation-states can be counted on to resist the expansion of regulatory power in international institutions.

Id. at 9–10.

B. The World Trade Organization

With this background in place, this Article now probes the WTO's constitutional structure and illustrates why its internal provisions and mechanisms enshrine a regime of international federalism that ultimately promotes economic growth within its member nations.⁷³

The WTO was established by the Final Act of the Uruguay Round of trade negotiations in 1994,⁷⁴ and is responsible for administering multilateral trade agreements negotiated by its members.⁷⁵ Its principal functions may be described as follows:

First, the WTO provides a substantive code of conduct directed at the reduction of tariffs and other barriers to trade, and the elimination of discrimination in international trade relations. Second, the WTO provides the institutional framework for the administration of the substantive code. Thus the WTO provides an integrated structure for the administration of both all past trade agreements and the agreements under the Uruguay

73. It should be noted at the outset that this section offers an account of global multilateralism, and the WTO in particular, in necessarily broad strokes. It does not, accordingly, seek to criticize or defend particular treaties or the present composition of the WTO. Rather, this section confines itself to illustrating why the nature of an international regime such as the WTO will tend to reign in the costs of opportunistic rent-seeking by interest groups. For present purposes, it is sufficient merely to note that politics is a game of compromise: invariably, particular WTO provisions that cause more social harm than good in the aggregate have hitchhiked along with more economically sound provisions. So long as these questionable provisions remain the exception, and not the norm, the model illustrated in this section posits that the WTO will continue to facilitate economically sound policies more often than not.

74. "Although the Final Act was signed in April 1994, the WTO did not actually come into existence until the following year." See McGinnis & Movsesian, *supra* note 13, at 530 n.96 (citing David A. Gantz, *A Post-Uruguay Round Introduction to International Trade Law in the United States*, 12 ARIZ. J. INT'L & COMP. L. 1, 7 (1995)).

75. The WTO presently has 146 member states. For a list of the WTO's membership, see World Trade Organization, *The Organization: Members and Observers*, at http://www.wto.org/English/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Nov. 16, 2003). It was created in part because the legal foundations of the GATT were weak (GATT was, and is, a treaty — i.e., it contained no institutional provisions) and in part because two issues on the agenda of the Uruguay Round were not covered by GATT: services and intellectual property rights. BERNARD M. HOEKMAN, *TRADE LAWS AND INSTITUTIONS* 3 (1995).

Round of Trade Negotiations. Third, the WTO ensures the implementation of the substantive code. It provides a forum for dispute settlement in international trade matters, and conducts surveillance of national trade policies and practices. Fourth, the WTO acts as a medium for the conduct of international trade relations amongst member States. Particularly, it is to act as a forum for the negotiation of further trade liberalization, and improvement in the international trading system.⁷⁶

The WTO should therefore be regarded as “both an *institution* embodying a set of rules and principles concerning the use of policies that affect trade flows, and as a *market* in which members exchange market access ‘concessions’ and agree on the ‘rules of the game.’”⁷⁷ For example, the periodic reductions in world tariffs provided for by the WTO have been called its “core feature.”⁷⁸ Even before the inauguration of the WTO, General Agreement on Tariffs and Trade (“GATT”) members met approximately once every ten years in negotiating rounds that reduced tariffs on goods on a reciprocal basis.⁷⁹ These rounds produced dramatic reductions in world tariffs.⁸⁰ The ratio of the value of duties collected to the value of imports dropped from approximately 37% before the adoption of GATT to less than 5% in the early 1990s.⁸¹ The inauguration of the WTO continues this pattern of reciprocal tariff reductions and expands the scope of the system through new agreements pertaining to in-

76. JOHN H. JACKSON, ALAN O. SYKES, & ASIF H. QURESHI, *THE WORLD TRADE ORGANIZATION: IMPLEMENTING INTERNATIONAL TRADE NORMS* 5 (John H. Jackson & Alan O. Sykes eds., 1997). Qureshi further notes that “the institutional framework of the WTO can be said to provide a basic, but by no means complete, constitutional framework for the international trading system. The system provides for a legislative machinery in the field of international trade, for a dispute settlement apparatus, a surveillance mechanism, and an administrative structure.” *Id.* See also Agreement Establishing the Multilateral Trade Organization, art. III, Dec. 15, 1993, 33 I.L.M. 13.

77. HOEKMAN, *supra* note 75, at 4.

78. McGinnis & Movsesian, *supra* note 13, at 544.

79. *Id.*

80. *Id.*

81. *Id.*

tellectual property, services, health and safety measures, and product standards.⁸²

The theoretical underpinning of this regime of reciprocity is as follows. Governments (i.e., collectives of individual domestic political actors) lack incentive to reduce trade barriers unilaterally. Indeed, as discussed,⁸³ politicians will face strong interest group pressure to erect new protectionist legislation. Under a multilateral trade agreement that mandates reciprocity, however, domestic export interests stand to reap benefits that largely offset the specific losses incurred by protected industries. Removing protectionist barriers in a domestic market will result in increased market access abroad. With foreign markets for their goods, these domestic export interests will, under a reciprocity regime, naturally exert pressure on political actors that will largely counteract the pressure mounted by domestic producers to maintain protectionist barriers.⁸⁴ If reciprocity was

82. HOEKMAN, *supra* note 75, at 4; John H. Jackson & Alan O. Sykes, *Introduction and Overview*, in *IMPLEMENTING THE URUGUAY ROUND 4* (John H. Jackson & Alan O. Sykes eds., 1997).

83. *Supra* Parts I.B – I.C and accompanying text.

84. McGinnis & Movsesian, *supra* note 13, at 545–46 (noting that the “WTO system mobilizes the interest groups that stand to win — workers and owners in industries that will prosper because of free trade — to counterbalance the interest groups that stand to lose”). It should be noted, however, that tariff reductions alone cannot ensure a free trade regime. *Id.* As the authors powerfully indicate:

Protectionist groups can frustrate the effect of tariff reductions by persuading national governments to impose nontariff barriers. Even if a member complies with GATT-mandated tariff reductions on a given product, for example, the member could offset the effect of these reductions by imposing quotas on the number of imports allowed into the country. Therefore, just as the United States Supreme Court has developed a doctrine to prevent state nontariff discrimination against out-of-state imports, the WTO has established a series of rules that prevent members from adopting measures that negate the value of GATT tariff reductions.

Id. at 546–47. The authors continue by noting, for example, that:

[A]rticle III of GATT prohibits members from imposing special internal taxes on imports — sales taxes, for example — that exceed taxes on “like domestic products.” Because members might impose discriminatory internal regulations on imports, article III also requires members to accord imports “treatment no less favorable than that accorded like products of national origin in respect of all laws, regula-

not mandated by the multilateral trade agreement, however, there would be no guarantee of market access abroad, and domestic export interests would therefore take little interest in opposing a protectionist barrier.⁸⁵

Accordingly, agreements administered by the WTO create pressure for liberalizing access to markets over time in a way that is politically more feasible than unilateral action. Indeed, reciprocal liberalization of market access has been a necessary (although perhaps not sufficient) condition for the reduction of barriers.⁸⁶ Domestic producers may lose from removing protectionist barriers to imports, but domestic exports win — if reciprocity is in effect.⁸⁷ But the situation is not a net wash, of course, because consumers benefit from free trade.⁸⁸ The self-interested politician assumed by public choice theory may be moved to act at the behest of powerful interest groups if the

tions and requirements affecting their internal sale,...purchase, transportation, distribution or use.”

Id. at 547 (citing to GATT article III). See also Rowley, *The International Economy*, *supra* note 12, at 659. Rowley notes:

Tariff protection now plays a diminished role in international markets, in large part owing to the success of a sequence of multilateral tariff-reduction rounds since the end of the Second World War. In its place, protection more frequently takes the form of bilaterally negotiated voluntary export restraints (VERs) negotiated between the governments of importing and exporting nations.

Id. at 660.

85. See LINDERT & KINDLEBERGER, *supra* note 12, at 231–34 (noting that when export interests have been organized, policy has tended toward freer trade). The authors quote John Stuart Mill: “A good cause seldom triumphs unless someone’s interest is bound up in it.” *Id.*

86. HOEKMAN, *supra* note 75, at 4.

87. Rowley, *The International Economy*, *supra* note 12, at 659. Rowley notes:

If a free trade agreement (FTA) must liberalize completely trade among the partner nations, a particular government might endorse an agreement in two types of situations. The first is the situation in which the FTA generates substantial welfare gains for the average voter and in which the adversely affected interest groups fail to coordinate their efforts to defeat the accord. The second is the situation in which the agreement creates profit gains for exporters in excess of the combined losses imposed on import-competing industries and on the average voter.

Id.

88. See *supra* Part I.A and accompanying text.

stakes are high enough. However, if countervailing pressures offset the interest groups — or if the pressures of one export group counteract the forces of an import interest group — then, all things being equal, self-interested politicians should look with favor upon the consumer benefits of a free trade regime.

For this analysis to hold, however, the average voter is presumed to actually prefer free trade — or at worst, that the average voter remains rationally ignorant. In fact, however, there is reason to believe that the average voter — the individual who, as a consumer, will benefit from free trade — is likely to *outright oppose it*. If this is true, then politicians faced with offsetting interest group pressure from import and export industries may not necessarily advance free trade policies by default. Free trade may produce gains in the aggregate, but any self-interested politician would obviously take notice if the majority of his constituency believed that free trade was an evil. The following section therefore examines consumer beliefs on free trade in more detail, and considers the extent to which the WTO may operate to counteract the potentially harmful effects of these beliefs, thereby further advancing free trade.

C. *The Missing Link: Rational Irrationality*

It is often said that the proposition that free trade creates wealth among nations has been “well established since at least the beginning of the nineteenth century.”⁸⁹ This is undoubtedly true — *if* it is taken to mean “well-established among economists.” As far as the general public is concerned, however, quite the opposite is true.

The positive economic beliefs of economists and the public appear to be systematically inapposite.⁹⁰ Professor Bryan Caplan has synthesized data from the Survey of Americans and Economists on the Economy to directly contrast the views of the general public and professional economists.⁹¹ The results are

89. McGinnis & Movsesian, *supra* note 13, at 521.

90. See generally Bryan Caplan, *Systematically Biased Beliefs About Economics*, 112 *ECON. J.* 479 (2002) (citing data from the Survey of Americans and Economists on the Economy 1996) [hereinafter Caplan, *Systematically Biased Beliefs About Economics*].

91. Bryan Caplan, *Rational Ignorance vs. Rational Irrationality*, 54(1) *KYKLOS* 3, 21 (2001); Bryan Caplan, *The Logic of Collective Belief*, 15 *RATIONALITY AND SOCIETY* 218 (2003).

startling. For example, Question 26 of the Survey of Americans and Economists on the Economy (1996) ("The Survey") asked: "Which do you think is more responsible for the recent increase in gasoline prices: the normal law of supply and demand, or oil companies trying to increase profits?" As Caplan notes, "only 22% of the general public accepted the supply-and-demand explanation, compared to 85% of economists, while 73% and 8% respectively affirmed the second explanation."⁹²

The Survey further asked both the general public and its group of professional economists a series of questions on "Why the Economy Is Not Doing Better Than It Is." The results appear below in Table 1.⁹³

92. Caplan, *The Logic of Collective Belief*, *supra* note 91, at 226. Cf. JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT INTEREST AND MONEY* 383 (1954) (noting that "the ideas of economists and political philosophers...are more powerful than is commonly understood," and that "the world is ruled by little else").

93. This table appeared in Caplan, *The Logic of Collective Belief*, *supra* note 91, at 227 (citing The Survey, Questions 27 and 29). Caplan also takes up, and adequately treats, the "two main ways one might try to vindicate the unbiasedness of non-economists' economic beliefs. The first is to maintain that the differences reflect economists' self-serving biases...The second is that economics attracts and/or molds individuals with specific ideological and political views." Caplan, *Systematically Biased Beliefs About Economics*, *supra* note 90, at 434 (citations omitted).

Table 1

General Public				
Explanation	Major Reason	Minor Reason	Not a Reason	No Opinion
Too Many People are on welfare.	70*	22	7	1
Foreign aid spending is too high.	66*	23	10	1
There are too many immigrants.	47	32*	19	1
Companies are sending jobs overseas.	68*	25	6	1
Business profits are too high.	46	36*	17	1
Technology is displacing workers.	46	38*	15	1
Companies are downsizing.	59*	30	9	2
Economists				
Explanation	Major Reason	Minor Reason	Not a Reason	No Opinion
Too many people are on welfare.	11	50*	39	0
Foreign aid spending is too high.	1	13	86*	0
There are too many immigrants.	1	18	80*	<.5
Companies are sending jobs overseas.	6	35	58*	<.5
Business profits are too high.	4	11	85*	1
Technology is displacing workers.	2	24	74*	<.5
Companies are downsizing.	5	38	57*	0
<i>Source:</i> Survey of Americans and Economists on the Economy, Questions 27 and 29 * = median belief				

Caplan proposes a theory of "rational irrationality" to explain the systematic divergence of populist beliefs from those of pro-

professionally trained economists.⁹⁴ Put simply, relative prices matter.⁹⁵ People will choose to hold systematically biased beliefs based on little or no information with a high level of certitude when the private costs of error are negligible.⁹⁶ Some beliefs, in other words, have practical consequences for the individual that holds them. But others do not. The rational irrationality model assumes that people have preferences for *beliefs themselves* as well as for outcomes, and that when the private costs of error are small enough, people can indulge their preferred beliefs.⁹⁷

For example, if an individual believes that protectionist tariffs produce net gains for the economy, the private costs of error are effectively zero. The odds of this individual's vote changing the outcome of an election are zero, so the odds of his belief ultimately "coming back to bite him" are zero. By contrast, if the individual chooses to believe that the automobiles in the street he is about to cross are mere apparitions, and that they may therefore be disregarded, the costs that this erroneous belief may impose on him are enormous. It should therefore come as no surprise that few people are willing to believe that the automobiles in the street are apparitions, but that many people apparently believe that ghosts haunt houses. The former imposes high private costs of error; the latter does not. Thus, if an indi-

94. See also FRIEDMAN, *supra* note 10, at 78. Friedman notes that his father-in-law would not consider questioning Friedman's views on physics, a subject in which Friedman holds a Ph.D. Nevertheless, Friedman's father-in-law is quick to disagree with Friedman's views on economics, despite the fact that Friedman has been writing and lecturing on economics for the past twenty years, and his father-in-law, as Friedman notes, has never taken an economics course in his life.

95. Caplan, *The Logic of Collective Belief*, *supra* note 91, at 227.

96. *Id.*

97. *Id.* at 227-28. See also McGinnis & Movsesian, *supra* note 13, at 524. The authors note:

[P]rotectionist groups enjoy an additional advantage: they can exploit nationalist sentiments. These sentiments, which are often deeply rooted in a country's tradition and culture, can have a positive impact on politics by encouraging the production of public goods. For example, they facilitate the common defense and aid in rallying opposition to totalitarian oppression, as in Eastern Europe at the end of the Cold War.

Id. See generally ROBERT H. FRANK, *PASSIONS WITHIN REASON* x (arguing that irrationality may be biologically selected).

vidual derives pleasure — consumption value — from the belief that particular houses are haunted by ghosts, he may *rationaly* adopt this (irrational) belief, because holding the belief presumably imposes no private costs. Similarly, in the political context, individual voters “can cheaply indulge their systematically biased beliefs at the ballot box knowing that they are extraordinarily unlikely to alter the outcome.”⁹⁸

But the *social* costs — the costs in the aggregate — of rationally indulging irrational beliefs may be enormous. Political markets represent the paradigmatic example. Individual voters may cheaply indulge their private fantasies without their marginal vote affecting the election's outcome, but when *all* rationally irrational voters do so, the outcome *does* vary. Accordingly, the voter tendency toward rational irrationality threatens to impose significant social costs — more so than those that might flow from “mere” rational ignorance alone. Rationally ignorant voters lack incentive to purchase information when the odds of their “investment paying off” — i.e., their vote changing the outcome of an election — are zero. But when information is provided at no cost, e.g., through the media or political debates, the rationally ignorant will at least process it. Rationally irrational voters, by contrast, already believe they have all the information they need, and will vote in accordance with their (irrational) beliefs.⁹⁹ That is, “if voters are rationally ignorant about the specifics of trade policy, they can still support general procedures to curtail protectionist pressures. But such procedures would win no favor from voters who affirmatively favor protectionism due to their rationally irrational overestimates of the social benefits of protectionist policy.”¹⁰⁰

98. Caplan, *The Logic of Collective Belief*, *supra* note 91, at 219 (also noting that “voter rationality...will normally be an under-produced collective good”) (citation omitted).

99. Caplan, *Rational Ignorance vs. Rational Irrationality*, *supra* note 91, at 5.

100. Caplan, *The Logic of Collective Belief*, *supra* note 91, at 224. Caplan further notes:

[T]he rationally ignorant at least acknowledge that they have [an information] problem, so they are open to compensatory political measures. Politicians who support such measures win the voters' favor. The rationally irrational, however, deny that they have a problem; they don't want the political system to “help them” overcome their ir-

Politicians will naturally be sensitive to the belief systems of their constituents. If the majority of voters believe that free trade is an evil to be combated, then politicians must take heed, and for the very same reasons that politicians are susceptible to the influences of interest groups: if reelection and prestige are the goals, then politicians must pay attention to the interest groups (and class of voters) who make a difference in elections.¹⁰¹

Thus, the WTO is revealed to serve an additional, perhaps "hidden," purpose. It operates as a "scapegoat" for politicians attempting to deflect the wrath of constituents angered by free-trade-oriented policies. Politicians may simply plead deference to the WTO as necessary to achieve other, more worthy (read: more popular), societal goals, while at the same time enjoying the stream of benefits that flow from increased market access. For example, a politician might claim that participation in the various multilateral trade agreements administered by the WTO is necessary to preserve diplomacy with foreign countries, which in turn might be considered essential to the preservation of human rights in impoverished countries — a more "noble" goal in society's eyes.¹⁰² Whether this is true or not is one thing;

rational biases. In their eyes, such compensatory political measures are useless at best, and insulting at worst. Politicians who support them have little to gain and much to lose.

Id. at 224.

101. If the excessive level of noise in political markets, coupled with rational ignorance, precludes voters from checking harmful political behavior, *supra* Section I.C, then concededly, the opposite might hold true as well. That is, even if voters on balance *oppose* free trade, that factor is merely one of many on the table during an election year, and the noise level in political markets may therefore check the potential damage caused by this belief. But the irrational tendencies of voters nevertheless become relevant to the personal calculus of politicians because *ignorance* is no longer at issue; by hypothesis, many voters go to the booths firmly believing that unencumbered free trade is an evil that must be stopped. This tendency therefore threatens to impose greater social costs than mere ignorance because voters cannot be persuaded to adopt "rational" policies; they will simply believe what they want to believe.

102. See John O. McGinnis, *World Trade Agreements: Advancing the Interests of the Poorest of Poor*, 34 IND. L. REV. 1361, 1361–62 (2001) (noting that free trade is a way to help the world's poor, and that free trade agreements help the expansion of civil rights in developing countries). McGinnis further notes that multilateral trade agreements might actually advance human rights more than The Universal Declaration and other human rights conventions, because expanding trade increases the wealth of foreign nations, which

what matters from a politician's perspective is simply whether his constituency believes it.¹⁰³

In summary, the multilateral treaties administered by the WTO — at least to the extent that they call for increased market access under a reciprocity regime — mobilize domestic export interests and counteract the interest group pressure mounted by domestic producers who stand to face increased competition in the aftermath of increased domestic market access. Politicians in a position to support agreements calling for increased market access will then prefer to act in furtherance of this goal, because, in the aggregate, free trade will create wealth. These politicians will then naturally take credit for increased societal wealth, and will presumably explain these benefits by reference to some domestic policy or other implemented by that politician. But what is more, to appease the voter who, while enjoying the benefits of free trade, still condemns free-trade policies, politicians may simply plead deference to a multilateral trade agreement administered by the WTO as if adherence to the agreement is some "necessary evil" to achieve a greater good, thereby giving political actors the best of all political worlds. Politicians will accordingly reap all the benefits of free trade without assuming personal responsibility for its "evils" in the eyes of those constituents who believe free trade should be curbed.¹⁰⁴ Accordingly, even though the

will result in higher revenue for the local despot. Offering market access as "bait" to improve human rights conditions may therefore be more effective than human rights conventions themselves. *Id.* Thus, trade agreements actually do operate as "means" to the end of human rights and other "greater goods." Nevertheless, a politician sensitive to the fact that the majority of his constituents may actually oppose free trade will have an incentive to bifurcate human rights and trade and treat the latter as a "necessary evil."

103. See, e.g., Judy Keen, *Cheney Balances Public, Private Diplomacy*, USA TODAY, Mar. 19, 2002, at A12 (Vice-President Cheney's aides explaining that "political considerations sometimes require leaders to say things publicly that contradict what they say in private"). But cf. Caplan, *The Logic of Collective Belief*, *supra* note 91, at 234 (noting that politicians who actually share the irrational beliefs of their constituents may enjoy a competitive advantage over political competitors who do not).

104. It is interesting to speculate on how international politics produced the WTO in the first place. As noted above, the immediate impetus for the creation of the WTO was to correct the failures of GATT. It may seem strangely fortuitous, however, that the world political system would produce an organization for correcting national (domestic) political failures. In fact, it is very

majority of voters may believe that free trade causes harm, playing the WTO as a scapegoat makes support of increased market access politically feasible.¹⁰⁵

CONCLUSION

The average voter may irrationally believe that free trade is an evil that should be combated, but, on the theoretical model proposed by this Article, the costs these beliefs threaten to impose are reduced by the WTO. Irrational beliefs that impose no private costs may, in general, impose great social costs in the aggregate — particularly in the context of political elections, where an entire electorate indulging their bliss beliefs may eventually bring about socially disastrous policies. But at least insofar as free trade is concerned, if the average voter believes that adherence to the WTO is a necessary means to achieving a more worthy end, then voters will tolerate the increased market access mandated by the WTO's multilateral treaties, and society will continue to enjoy the benefits that flow from free trade.

unlikely that the WTO was created for this reason. But if it was not created for this purpose, then perhaps there is less reason to believe these good (and unintended) effects will last.

105. It may be questioned whether using the WTO in this manner is not without its own set of costs. For example, perhaps “playing the WTO as a scapegoat” further encourages the (possible) natural hypocrisy of political actors, or contributes to the accumulation of public disinformation. It may even be said that by playing the scapegoat card, the WTO negotiating process may itself become distorted, because without proper negotiating alignments internally, parties may not have the best-laid agendas. These are all points worthy of consideration. Nevertheless, for present purposes, the thesis of this Article is simply — and is limited in scope to stating — that rational irrationality poses a problem to the proliferation of free trade agendas, but that it turns out that the WTO's status as a potential whipping child has the unintended, and somewhat surprising, consequence of making free trade more palatable.