

Given that Trade Wars Tend to Be More Regular Between the World's Economic Powers, Does Free Trade Still Make Sense Today? — Through the Analysis of Sino-American Relations and Some Cases

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Abstract

Since World War II, as the need to restore economic production in various countries continues to increase, advocating trade liberalization seems to be a global trend. In recent years, however, some countries' efforts to protect their trade seem to be bucking this trend. How free should Free trade be? How much should each country concede? Are the effects of the trade war purely bad? Or are there some benefits? How should we deal with these situations in the future? These are the questions discussed in this article. The attitude of individual countries towards the trade war and trade liberalization is undoubtedly the key. Does it pay to be a gentleman in today's world of international trade? After all, trade has a profound impact on politics and many other areas.

Keywords: free trade, trade war, change, norm

1. Overview

1.1 *Free Trade Is an Inevitable Trend, but the Nature of Free Trade Remains to Be Explored*

1.1.1 Free Trade Is an Inevitable Trend

It is said that being good at everything means you are not good at anything. Adam Smith believed that if a country produced everything itself, it would be much less efficient. But when two countries each produce what they are good at producing and then exchange it, the total amount of wealth in society will increase significantly, and everyone will have better things.

Does it make sense for a country to trade with other countries if this country is competent enough to produce almost anything? The answer is yes, it still needs to trade with other countries. The reason is that time is limited, and only by spending time on what is most valuable to oneself can this country discover and give full play to its advantages. If a country spends time doing what other countries are also capable of doing well, then this country can never maximize its biggest strengths.

This may be the rationale for free trade.

1.1.2 The Essence of Free Trade

The cosmopolitan economics of Quesnay and Adam Smith advocated free trade; List's State Economics advocated the use of tariff protection to boost the national economy. However, both the tariff protectionists and the free-trade school view the impact of trade policies on a country's economic development from the perspective of the bourgeoisie. Marx believes that both kinds of economic policies are essentially misleading and deceiving workers.¹

¹ Huang Jin, (2011). Marx Engels, and List — On free trade and protective tariffs. *Review of Political Economy*, 02(03).

The case in point was the Anti-Corn Law League of the British Free Traders. The Anti-Grain League told workers that repealing the grain laws would enable them to earn higher wages and buy bread at a lower price. But in essence, the loss of the Grain Laws would put them at a disadvantage on both counts. The abolition of the Grain Laws in favor of free trade was essentially a bourgeois tactic, used by the bourgeoisie in its battle with the landed classes, to the ultimate detriment of the working class.

There are obvious advantages to free trade, but these advantages are derivative, not innate. Given that free trade leads to a growing clarity of ideology and dominant values in individual countries, it certainly has the effect of bringing about a united struggle of the global proletariat, providing a suitable ground for social revolution. From this perspective, the negative effects of free trade may also be a catalyst for greater proletarian unity.

1.2 The Inevitability of More Trade Wars

With the weakening of the function of national law, many countries have begun to strengthen the function of domestic law, trying to replace the institutional blank of international law. This has provided the soil for the escalation of contradictions between countries.

Trade law has two aspects. From the perspective of domestic law, it defines a country's norms and restrictions on trade. At the level of international law, it establishes some rules for dealing with disputes that may be caused by these norms and restrictions. It serves as a bridging and coordinating function. ¹Tariff wars are largely legal battles, and as long as there are differences in national laws, it is impossible to avoid conflicts at the international level.

To give an example from the perspective of international investment law, in *Garanti Koza v. Turkmenistan*, the applicant argued that the effect of the umbrella clause would elevate the breach of contract in that case to a breach of the host government's treaty obligations. The tribunal held, however, that a mere breach of a commercial contract did not automatically constitute a breach of a treaty obligation, but that a government act that gave rise to a breach of an obligation related to the investment of a foreign investor in that country would fall within the scope of the umbrella clause. It can be seen that in the transaction process between the investor and the host country, the obligation can be upgraded, and the nature of the dispute can also shift. To some extent, trade wars have also evolved from disputes in different aspects between countries. The diversity of factors that cause trade wars determines the inevitability of their normalization.

2. Is Free Trade Really Free? — There Is No Absolute Free Trade

2.1 The Extent of Free Trade

The opposite of free trade is trade protectionism. And the so-called trade protectionism is also terminable. Inevitably, it will eventually return to free competition in the international market. And it is impossible to get the protection from its home country forever. Germany has adopted a national tariff protection policy to protect its industries and to prevent the impact of free trade on a large number of industrial products from damaging the development of its industries. At the same time, the degree of freedom chosen by countries in favor of free trade is bound to vary, and there are different preferences at different times, and many factors will affect the country's choice of the degree of freedom. For example, when Britain was the most developed industrial country in the world, the reason why Britain constantly emphasized the benefits of free trade was that it could bring enormous economic benefits.

Trade frictions are inevitable in the pursuit of free trade when the consequences are not in line with national expectations or when compliance with commitments leads to sustained damage to one's own interests. In recent years the link between trade and investment has been strengthened, on the one hand, international trade and investment are no longer just two kinds of internationalization strategy in the sense of substitutability, the investment behavior has been able to achieve through the adjustment of the production location of the scale of trade and flow change, and the degree of openness of the trade, the level of facilitation as well as the overall scale of the investment will become a key factor in determining the investment. ²The role of international investment in promoting trade development is increasing. From the perspective of international investment, many countries cannot fully foresee the risks they may face when signing treaties or formulating provisions. Today, when international investment disputes arise, countries most often advocate the rules that were in place before 2000 or 2012, because at that time most countries were eager to develop their economies and were willing to pay for it, and did not have the heart to think about the disputes that these treaty provisions might bring to

¹ Peng Yue, (2021). The American Law Roots of the US-China Trade War and China's Response. *Journal of Wuhan University (Philosophy & Social Science Edition)*, 74(02).

² Zhang Yu, (2023, November 6). Promoting the Construction of a Strong Trade Country with the Integrated Development of Trade and Investment. *Economic Journal*.

them in the future. Today's international investment has slowly shifted from protecting investors to respecting the laws of the host country. For example, in the case *Inceysa v. El Salvador*, investments that do not meet the conditions of the domestic law of the contracting state will not be accepted by the host state, and the scope of protection of BITs explicitly excludes investments that violate the law; and in *Fraport v. The Philippines* as well, even though under the law of the host state, investments that are not lawful may also contribute to the economic growth of the host state, sometimes economic growth is not the only goal of the international investment law. The integrity of the host country's laws is also a key concern of international investment law.

It follows that there are always limits to freedom, whether between individuals, between investors and States, or between States and that there are implicit limitations to freedom.

2.2 *The Partners in Free Trade*

The choice of the partners in free trade is crucial. The biggest trading partner of a country is usually the neighboring countries. Such as the United States, Canada, and Mexico. However, some countries and organizations will also become Allies because of similar ideas. The choice of who to trade with determines the upper limit of free trade, while a trade war can only affect the free-trade with a few countries.

It is exactly because of the trade war that free trade is more meaningful. In the trade war between China and the United States, the trade-related measures taken by the United States against China obviously have a deeper goal. In other words, America's economic goals are just an external expression of its political attitude. Facing the situation, the trade war is indeed damaging to us, but if we abandon the strategy of free trade, the damage will only be further amplified. There is a logical problem here. If trade wars are inevitable and frequent, then we need free trade all the more to strengthen friendly relations with other countries to make up for the losses suffered in trade wars.

3. **Is the Impact of a Trade War on Free Trade Necessarily Negative?**

3.1 *The Nature of Trade Wars*

Trade frictions are not just about trade. Just as free trade is an important part of achieving a country's political and cultural goals, so is a trade war. It can be seen that trade measures have become an important means for many countries to achieve their own goals, and it is also a strategy for economic powers to achieve political goals. Whether to launch a trade war or not largely depends on a country's culture. Every country has its own temper and personality. Some of the US's actions are clearly designed to shift domestic tensions to its trading partners. Such actions are extreme. In the China-U.S. trade war, the trade friction between China and the United States is not just a trade dispute, but a means for the United States to restrain China's excessive development. It is also an open challenge to the WTO multilateral system based on the theory of comparative advantage and free trade.¹ The US wants to monopolize its position in the financial market as well as its global hegemony, and this ambition has become clear from a very early time. In the early days, unilateral US sanctions were mainly based on the Trade with the Enemy Act, and the International Emergency Economic Powers Act, and in recent years, the National Emergency Act. These acts have the obvious aim of rationalizing their actions. In view of this situation, we must further improve our anti-foreign sanctions legal system to deal with the possibility of greater disputes that may arise in the future.

3.2 *The Meaning of Trade Wars*

Trade wars are not always bad. As the saying goes, countries can be friends, foes, or both. The normalization of trade wars will also allow each country's style and temper to be more transparent, which is a good reference for future cooperation. There are no permanent enemies in this world, and the interest is always the key. As long as free trade can bring benefits to a country, then it is meaningful. The benefits here are not only about economic, but also about political and cultural level. Economy, politics and culture are all closely related.

If there is no trade war between economic powers, then peace will only be superficial. As long as there is trade, there will be friction, if it is two people or countries with equal strength, then it is inevitable that the two will be in a fierce competition relationship for a period of time.

When the foreign investment law is inconsistent with the international investment treaty, it is easy to cause disputes, which will hinder the process of the modernization of the investment law. However, these disputes can make us more cautious when participating in treaty-making and contract drafting in the future, and we can be more clear about what we want and what is most important to us.

Regular trade wars will certainly have an impact on the economic side of the country, but the cost we pay on the economic side is likely to give us more things, propelling the country into a new phase of development and continuous upgrading of the country's soft power. Joseph said that national power and capability equals soft

¹ Liu Jingdong, (2018). The "trade war" between China and the United States is not simply a trade issue. *People's rule of law*, (10), 14-18.

power plus hard power equals smart power. The economic sphere is not a piece of paradise that exists in isolation but is only a part of national power. Not to mention the fact that temporary concessions in the economic sphere may be exchanged for longer-term economic benefits, any change in the economic sphere may contribute to the enhancement of our soft power, thus enabling us to reach a higher level of economic development.

4. Conclusion

4.1 Trade Wars Characterize the Economic Development of Economic Powers

The impact of trade wars is there for all to see, but trade wars are still the specialty of economic powers today. Small countries do not have the capacity to initiate a trade war, much less to bear the consequences.

Economic policy is a reflection of the consciousness of mainstream interest groups, and economic frictions, big or small, are essentially a clash of mainstream values of various countries. Some countries, however, are not likely to launch a trade war when their interests are damaged, because they are busy enough with their own affairs. They often do things that go against their own commitments, and to a large extent, they change their policies and laws according to the most serious problems at the moment, without considering the big picture. Nor do they need a big-picture perspective, because their strength and level of economic development do not support them in full free trade, much less in honoring all their commitments to other countries. They can even do more damage to themselves if they fulfill all their promises.

For these countries, what we need to do is to clarify the relevant terms so that we have more leverage to defend our interests in future disputes. In order to conduct free trade with these countries, we must clearly realize that many advantages such as Preferential policies have their costs and risks. Compared with the more obvious political and economic tendencies of economic powers, the strategies and attitudes of these countries are often deeply hidden. This also illustrates the value of trade wars by making countries' attitudes clear and their behavior predictable.

4.2 Attitude Towards Trade Wars Matters

In fact, not only trade wars, but also the impact of daily trade frictions should not be ignored. The reason why trade frictions do not unduly affect bilateral relations is largely because they do not touch on the fundamental interests or principles of both sides. When the trumpet of a trade war blows, we should first realize that it is not only a war but also a stage to show our attitude and value orientation to all countries. We are actually reporting to all countries — giving a reminder to those who disagree with us, and an invitation to like-minded potential trading partners.

Since the trade friction between China and the United States started, many Chinese companies and individuals have been fined by the relevant U.S. authorities for violating U.S. sanctions. In addition to striving to be removed from the sanctions list, settling with the U.S. authorities, or filing lawsuits in U.S. courts, Chinese entities and individuals facing such situations should clarify the relevant terms in their contracts and review the contracts in advance to ensure business compliance.¹ As seen in past investment disputes, regardless of the method of settlement, when the development of various systems is still immature and the provisions of the treaty are not clear and specific, the judgment of the case depends largely on the terms and conditions explicitly agreed upon by the two parties to the dispute, or the explicit limitations of a country's domestic law. Even the commitment of the state, but also must be clear, specific and written on paper. Whether it is *Huawei v. United States*, *Yida v. U.S. Department of Commerce*, or *Xiaomi v. Department of Defence*, it can be seen that Chinese companies want to challenge the unilateral sanctions of the United States of America's behaviour is very difficult. This is very similar to the situation facing international investment disputes today. There is still a lack of predictability in the outcome of international investment disputes, to which we must make corresponding adjustments at both the internal and external levels.

In addition, we can take the initiative to cooperate with the United States in reforming the WTO rules in order to address the institutional contradictions and shortcomings of the WTO rules.² In the future, we must further improve domestic laws and regulations, further familiarize ourselves with international rules, and cultivate more economic and legal talents.

4.3 Free Trade Is Eternally Significant

There are two aspects. On the one hand, the situation of international trade is a bellwether for everyday trade of all kinds, large or small. Most people have come to realize that trade relations between countries have become closely related to our daily life and relations among countries. As trade and investment become more intertwined,

¹ Gong Baohua, (2019). Sino-US economic and trade legal issues and response. *Economic and Trade Law Review*, (06).

² Wang Qichang, (2023, September 23). What to do — Review of the book Shen Wei, China-US Economic and Trade Friction and the Transformation of the International Economic Order. Shanghai Jiao Tong University Press, 2023 edition.

relations between countries and investor-state relations will also interact. If there is no free trade between countries, there is no basis for political and cultural communication.

On the other hand, free trade has different meanings for countries at different stages of development, and countries can only maximize the value of free trade to themselves when they develop to a certain degree. For the world's major economic powers, the choice to promote free trade may have had some adverse effects. But for many small countries that are still developing, and for those that are strong in one area, the value of free trade is far greater than its potential negative impact. Despite the burdens that free trade imposes on individual countries, a country cannot develop without it.

There is always some space for a country to use its discretion on the degree of freedom, and free trade will never mean compromising with anyone or benefiting only one party. The horizontal and vertical, internal and external impacts of free trade have made it impossible for us to give up the benefits that free trade has brought us. Trade wars are in fact a product of free trade, and our task should be to identify our own problems through trade wars so that we can move on to the next stage of free trade with a better outlook. Of course, the scope and object of a country's free trade is always changing. Behind the normalization of trade wars is still a conflict of ideas. Since it is a conflict of ideas, it can never be avoided. Instead of considering whether free trade is still meaningful today, we should consider how to improve the environment for free trade. The recent meeting between the Chinese and American heads of state has shown that the relationship between China and the United States will be stable. This is not because the two sides cannot afford to lose, but because they will win more if they work together.

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