

Louise Curran* and Jappe Eckhardt

Influencing trade policy in a multi-level system—understanding corporate political activity in the context of global value chains and regime complexity†

Abstract: The increasing impact of the international trade governance regime on the domestic regulatory sphere and the growing inter-linkages between international companies through their involvement in global value chains, have complicated corporate political activity (CPA) in the trade arena and changed the way companies interact with governments in this context. This paper draws on several recent examples of novel forms of CPA in trade conflicts at both multilateral and regional (E.U.) level, to provide an updated conceptual framework of trade policy CPA, which takes account of the increasing complexity and interconnectedness in the world economy. We highlight, in particular, the fact that this changing context means that “domestic” interests are often heterogeneous. The international linkages of a firm may dictate trade policy preferences more than its nationality. In addition, non-government actors increasingly react to globalization by mobilizing transnationally, with positive and negative impacts for CPA. CPA strategy has adapted to that reality, in both home and host country contexts, leading to novel cross border alliances and even political activity in countries where, although their local presence is relatively low, companies find common interests.

Keywords: WTO disputes, trade policy, transnational corporate political activity, “sin” industries, global value chains

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***Corresponding author:** Louise Curran, Université de Toulouse, Toulouse Business School, Department of Marketing and International Business Toulouse, France. Email: l.curran@tbs-education.fr

Jappe Eckhardt, Department of Politics, University of York, York, United Kingdom. Email: jappe.eckhardt@york.ac.uk

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1 Introduction

Companies' interactions with their non-market environment have attracted much academic attention in recent decades. Baron defined the non-market environment as including "those interactions that are mediated by the public, stakeholders, government, the media and public institutions."¹ He argued that the effective integration of market strategy with non-market strategy (NMS) optimized firm performance. Since then the field of research on NMS has considerably evolved. A key focus of this research has been on Corporate Political Activity (CPA), which explores interactions with government and public institutions, defined as: "...corporate attempts to shape government policy in ways favorable to the firm."² Much work on CPA has focused on trade policy, which has historically been a pivotal public policy affecting business.³ One of the key contributions is Baron's own work. In particular, his conceptual framework on trade policy-making, and the work based on it, has been highly influential in theory building in the field of CPA.⁴

The other key NMS research stream explores Corporate Social Responsibility (CSR), defined as "...context-specific organizational actions and policies that take into account stakeholders' expectations and the triple bottom line of economic, social, and environmental performance."⁵ This research has tended to focus more on interactions with the public, stakeholders, and the media.⁶ Several scholars have recently called for a more effective integration of these two streams, which have developed rather independently of each other.⁷

In this paper, we focus primarily on the CPA aspect of NMS, with an emphasis on trade policy. Since Baron published his seminal work, the range of issues covered by trade policy has expanded, making it pertinent to a wider range of business and non-business interests.⁸ At the same time, globalization and the emergence of global value chains (GVCs) have changed the nature of linkages both between and within firms and with their home and host governments, as well as encouraging non-governmental organizations (NGOs) to militate at the international level. As a result of these different factors, CPA in the trade arena has

1 Baron (1995), 47.

2 Hillman, Keim, and Schuler (2004), 838.

3 Baron (1995; 1997); Vogel (1996).

4 Baron (1995; 1997).

5 Aguinis and Glavas (2012).

6 See Frynas and Stephens (2015) and Scherer et al. (2016) for recent reviews.

7 Den Hond et al. (2014); Lock and Seele (2016).

8 Woll and Artigas (2007).

changed significantly. Yet Baron's trade policy-making conceptual framework and the work based on it has not been revisited to take account of these evolutions. In this paper, we will argue that some of the assumptions behind Baron's framework now require revision. We focus on the following question: *how have the globalization of value chains and increasing coverage and complexity in international trade governance impacted CPA in the trade policy arena?* In answering this question, we develop a modified conceptual framework of CPA and trade policy, which integrates today's more global and complex context in terms of production, stakeholders, and trade governance.

Our modified framework will integrate two important evolutions, which are absent in Baron's conceptualization and most of the work building on it. Firstly, the globalization of production structures and trade governance and the consequent emergence of transnational and multilateral lobbying and, secondly, the expansion of the trade policy arena beyond classic trade issues and traditional company actors.

In terms of the first evolution—globalization—most existing work on CPA and trade policy is based on a classic two country/two industry model (in Baron's case, United States/Japan: Kodak/Fujifilm), with lobbying focused on the home country and the bilateral relationship. Baron acknowledged that the "home" country of company headquarters may not be the best perspective and that the "rent chain" might be a better lens to view the likely political influence of a company.⁹ This concept of mobilizing the rent chain for more effective CPA was further developed in a later paper, where he noted: "In addition to sharing the cost of nonmarket strategy more broadly, *rent chain mobilization* can contribute to the *coverage* a firm or coalition can generate."¹⁰ However, he did not incorporate international activity into his framework, where policy-making remains essentially domestic—the *coverage* of a rent chain coalition was defined in terms of number of (U.S.) legislative districts mobilized. We argue that the expansion of GVCs has considerably expanded the potential for interest mobilization beyond the home country. In the Kodak/Fuji case, the rent chain and the home country coincided, a situation which was common at the time. However, in recent years we have seen an increasing number of Multi National Enterprises (MNEs) undertaking CPA outside of their home country, in response to threats and opportunities along their "rent chain."

In addition, another factor anticipated in Baron's work—the growing importance of action at the multilateral, rather than the bilateral level¹¹—has also become much more generalized in CPA. This has particularly been the case

⁹ Baron (1997), 158.

¹⁰ Baron (1999), 22, emphasis in original.

¹¹ Baron (1997), 164.

since the founding of the World Trade Organization (WTO) in 1995 and the establishment therein of a more effective and binding Dispute Settlement Body (DSB). We argue here that the internationalization of both production and trade governance need to be more effectively integrated into our understanding of how companies interact with the political process through their nonmarket strategies.

The second important evolution, which we highlight in this paper, is how “trade” policy has expanded well beyond classic “trade” issues and now involves a much wider range of actors.¹² As Vogel pointed out in 1996,¹³ CPA expanded because the government’s role in the economy increasingly incorporated issues with a direct impact on companies’ business models, like health, safety, and environmental protection. Since then, the trade policy remit has itself expanded. Increasingly the DSB is called upon to rule on domestic regulation on precisely the issues Vogel highlights, in view of their links to trade. There is now a growing body of jurisprudence from the WTO DSB relating to the compatibility of national regulation with member states’ WTO commitments, including key issues like environmental protection and public health. This has widened the trade policy remit, but has also increased its relevance to civil society actors, who have consequently expanded their transnational advocacy.¹⁴ Given their potential to affect national governments’ legislative autonomy, WTO judgments have been subject to extensive scrutiny by academics and civil society.¹⁵ Thus, in tandem with an expansion of the domestic political agenda affecting business, that same agenda has increasingly been subject to scrutiny by the international trade regime, bringing trade policy center stage once more in terms of MNEs’ concerns and providing multi-level arenas for CPA on regulatory issues.¹⁶

Empirically, this paper draws on the analyses of a series of recent trade disputes, at multilateral and regional levels, which highlight how globalization, GVCs (as “rent chains” are now more commonly termed), and increasing regime complexity, have changed the CPA strategies of MNEs. Based on these analyses, we propose a revised model of international CPA in the trade policy arena, taking into account the evolutions described above. Although our focus is on trade policymaking, the important characteristics and interactions identified in this paper are also relevant to understanding CPA more widely, as well as to other areas of NMS. For example in the area of CSR, recent research has highlighted how the rise of

¹² Woll and Artigas (2007).

¹³ Vogel (1996).

¹⁴ Betzold (2014); Eilstrup-Sangiovanni and Phelps Bondaroff (2014); Mukherjee and Ekanayake (2009); Rietig (2016).

¹⁵ For example: Howse and Levy (2013); Read (2005); Vogel (2013); Davis (2009).

¹⁶ Woll and Artigas (2007).

international NGO movements and extensive networks between stakeholders, have forced companies to adapt their strategies.¹⁷ In addition, the evolutions we highlight—the growing influence of NGOs in regulatory debates, the variety of interests coexisting within domestic industry, and the potential for companies to engage in multi-level CPA—have the potential to impact CPA in many different issue areas, from environmental protection to taxation policy. Our objective, therefore, is to contribute not only to analysis of trade policy making, but also to our wider understanding of how CPA is adapting to a more integrated and multi-level global context.

2 Research on CPA in the trade policy arena

Research on CPA is extensive and growing. Furthermore, as pointed out by several scholars, CPA literature does not rest on a single unique theory. Rather a variety of different theoretical lenses and methodological approaches have been used to interpret firms' political behavior.¹⁸ Our objective here is not to summarize this wide body of work. There are several recent comprehensive reviews of the literature.¹⁹ These highlight that existing research has tended to focus on why firms engage in CPA and whether it affects performance,²⁰ as well as understanding the context of CPA, especially the impact of institutions.²¹ Our focus is less on the former questions of the antecedents and outcomes of CPA, than on the latter, of how to better understand its evolution in the context of shifting institutional contexts.

In terms of the different models and typologies presented in the literature,²² our objective is to contribute to understanding the interaction between CPA and firms' evolving institutional context, specifically the work which Lawton and his co-authors identify as seeking to "...help explain the process of change and adaptation of CPA in the context of globalization.²³" As their review highlights, much of the work in this research stream has looked at CPA in emerging markets and has focused on the national level. The potential for multilateral trade liberalization

17 Lucea and Doh (2012).

18 Doh, Lawton, and Rajwani (2012); Hillman et al. (2004); Lawton, McGuire, and Rajwani (2013); Shaffer (1995); Mellahi et al. (2016).

19 Shaffer (1995); Hillman et al. (2004); Lawton et al. (2013); Lux, Crook, and Woehr (2011); Mellahi et al. (2016).

20 Hillman et al. (2004); Lux et al. (2011); Mellahi et al. (2016).

21 Doh et al. (2012); Lawton et al. (2013).

22 Doh et al. (2012); Hillman et al. (2004); Lawton et al. (2013); Mellahi et al. (2016).

23 Lawton et al. (2013), 93.

to change government business relations is noted in the review, however work in the area is little explored.²⁴ This is unfortunate, as CPA needs to adapt, not just to the rise of emerging markets, but also to the expansion of GVCs and global trade governance. Several existing analyses, which we will draw on in this paper, contribute to our understanding of this process of change. This paper seeks to better integrate these insights into our understanding of CPA.²⁵

The aforementioned work by Baron²⁶ is of course a seminal contribution to existing understanding and theory building on CPA. His work draws heavily on cases of company CPA (mainly in the US) related to trade policy or intergovernmental negotiations²⁷ and has generated an extensive body of literature. Much of this research has focused on: a) the domestic context, analyzing how companies seek to influence their government;²⁸ b) the factors which affect such influence;²⁹ and c) the role of non-business groups in counteracting business led CPA.³⁰ However, we will argue that the nature of CPA in the trade arena has evolved considerably since Baron's early conceptualization and that a wider set of factors needs to be integrated into our conceptual framework of CPA in the trade policy context.

Firstly, most existing work views trade lobbying as an internal domestic activity, where a given government's political choices are the result of lobbying by domestic actors.³¹ The conventional view is that import-competing firms lobby domestically for protectionist policies, while exporters encourage domestic decision makers to negotiate trade deals that increase access to foreign markets.³² In other words, the assumption is that independent, domestic based company lobbying is the norm in the trade arena. A lack of trust is assumed to exist across companies and, even more so, across borders, which precludes cooperative CPA

24 The only relevant paper referenced in Lawton et al.'s (2013) review, is one on how WTO membership transformed government business relations in Brazil: Shaffer, Ratton, Sanchez, and Rosenberg (2007).

25 Doh, McGuire, and Ozaki (2015); Davis (2009); Lawton, Lindeque, and McGuire (2009); Shaffer (2003).

26 Baron (1995; 1997).

27 These are, in Baron (1995) the Cemex antidumping case, Toy'R'Us lobbying of the government to put pressure on Japan to revise regulations on retailing and in Baron (1997), Kodak's filing of a Section 301 case in the United States to force the government to address restrictions on their market access in Japan.

28 For example: Brook (2005); Lindeque and McGuire (2010); Solis (2013); Thacker (2000).

29 For example: Hillman, Long, and Soubeyran (2001); Lindeque and McGuire (2010); Solis (2013).

30 For example: Farrand (2015); Schnietz and Nieman (1999).

31 See, for example, Schnietz and Nieman (1999) on lobbying around the U.S. Fast Track Authority and Brook (2005) on U.S. steel sector lobbying.

32 Dür (2010); Friedan and Rogowski (1996); Goldstein and Martin (2000).

beyond limited sectoral or local groups.³³ However, the global expansion of MNEs and their economic activities has modified the incentives for lobbying across companies, countries and non-state actors. Through their geographically dispersed investment and sourcing, MNEs now have extensive political leverage with foreign (host) governments. In addition, their activities impact on sustainable development, in ways which NGOs may support or challenge. They can therefore create alliances across a wider range of actors with shared strategic interests, many of whom may be “foreign.”

Secondly, and related to our first point, the growing importance of GVCs complicates the concept of company and national interests, with effects on the instigators and targets of CPA. At the same time as Baron was developing his ideas on trade policy-making, Gary Gereffi was starting what was to become a wide and rich research stream on the emergence of GVCs.³⁴ It is now well accepted that “[t]he fragmentation of production across [GVCs] and the importance of foreign inputs in virtually all sectors,”³⁵ have become a dominant economic reality in the twenty-first century. We argue that, as a result of the globalization of production systems, the aforementioned traditional model of trade policy, as a political battle between import-competitors and exporters, is no longer generalized. GVCs have given rise to the political mobilization and empowerment of a wider set of societal interests. In particular, “import dependent firms” (IDFs), defined as: “...those which rely on income created by imported goods or on the import of intermediate products for their production process,”³⁶ have increasingly become politically active at home and abroad. This trend for consuming industries to mobilize and defend their preferences in the political arena was already evident in the early years of this century, when car manufacturers complained of the negative impacts of anti-dumping action on steel imports.³⁷ However, as we will demonstrate below, there are now several recent cases, where CPA by import-dependent firms has been more pro-active and organized.

In addition, GVCs have increasingly been subject to scrutiny and activism by civil society actors in relation to their impact on the environment and potential to undermine labor standards, especially in developing countries.³⁸ Much transnational NGO advocacy has focused on environmental policy.³⁹ However, civil

³³ Grossman and Helpman (2002), 149.

³⁴ Gereffi (1995); Gereffi (1999); Gereffi, Humphrey, and Sturgeon (2005).

³⁵ Tagliani and Winkler (2014), XV.

³⁶ Eckhardt (2013), 990.

³⁷ Brook (2005).

³⁸ Bair and Palpacuer (2012); Doh et al. (2015); Plank, Staritz, and Lucas (2009).

³⁹ Betzold (2014); Eilstrup-Sangiovanni and Phelps Bondaroff (2014); Rietig (2016).

society has also been active in the trade policy arena, both in mobilizing against MNEs, when interests are seen to be divergent,⁴⁰ and working with them, especially in pursuit of protection to safeguard employment.⁴¹ We argue that the expansion of GVCs and the increasing power of multilateral institutions have encouraged NGOs, like MNEs, to move beyond their domestic arena and militate transnationally, with corresponding impacts on trade policy.

Thirdly, existing analysis of transnational lobbying (by which we mean firms lobbying a foreign government) in the trade policy context, has tended to assume, rather intuitively, that the objective of that lobbying would be market opening in the lobbied state. For example, research has found foreign firms to be active in lobbying U.S. policy makers to lower barriers in their domestic market,⁴² while empirical analysis has found a correlation between lobbying by foreign companies and lower barriers to related imports.⁴³ Foreign lobbyists, like their domestic equivalents, are assumed to be seeking *domestic* policy change, especially lower import tariffs. Yet, as we will highlight below, this is not always the case. The fact that international trade dispute settlement procedures are inter-state means that any state can bring a case against another state, but companies cannot pursue states at the WTO. Thus, corporate access to the DSB depends on the company's capacity to persuade a state to take a case.⁴⁴ This institutional reality opens another avenue for CPA, which is quite distinct from the domestic policy space and narrow tariff-related trade interests.

Finally, the emergence of a stronger, multilevel governance system within the WTO both expands the reach of "trade" policy beyond classic "trade" issues and increases regime complexity in this policy area.⁴⁵ The WTO, and its DSB in particular, provides a new level of policy-making, or at least policy oversight of domestic policy. This opens up the possibility for company agency on trade policy well beyond the classic issues of domestic market protection or foreign market opening. In addition, as tariffs have fallen over time, barriers to trade are more likely to emanate from "behind the border issues" of domestic regulation,⁴⁶ which have increasingly been challenged in the DSB.⁴⁷ Disputes have covered regulations seeking to protect specific species like sea turtles, dolphins, and seals, as

40 See Schnietz and Nieman (1999) on the role of environmental and labor activists in the successful campaign to deny fast track authority to the Clinton administration.

41 See Brook (2005) on the role of labor unions in a successful campaign to protect the U.S. steel industry.

42 Destler and Odell (1987).

43 Gawande, Krishna, and Robbins (2006); Kee, Olarreaga, and Silva (2007).

44 Lawton et al. (2009), 11.

45 Davis (2009).

46 Cadot and Webber (2002); Winslett (2016); Woll and Artigas (2007).

47 Lawton et al. (2009).

well as consumers and the environment.⁴⁸ Thus WTO law has come to impact on a growing number of sectors and issues areas across its member states. This development provides a new option for MNEs CPA seeking regulatory change.⁴⁹ In this context the national level may no longer be the most appropriate or most efficient arena to challenge domestic regulation.⁵⁰

3 Research question and approach

As indicated in the introduction, our key research question is *how have the globalization of value chains and increasing coverage and complexity in international trade governance impacted CPA in the trade policy arena?* Specifically, we seek to draw on analyses of CPA in recent trade disputes to highlight how company strategy has responded to these joint institutional evolutions. Building on these findings we propose a revised conceptual framework of CPA and trade policy. To inform our analysis, we chose four cases, based on two key criteria. Firstly, that some of, or all, the novel elements which we highlight above can be seen to have influenced company strategy and, secondly, that they were high profile and therefore relatively well documented, both by the media and, with the exception of the very recent Plain Packaging case, academic researchers.⁵¹ We look at the following disputes: the WTO challenge by Antigua of U.S. online gambling legislation, the European Union-China conflict on anti-dumping (AD) action in footwear, the E.U.-China solar panel AD conflict, and the WTO challenge by five countries to Australia's plain packaging legislation for tobacco products.

This paper is a conceptual paper and, as such, is mainly based on secondary data. However, one or both authors have undertaken primary research on all the cases covered in this paper, including interviews with the key actors, which inform our analysis.⁵² We are well aware of the difficulties of generalizing from case studies, however an increasing number of scholars consider that social sciences have become too reliant on quantitative research and have argued that qualitative case studies can provide useful insights for theory building.⁵³ In one of the first attempts to summarize CPA literature, Shaffer noted that case studies had

⁴⁸ Howse and Levy (2013); Sykes (2014).

⁴⁹ Windsor (2007).

⁵⁰ Davis (2009).

⁵¹ Due to this lack of existing research, the section which explores this latter case is slightly longer than the other three.

⁵² Curran (2009; 2015); Curran and Eckhardt (2017); Eckhardt (2011; 2015); Eckhardt and de Bievre (2015); Kolk and Curran (2016).

⁵³ George and Bennett (2005).

provided important contributions and defended their importance: “As a research problem, political influence activities may be particularly hard to describe using statistical methods.”⁵⁴ Indeed, many important contributions to the literature on CPA have drawn on case study evidence,⁵⁵ not least Baron’s own work.⁵⁶ Our aim is to build a new conceptual framework, by generating plausible propositions based on case study evidence, “which do not make sense when viewed in the light of an initial theoretical framework.”⁵⁷ This approach —often referred to as abductive reasoning—is a well-accepted basis for theory-building from case studies.⁵⁸

4 Evolving towards more complex and transnational policy-making—some empirical examples of changing patterns of CPA

This section will explore the four chosen cases of trade conflicts. To put them into context, we will briefly highlight the main features of the Kodak-Fuji case on which Baron’s framework was based. The core of that case was the alleged tolerance of anti-competitive practices in the Japanese market. This practice restricted market access for Kodak and in turn enabled local firm Fujifilm to make abnormal profits, with which they subsidized sales elsewhere. Kodak chose to challenge these practices not in Japan, where it had little political influence, but in its home country, the United States, through a Section 301 market-opening petition. The U.S. administration ruled in favor of Kodak and subsequently complained about Japan’s anti-competitive practices in the WTO. Kodak’s CPA in the case was multifaceted and extensive, but essentially domestic. Although they did seek to undertake CPA in Japan, it seems to have had little impact.⁵⁹

Antigua-U.S. gambling

In 2001, the United States introduced several state and federal laws to severely restrict online sports betting. Under the new rules, it was prohibited for firms (partly) based in other WTO member states to provide cross-border betting services

⁵⁴ Shaffer (1995), 509.

⁵⁵ For example: Eckhardt and de Bievre (2015); Lawton et al. (2009); Lucea and Doh (2012); Shaffer and Hillman (2000); Kingsley, Vanden Bergh, and Bonardi (2012).

⁵⁶ Baron (1995; 1997).

⁵⁷ Andersen and Hanne (2010), 52.

⁵⁸ See, for example: Andersen and Hanne (2010); Reichertz (2004).

⁵⁹ Baron (1997).

to U.S. customers. However, betting offered on horse races by fully U.S. based companies and online lotteries in some U.S. states remained legal. In 2003, Antigua and Barbuda—a small twin-island state in the Eastern Caribbean—brought a WTO DSB case against the United States, alleging that the new U.S. betting laws were in violation of the principle of “national treatment” and hence WTO-incompatible.⁶⁰

The case is interesting in the light of our paper because of the key role of MNEs and their transnational lobbying activities. Small, less developed countries, such as the one involved in this case, rarely use the DSB, given the high costs of WTO litigation.⁶¹ Therefore, external factors seemed likely to be at play and, indeed, research has shown that *transnational* lobbying by a group of U.S. online betting firms played a decisive role in Antigua’s decision to bring the WTO case.⁶² Their choice to lobby a third country government to challenge legislation in the WTO was unusual. As indicated earlier, litigation in the WTO has typically been the result of *domestic lobbying* by powerful import-competing industries seeking protection from their home government⁶³ or large domestic exporting firms seeking to secure access to foreign markets.⁶⁴ The political dynamics in the *Antigua-U.S. gambling case* were very different.

At the end of the 1990s, attracted by its supportive institutional environment, many U.S. online betting firms had moved (part of) their operations to Antigua to serve their American customers. When the United States introduced its protectionist gambling laws in 2001, fifty of these firms formed an ad-hoc interest group—the Antigua Online Gaming Association (AOGA), based in El Paso, Texas—and engaged in an intensive lobbying campaign to convince the Antiguan authorities to file a WTO case.⁶⁵ There is strong evidence that the lobbying efforts of AOGA were crucial to persuading the government to bring the case. In addition, it has been confirmed that AOGA paid all the legal costs and that their lawyer also represented Antigua during the entire case, helping to overcome the resource constraints of this small country.⁶⁶

A key reason why the U.S. online gambling companies turned to a foreign government to file a WTO complaint was that their initial efforts to convince the U.S. authorities (their home government) to lift the trade barriers were unsuccessful. This appears to be largely because of their lack of political resources in the

⁶⁰ Thayer (2004).

⁶¹ Lindeque and McGuire (2007).

⁶² Eckhardt and de Bièvre (2015).

⁶³ Baron (1997); Zimmerman (2011).

⁶⁴ Bown (2009).

⁶⁵ Eckhardt and de Bièvre (2015).

⁶⁶ Ibid.

United States and their limited perceived contribution to the U.S. economy. In addition, gambling, because of its negative social externalities, is considered a “sin” industry.⁶⁷ For gambling, and other “sin” sectors like tobacco and alcohol, this status involves certain costs,⁶⁸ including low political leverage. Finally, the online gambling firms faced powerful opposing actors at the domestic level: traditional gambling companies (especially casinos), several of the major professional sports league associations, and religious groups.⁶⁹ This coalition of opposing domestic interests, including some very active NGOs, further undermined the efforts of the online betting companies to secure support from their home government, leaving them with little choice but to target the host government.

In sum, the *Antigua-U.S. gambling case* challenges the conventional view that, when seeking redress in an international trade dispute, firms lobby their own government. Unlike Kodak, these U.S. MNEs were not seen as important actors in their domestic economy and faced strong opposition from powerful domestic interest groups. They therefore chose to challenge the legislation at the multilateral level, through the state where they based much of their economic activity. The small size and power of that state were counteracted by extensive MNE resources, which were mobilized in support of their challenge. The fact that Antigua won the case on several key points indicates that such a strategy can be effective, although so far the United States has failed to bring its law into compliance, underlining the limitations of even the WTO’s legal machinery.

E.U.-China Footwear

In 2005 the quota system, which had restricted trade in many fashion goods, came to an end and trade between WTO members was liberalized. It quickly became evident that the liberalization was strongly impacting exports from China, which increased very rapidly to most affected markets.⁷⁰ Intense pressure was put on policy makers by local manufacturers in both the European Union and the United States to react. In the case of the E.U. footwear sector, the outcome was an industry request for an AD investigation to secure protection against “dumped” exports. Further to the ensuing investigation, the decision was made to impose anti-dumping duties (ADDs) on Chinese and Vietnamese footwear. The case has been subject to several in-depth analyses, which we will draw on

⁶⁷ Liu, Lu, and Veenstra (2014).

⁶⁸ Leventis, Hasan, and Dedoulis (2013).

⁶⁹ Schwartz (2005).

⁷⁰ For further explanation of the evolution of trade in the textiles sector see Lawton and McGuire (2005).

here.⁷¹ These studies highlight both how divisive the case was for E.U. Member States⁷² and how active a variety of companies were in lobbying both for and against the duties.⁷³

Importantly, the domestic import-competing producers who were in favor of ADDs were not alone in lobbying E.U. governments and the European Commission. E.U. companies with vested interests in low cost imports also mobilized and lobbied against protection. They established two ad-hoc lobbying platforms: the European Branded Footwear Coalition (EBFC), representing branded footwear and the Footwear Association of Importers and Retail chains (FAIR), mainly representing retailers. In addition, the pre-existing Federation of the European Sporting Goods Industry (FESI) lobbied heavily (and successfully) to exclude sport shoes from the investigation.⁷⁴

One of the notable aspects of this case is that import-dependent firms (domestic retailers and brands operating within GVCs) can mobilize and lobby effectively. This is counter to received wisdom that domestic import-competing or export-oriented producers, are essentially the key lobbying actors in the trade policy arena. Lawton and McGuire have argued that the propensity of the E.U. textiles sector to lobby for trade protection has been mitigated by the availability of other adjustment strategies to cope with trade liberalization, including out-sourcing.⁷⁵ A similar process has resulted in a more diverse range of policy preferences within the footwear sector. As a recent analysis concluded, "...the conventional wisdom of political economy, that import-competing firms can overcome collective action problems in a way that consumers and others cannot and drive protectionist policies, is no longer a fully accurate description of trade politics."⁷⁶ Eckhardt argues that import-dependent firms, in particular, are increasingly mobilizing politically and postulates that they do so in cases where the costs of adjustment are high (there are limited alternative sources) and the costs of mobilization are low (an existing lobby group exists, or firms are relatively concentrated and easy to mobilize).⁷⁷ Both conditions were met in the footwear case.

What makes the footwear case particularly interesting, in the light of this article, is that it also involved multilateral action. The E.U. procedure for investigating Chinese (and Vietnamese) companies in anti-dumping cases was different to

71 Curran (2009); Dunoff and Moore (2014); Eckhardt (2011).

72 Curran (2009); Dunoff and Moore (2014).

73 Eckhardt (2011).

74 Ibid.

75 Lawton and McGuire (2005).

76 Dunoff and Moore (2014), 177.

77 Eckhardt (2013); see also Eckhardt (2015); Yildirim et al. (2017).

most other countries, as they were not yet considered by the European Union to be Market Economies.⁷⁸ This particularity became the basis of a WTO DSB challenge by China. There is convincing evidence that E.U. footwear retailers, together with their Chinese suppliers, were instrumental in persuading the Chinese government to launch what was only their second WTO case against the European Union.⁷⁹ Their objective was clearly to avoid the continuance of the AD action and reduce the chances of future action. In as much as the WTO ruled in favor of China on some aspects of the case, while the E.U. ADDs expired without challenge in due course, their objectives seem to have been achieved.

Thus, the footwear case challenges the classic view of CPA in the trade policy arena in two ways. Firstly, import-dependent firms in the European Union overcame the intrinsic difficulties with collective action to lobby against trade protection and secondly, once they failed to secure an overtly positive outcome domestically, these same E.U. companies engaged in transnational CPA and lobbied a foreign government to challenge their own governments' handling of the case at the WTO.

E.U.-China solar panels

In July 2012, a coalition of E.U. solar panel producers who had mobilized together in an ad-hoc alliance called Prosun, filed a complaint with the European Commission alleging that Chinese solar panels were being sold on the E.U. market at dumped prices. The complaint followed impressive growth in Chinese solar exports globally and a similar case in the United States, where ADDs had been imposed a few months earlier. Almost immediately another ad-hoc lobby group—the Alliance for Affordable Solar Energy (AFASE)—was formed to oppose the proposed AD action.

These trade tensions in the solar sector have also been subject to quite extensive analyses, which have highlighted the strong interdependence between the E.U. and Chinese solar panel industries, as well as the extent to which companies adjusted their production structures in response to new restrictions.⁸⁰ Studies have also highlighted the controversy around the proposed imposition of ADDs on solar panels, in the European Union⁸¹ and the United States.⁸² The arguments mobilized by the AD opponents in AFASE were similar to those in the footwear

⁷⁸ Dunoff and Moore (2014).

⁷⁹ Eckhardt and de Bièvre (2015).

⁸⁰ Curran (2015); Dunford et al. (2013); Lewis (2014).

⁸¹ Kolk and Curran (2016).

⁸² Carbaugh and St. Brown (2012).

case: Increasing the costs of solar panels would disadvantage E.U. consumers, retailers, and installers. However, there was a wider group of interests involved in AFASE, which had over 800 members by the end of the case. These included not just importers, but exporters of raw materials and manufacturing machinery to the solar panel industry in China, as well as Chinese exporters themselves. It was therefore, not only an inter-sectoral company grouping, but also a transnational one, quite a rare undertaking outside of regional structures like the European Union. The nature of the product also ensured that the interests of the environmental lobby were mobilized. Environmental NGOs, although they did not join AFASE, issued a supportive press release underlining that low cost solar energy was necessary if the European Union was to meet its commitment to transition from carbon intensive energy sources.⁸³

It is the cross-country element of the lobbying coalition, which is most novel in this case. It is a clear example of transnational CPA. That E.U. retailers in the footwear case could overcome their collective action problems to lobby together was understandable, given their high costs of adjustment (few alternative high volume/low cost sources) and low costs of mobilization, not least because they were relatively concentrated large companies.⁸⁴ That Chinese exporters and their E.U. customers should lobby collectively in a relatively fragmented industry is more surprising. However, it is well established in the literature that a perceived threat to material interests, because of changes in market conditions, is a primary condition affecting a firm's decision to lobby.⁸⁵ The potentially high costs of adjustment to new trade costs were certainly a key motivation: E.U. importers had few alternative sources with China's production capacity.⁸⁶ For the Chinese exporters, they were highly reliant on the E.U. market, where their business model was under threat.⁸⁷ As the case advanced, the involvement of Chinese suppliers became less evident, partly in response to heavy criticism by the domestic solar lobby of the involvement of "foreign" companies in the political process.⁸⁸ This experience shows that, even if transnational groupings succeed in overcoming their collective action problems to lobby together, certain MNEs still face problems

83 World Wildlife Fund (2013).

84 Eckhardt (2011).

85 Vernon (1966), 200, explained it thus: "...any threat to the established position of an enterprise is a powerful galvanizing force to action; in fact...[a] threat in general is a more reliable stimulus to action than an opportunity is likely to be." Since Vernon's observation, research has shown that firms are indeed much more likely to lobby when faced with potential losses in revenue than in pursuit of a lucrative market opportunity. See, for example, Dür (2010).

86 Curran (2015).

87 Kolk and Curran (2016).

88 Ibid.

of legitimacy in the domestic political process linked to their “Liability of Foreignness.”⁸⁹

Thus, the solar case, like the footwear case, highlighted the fact that differential integration into GVCs is increasingly changing the balance of interests within “domestic” industry. In addition, it is creating the conditions for both import-dependent firms and foreign companies to engage more actively in the political process in defense of openness. The case shows that, under certain circumstances, foreign companies may become involved in CPA. The Chinese companies in this case were instrumental in establishing the AFASE alliance. Rather than relying on their home government to put pressure on the European Union, they actively engaged in the political process within the European Union.

WTO challenge by five countries to Australia’s plain packaging legislation

In 2012 Australia became the first country in the world to introduce a legal requirement that cigarettes and other tobacco products be presented in plain packaging (PP), as a public health measure to reduce tobacco consumption. This move was vehemently opposed by the tobacco industry, who argued that their intellectual property was being appropriated. They challenged Australia’s legislation on several levels. Firstly, in Australia itself, where Japan Tobacco International (JTI) and British American Tobacco (BAT) mounted an unsuccessful challenge in the Australian High Court.⁹⁰ The next challenge was bilateral—through the Hong Kong-Australia Bilateral Investment Treaty (BIT)—where Philip Morris International (PMI) challenged the new law.⁹¹ This was rejected for jurisdictional, rather than substantial reasons.⁹² Finally, at the multilateral level, the Ukraine, Honduras, the Dominican Republic, Cuba, and Indonesia brought a series of DSB cases against Australia in the WTO. Their claims centered on the alleged infringement of several articles of the Trade Related Intellectual Property Rights (TRIPs) agreement, due to the banning of company logos and trademarks.⁹³ This case is still ongoing, although Ukraine has withdrawn its complaint following a change of government.⁹⁴

⁸⁹ Zaheer (1995).

⁹⁰ Marsoof (2013).

⁹¹ Mitchell and Wurzberger (2011); Voon and Mitchell (2012).

⁹² PMAL (2015).

⁹³ Fooks and Gilmore (2014).

⁹⁴ Miles (2015).

In the context of this paper, the political behavior of the transnational tobacco companies (TTCs) is interesting for three reasons. Firstly, the action took place at the national and the international level at the same time. As WTO litigation is a very costly affair, the traditional view is that firms only resort to lobbying for WTO action after all other options have been exhausted.⁹⁵ However, the TTCs were engaged in lobbying for WTO litigation, while at the same time also pursuing investor state arbitration in the context of a BIT and a domestic court case in Australia. The recourse to several different policy arenas is unusual. In the presence of high levels of uncertainty about the outcome of different levels of action, it seems likely that the TTCs saw the choice of several different arenas as the most effective way to secure a positive outcome. Brook has argued that, even in the U.S. domestic context, the complexity of trade policy-making requires a meta-strategy, which, although it may appear to consist of “do everything and see what works,” is in fact a conscious integration of sub-strategies, which are mutually supportive.⁹⁶ Pursuing such a “meta-strategy” also provides the opportunity to shift the framing of the key points at issue to the most supportive arena, as the outcomes at different levels emerge.⁹⁷

Secondly, the choice of governments for CPA in this case was unusual. Establishing common interests with a member state of the WTO was an inevitable step in mounting a multilateral challenge. As highlighted above, only states can bring cases against other governments’ policies in the WTO. However, one would have expected BAT or PMI to lobby their home state (the United States) to challenge the Australian legislation in WTO rather than Ukraine, Honduras, the Dominican Republic, Cuba, or Indonesia. In the case of tobacco, the reason for the recourse to host countries seems to lie in the limited political influence of these companies in their “home” countries. Like in the gambling case above, tobacco is considered a “sin industry” and thus suffers from a growing lack of political support. This is especially so in developed countries, with increasingly extensive and well-established tobacco control regulation.⁹⁸ Non-governmental actors have been an important factor in this evolution, with an “epistemic community” of NGOs, academics and public health professionals increasingly capable of challenging the strategies of tobacco companies internationally.⁹⁹ As a result, the chances of persuading the home country of one of the TTCs to pursue a case

⁹⁵ Bown (2009).

⁹⁶ Brooks (2005), 19.

⁹⁷ Bach and Blake (2016).

⁹⁸ Holden and Lee (2009).

⁹⁹ Mukherjee and Ekanayake (2009).

were low and the pool of likely target states for CPA beyond their home countries was relatively limited.¹⁰⁰

Thirdly, none of the plaintiff countries in the PP case was a significant exporter of tobacco products to Australia. They were unlikely to be strongly affected by the new restrictions and thus subject to rather limited compensation, even if the case were to be ruled in their favor.¹⁰¹ This is not the first time a country without a direct trade interest has challenged another member state's policy in WTO. The United States challenged the European Union's banana regime, although it was not a banana exporter. This was largely because several large U.S.-based MNEs, with political influence in Washington, had substantial foreign direct investments (FDI) in countries negatively affected by that regime.¹⁰² The choice by the complainant countries to pursue the PP case seems likely to be related, not to outward FDI, but rather to inward FDI.

The tobacco industry is among the most concentrated in the world¹⁰³: four MNEs control more than half of the global tobacco market outside China.¹⁰⁴ TTCs are present worldwide and although their geographic coverage varies depending on their individual histories, one or several TTCs are active on most world markets. Production facilities are more concentrated, with a few large factories often serving as hubs for local regions.¹⁰⁵ This gives the companies political leverage with some host states.¹⁰⁶ Like Antigua in the gambling case, these countries are part of the "rent chain" of the TTCs and therefore legitimate targets for CPA.

Aside from Cuba, the complainants in the PP case generally have an important presence of TTCs, including through processing facilities.¹⁰⁷ Like Antigua, the complainants are relatively small and/or developing states, with limited administrative capacity.¹⁰⁸ However, here too, the MNEs involved provided material support. BAT is paying the legal expenses of Honduras and Ukraine, while PMI has paid those of the Dominican Republic.¹⁰⁹ The case thus represented a major

100 Ibid.

101 Ibid.; Curran and Eckhardt (2017).

102 See Cadot and Webber (2002) for an extensive analysis of the banana dispute and its motivations.

103 Holden and Lee (2009).

104 These four companies are: Philip Morris International (home economy: United States); BAT (United Kingdom); Imperial Tobacco (United Kingdom); Japan Tobacco International (Switzerland).

105 Mukherjee and Ekanayake (2009).

106 Holden and Lee (2009).

107 Curran and Eckhardt (2017).

108 Lindeque and McGuire (2007); Davis (2009).

109 Jarman (2013); Scott Kennedy (2014).

financial investment for the TTCs and can be seen as, for all intents and purposes, a continuation of their CPA at national and bilateral level through the multilateral system.

The countries' decision to challenge the legislation is not explained solely by the TTC's economic leverage and their provision of material support. These countries are all tobacco or cigarette producers, even if the importance of the sector varies. Their challenge is thus also related to their concerns, shared with TTCs and producer countries, about the impact on their global exports of regulatory "spill over." Several other countries including the United Kingdom, Ireland, New Zealand, and France were actively debating similar legislation as Australia's became operational.¹¹⁰ The uncertainty created by a legal challenge at the WTO can delay the introduction of similar legislation elsewhere—so called "regulatory chill"—containing the threat.¹¹¹ Thus a key advantage of a WTO challenge is that it can have a regulatory impact well beyond the targeted state.

What the PP case demonstrates is that the fact that dispute resolution in the multilateral trading system is only available to states, has opened the possibility for MNEs to lobby countries in which they have an important economic presence, to represent their interests at the multilateral level. Thus, perceived dependence on an MNE can secure the leverage required with host governments to access the multilateral system. This mode of CPA is very different to that proposed by Baron, although it reflects his forecast that, as WTO became more important "... nonmarket strategies will be directed at influencing governments in which the company has located components of its rent chain to position issues strategically at the WTO...."¹¹² The PP case is an example of precisely such a strategy.

5 A revised conceptual framework of international CPA in the trade arena

In this section, we draw on the case study material presented above to answer our key research question on the impact of globalization of value chains and trade governance on trade CPA. On that basis, we propose a revised framework to understand trade policy-making, reflecting these evolutions. The above analysis highlights that trade policy CPA is no longer a solely domestic activity, focused

110 Scott Kennedy (2014).

111 Certainly TTCs used the argument of legal uncertainty created by the WTO case to argue against similar legislation elsewhere. See for example, in Ireland, PJ Carroll and Co. (2014) and PMI (2014).

112 Baron (1997), 164.

on clear domestic interests. Rather, it has become a multi-level process, operating across national/regional and multilateral axes, as interests increasingly cross borders and jurisdictions. The cases discussed above demonstrate the emergence of lobbying coalitions combining domestic (import dependent) firms and “foreign” companies; as well as lobbying of “host” countries to take action, both against “home” countries and against third countries. As MNEs have expanded their impact across their GVCs and shifted the fora of their CPA, so non-state actors, especially NGOs, have evolved their own global strategies, including supportive lobbying with MNEs where they have shared interests and counteractive lobbying when interests are opposed. In [table 1](#) we provide a summary of the cases explored above along the main dimensions of the actors involved and their market and non-market context. The Kodak/Fuji case is included to highlight the main changes since Baron published his work in the mid-1990s.

Our above analysis provides strong evidence that the traditional two-country model of trade disputes, focused on importers in one country and exporters in the other, is outdated. Our understanding of CPA in trade policy needs to expand to include, on the one hand, third countries and, on the other, NGOs, who can be as active in the political arena as states or MNEs and whose actions have impacted, directly or indirectly, on the gambling, solar panel, and tobacco cases discussed above. The main conclusion from our case analyses is that the international trade policy framework is now significantly more complex than suggested by Baron and others and, therefore, his conceptual framework needs to be revised.¹¹³ To clarify the bases for our revisions, [table 2](#) highlights our key findings on the evolution of MNEs strategic responses to the changed global context. It provides a detailed summary of the novel aspects of the cases discussed above, the motivations for these innovative CPA practices and their organization. The Kodak/Fuji case is again included for comparison. In this case, the highly concentrated nature of the industry posed no collective action problems, with the main issue being trade access, rather than investment, the target country being the home country and no indication that NGOs were active.

In [figure 1](#), we draw on the findings summarized above to propose a modified policy framework, based on Baron’s, but reflecting both changes in trade governance and the move from domestic to transnational CPA. Although our framework reflects a two-country model—Country A (the exporter) and Country B (the importer)—the homogeneous two industry/interest model is deconstructed, while the possibility that companies will lobby beyond their home state is acknowledged.

¹¹³ Brook (2005) has already highlighted that, even in the domestic sphere, the context was more complex than suggested in Baron’s work.

Table 1 Actors involved and main dimensions of market and non-market context in the cases analysed

Dimension	Kodak/Fuji	Antigua-U.S.	E.U.-China footwear	E.U.-China solar	Australia PP
Formal complainant	Kodak	Antigua	E.U. footwear manufacturers	E.U. solar panel producers	Ukraine, Honduras, DR, Cuba, Indonesia
Focal companies involved in CPA	Kodak	U.S. gambling companies	E.U. importers (and Chinese exporters)	E.U. importers (and Chinese exporters)	Transnational Tobacco Companies
Non-market environment in home country	Political influence	Little political influence: nature of industry (Sin).	Little political influence: importers seen as less “productive” than manufacturers	Little political influence: Importers seen as less “productive” than manufacturers	Little political influence: nature of industry (Sin).
Market environment	Global duopoly	A few large companies.	Importers highly concentrated and organized. Producers more dispersed, but well organized.	E.U. installers highly dispersed; Chinese producers more concentrated. E.U. producers concentrated.	Oligopoly. Four large companies control most of the world market
Trade policy context	Domestic	Multilevel	First regional (E.U.) then multilateral	Regional (E.U.)	National, bilateral, and multilateral simultaneously
Key actors					
Local producers	yes	no	yes	yes	limited
Foreign MNEs	yes	yes	In latter stages	yes	yes
WTO	subsequently	yes	subsequently	no	yes
Regional institutions	no	no	yes (E.U.)	yes (E.U.)	yes (BIT)
NGO influence	no	yes (counteractive)	no	yes (supportive)	yes (counteractive)

Source – own elaboration

Table 2 Motivations and organization of novel CPA actions in the cases covered

Case	CPA actor of interest	Why engage in CPA?		How organized?		Choice of CPA strategy?			Other NGOs active? (direction of impact)	
		Threat to business model?	High costs to adjust?	Concentrated industry?	Ad hoc lobby group ?	Domestic political disadvantage (why?)	FDI depend. relevant ?	Trade depend. relevant ?		Country lobbied
Kodak/ Fuji	Kodak	Yes	Yes	Yes	No	No	No	Yes	U.S.	No
Gambling	U.S. gambling firms	Yes	Yes	Yes	Yes	Yes (sin)	Yes	No	U.S.; Antigua	Yes (very negative)
Footwear	E.U. importers	Yes	Yes	Yes	Yes	Yes (importers)	No	Yes	E.U. and China	No
Solar	E.U. importers and CN exporters	Yes	Yes	No	Yes	Yes (importers)	No	Yes	E.U. and China	Yes (positive)
Tobacco	TTCs	Yes	Yes	Yes	No	Yes (sin)	Yes	No	5 various	Yes (very negative)

Source—own elaboration

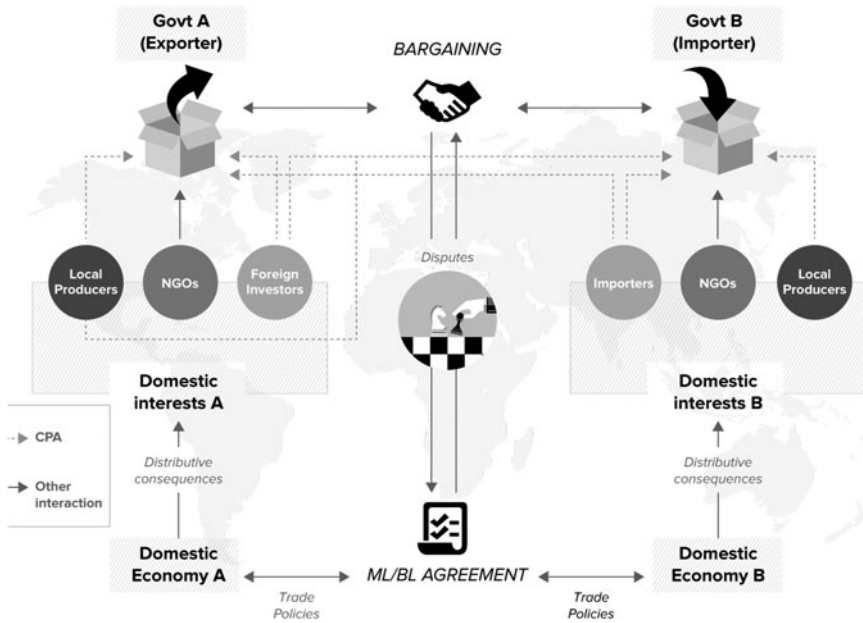


Figure 1 Modified international trade policy framework

An important change in the framework is to deconstruct “domestic” interests to take account of their increasing diversity. In the case of the exporting Country A, bilateral trade policy priorities would traditionally be focused on the interests of domestic industries, which export their products to Country B and have an interest in maximizing market opening. However, the involvement of foreign investors (FI) on the territory of Country A, opens the possibility that the interests of these firms may be undermined by the regulatory actions of Country B, even in cases where Country B is their home state or where most of the effects of Country B’s actions are outside Country A. If home country (Govt. B) lobbying fails (as in the gambling and tobacco cases), CPA aimed at mobilizing the capacity of the (host) country (Govt. A) to address the issue at the multilateral level, becomes an option.

Table 2 provides indications of the factors influencing the strategic decision to lobby outside the “home” state (political disadvantage) and the choice of host country (dependence on FDI or trade). These issues are discussed in more detail below. Such transnational CPA may occur even in cases which are only related to Country A’s interests indirectly, or over the long term (as in the tobacco case). In addition, depending on the level of openness of its political system, civil society may be active in Country A on the issue areas of interest to

companies. This could be, for example, in the form of trade unions worried about the employment impacts of MNE withdrawal, or through NGOs militating on related issues, like environmental protection (in the solar case), or tobacco and gambling control (in the tobacco and gambling cases).¹¹⁴ In the case of the importing Country B, governments are increasingly being lobbied, not only by import-competing local producers seeking protection, but also by import-dependent firms (IDFs) who are vehement supporters of trade liberalization (as evidenced in the footwear and solar cases and highlighted in [table 2](#)).

One further evolution we note is that companies also lobby countries outside of even their host country policy space. Providing that they have a positive impact on the country's economy, for example through their imports, MNEs can have political leverage, even in the absence of FDI. In the case of recourse to action at the multilateral level, the same alliance of import-dependent firms (IDF in our framework) in Country B and exporters in Country A, which lobbies against trade protection in the former, may lobby country A to take action against Country B. This happened in the footwear case, when the Chinese government was lobbied by E.U. importers to challenge the case at the WTO. In this case, E.U. import-dependent firms had essentially no FDI in China, which we would expect to be a prerequisite for leverage or legitimacy in such CPA. The presence of a large share of their GVC in China was sufficient to create common interests with local exporters and facilitate successful CPA there.

Of course, not all firms are willing, or able, to pursue an international CPA strategy. Based on our analysis and existing work, we suggest that the following conditions are necessary for companies to engage in the type of transnational lobbying described here. Firstly, the firm in question must be confronted with both a policy measure that poses a serious threat to its material interests and high expected adjustment costs. As Lawton and McGuire have pointed out, there are several potential adjustment strategies available to companies in response to trade policy changes, but the feasibility of these strategies varies extensively across industrial sectors.¹¹⁵ The likelihood of political action is particularly high when adjustment options are limited and firms thus face high costs from policy change.¹¹⁶

A second key reason for transnational lobbying, highlighted in [table 2](#), is that the home government is unresponsive to company demands. This may be because

114 See Mukherjee and Ekanayake (2009) on NGOs in the tobacco control arena and Farrand (2015) on the effectiveness of NGO lobbying against ACTA, a trade agreement rejected by the European Parliament.

115 Lawton and McGuire (2005).

116 Destler and Odell (1987); Eckhardt (2015); Kolk and Curran (2016).

firms are seen to be less important for the domestic economy than more productive firms. Retailers are a good example, as they are often seen to be economically less valuable than manufacturers.¹¹⁷ As discussed above, E.U. footwear retailers resorted to transnational CPA in the footwear case for exactly this reason. The other key reason we identify for a potential lack of political leverage is that the firms in question are considered to be morally suspect (“sin” industries). Gambling and tobacco firms are clear examples and their transnational lobbying is evident in the gambling and PP cases discussed above. Especially in the case of such ‘sin’ companies, their main challengers in policy disputes are not competitor companies,¹¹⁸ but civil society actors like NGOs, doctors, religious groups and academics. The extensive mobilization of civil society against them in the domestic sphere undermines their chances of securing political support. Seeking such support in a less conflictual environment—through transnational lobbying—is the most rational strategy, particularly if the objective is to access the international trade governance regime.

Although this trend is most evident for “sin” companies, the growing political power of NGOs also has implications for companies with less obvious negative externalities, like increased pollution or obesity.¹¹⁹ Thus in the wider CPA sphere, it seems likely that we will see increasing cases of conflicts on regulatory issues which pitch companies, not against each other, but against civil society actors, with consequences for their political influence.¹²⁰

Thirdly, the companies in question need to be able to overcome collective action problems, identify a legal line of attack and access the policy-making machinery in a foreign country. None of these is straightforward to achieve. International CPA for WTO action is even more time and resource consuming than traditional dispute initiation through domestic CPA. Only the most internationalized firms, operating in well-endowed sectors, with a high concentration ratio and a high mobilization rate are likely to be able to engage in such a strategy.¹²¹

6 Contributions, limitations, and future research

In this paper, we address the question of how the globalization of value chains and expanded trade governance has impacted on CPA. We draw on a series of recent

¹¹⁷ Eckhardt (2015).

¹¹⁸ As presented in Baron (1997) but also in much more recent work, for example Kanol (2015).

¹¹⁹ Lock and Seele (2016).

¹²⁰ Lucea and Doh (2012).

¹²¹ Bown (2009).

trade conflicts to identify several changes in CPA in the international trade policy arena, which we believe reflect strategic responses to the globalization of production and the expansion in coverage of the international trade governance regime, as well as its increasing complexity. In doing so, we contribute to the literature which seeks to explain how CPA adapts to changes in the institutional environment.¹²²

Firstly, we highlight how, as trade and investment liberalization has facilitated cross-border integration of production networks, the range of “domestic” companies that get involved in trade politics has expanded. In particular, import-dependent firms have become increasingly active.

Secondly, we find that the emergence of global and multi-level governance of trade policy has led to a shift in the targets of CPA. Transnational lobbying activities and political activity outside the home country have become more common, especially with the objective of accessing the WTO DSB, but also to fight (regional) protectionism.

Finally, we also note an increase in transnational advocacy by NGOs, who seek to impact on the governance of GVCs, both in cooperation with MNEs and in opposition to them. We have argued that, as a result of these evolutions, the positions of companies, NGOs, and even states, on important trade issues can only be understood in the light of the complex interlinkages which characterize the contemporary world economy and the shared interests they create.

The main objective of this paper has been to better integrate these interactions into the conceptual bases of international CPA, by revising Baron’s framework developed in the 1990s.¹²³ Clearly not all aspects of our revised framework are pertinent in any given trade dispute. We recognize that in most cases firms still lobby their domestic government to further their interests. However, we highlight several factors which are likely to stimulate MNEs to engage in such novel and “transnational” CPA. In so doing, we expand understanding of the motivations for company CPA, a key concern in the literature.¹²⁴ We hope that our framework will help trade policy scholars to better illuminate the role of different actors and their alliances and thus more effectively analyze how final policy outcomes reflect these dynamics. In addition, we see several promising avenues for future research based on the revised framework presented here, both focusing on the trade policy arena and on CPA in other issue areas affected by global integration.

Firstly, we see potential in work exploring how MNEs choose the political arena in which they play out the policy conflicts they seek to resolve. We have

122 Lawton et al. (2009; 2013).

123 Baron (1995; 1997).

124 Doh et al. (2015); Hillman et al. (2004); Lawton et al. (2013); Shaffer (1995).

focused here on the multilateral (WTO) and regional (E.U.) level. Although there are good reasons to believe that CPA at this international level is likely to continue to expand,¹²⁵ the complexity and dynamic nature of such institutions, particularly at multilateral level, also make outcomes there quite uncertain.¹²⁶ This limits their attractiveness as a venue for resolving disputes. MNEs need to make choices on how to allocate scarce corporate resources across the different levels of potential operations, which implies making judgments on which level is likely to be the most productive.¹²⁷ We know little about the driving factors behind these choices. In this paper, we have highlighted some characteristics likely to encourage MNEs to undertake transnational CPA, however more work needs to be done to better understand the motivating and constraining factors behind such strategies.

Secondly, as shown in this paper, the emergence of GVCs has had an important impact on the type of actors involved in policy debates, their policy preferences and the incentives they face when deciding to mobilize politically. Ultimately, we believe that GVCs also impact on how public and private actors interact to produce particular policy outcomes. However, more work is needed that systematically investigates the implications of GVCs for CPA. It is clear from our analysis that the fact that many companies are now embedded in transnational GVCs means that their most likely corporate partners for CPA may be found, not in their domestic trade associations, but in their partners along the value chain. In the footwear, gambling and solar cases discussed in this paper, we witnessed the establishment of cross border ad-hoc lobby groups specifically set up as vectors for CPA on the case in question. Such temporary, single issue structures have provided important conduits for cooperative lobbying in these cases, expanding the “coverage” of the coalition,¹²⁸ while challenging traditional ideas about the necessary preconditions for collective action.

Thirdly, the expanding role of civil society in policy-making creates both new threats and opportunities for MNEs. NGOs have been seen to be very effective at mobilizing around regulatory issues at national and international level, including on issues indirectly related to trade policy like public health¹²⁹ and sustainable production systems,¹³⁰ as well as directly on trade policy itself.¹³¹ In the cases explored here, NGOs have impacted on MNE CPA both by campaigning against

125 Lawton, Lindeque, and McGuire (2009).

126 Levy and Prakash (2003).

127 Windsor (2007).

128 Baron (1999).

129 Mukherjee and Ekanayake (2009).

130 Levy, Reinecke, and Manning (2016).

131 Farrand (2015); Schnietz and Nieman (1999).

company interests (gambling and tobacco) and in their support (solar panels). CPA theory thus needs to expand its focus from a traditional view, where governments are the main actors in the regulatory process, to better incorporate the role of non-state actors. MNEs often interact with NGOs in their corporate social responsibility (CSR) actions, but this work is frequently divorced from, and even incoherent with, their CPA activities. Several scholars have recently argued that this division of activities is problematic and that there is a strong case for MNEs to better reconcile these two non-market activities.¹³² Such efforts would also increase the potential to build alliances. However, beyond their CSR activities, very little work has addressed how companies can more effectively work transnationally with civil society to achieve common interests. There is certainly potential for further research in this area.

Finally, recent changes in the international political climate, especially Brexit and the U.S. election outcome, pose questions for the continued integration of both GVCs and trade governance. Brexit will pose challenges to the European Union and remove an important advocate of trade openness from the Union.¹³³ The Trump administration has threatened to withdraw from the WTO in the case of rulings against new trade restrictions.¹³⁴ Such evolutions highlight that protectionist forces continue to mobilize strong political support, posing major problems for globally integrated MNEs and requiring them to continually readjust their CPA, revising their alliances and targets. This paper underlines the fact that CPA evolves in reaction to opportunities and challenges created by the institutional environment. We expect this evolution to continue in response to future changes, requiring scholars to regularly adjust their understanding of how CPA is best structured and organized.

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¹³² Den Hond et al. (2014); Lock and Seele (2016).

¹³³ Nordstrom (2011).

¹³⁴ *The Financial Times*, 24 July 2016, "Donald Trump threatens to pull US out of WTO," Geoff Dyer (Accessed on 19 January 2017) <https://www.ft.com/content/d97b97ba-51d8-11e6-9664-e0bdc13c3bef>.

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