

That chapter and others assess the TPP alongside other regional and global arrangements. Among these is the chapter by Low on the GATT/WTO.

The proliferation of PTAs and the development of regional trade agreements have occurred in the absence of clear or robust WTO rules regarding how they should be governed. The TPP and other regional agreements are a bottom-up approach to consolidating the many overlapping PTAs, but Low considers that approach in the context of an alternative top-down approach through the WTO, in an analysis of how to multilateralize regionalism. He argues that a top-down approach would be issues based (not restricted to geography) and go a long way towards making progress without discrimination (through preserving the pre-eminence of the WTO's MFN Article 1).

*Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement* is a mix of new ideas for regional and global trade and provides a synthesis of trade issues being negotiated within the TPP. It brings recent developments to bear on the analysis of critical issues. Finally, it provides the reader a benchmark by which to assess the TPP as it unfolds as well as a framework for how think about where the TPP sits, or should sit, in the global trading system.

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## Reference

Francois, J. and B. Hoekman (2010), 'Services Trade and Policy', *Journal of Economic Literature*, 48(3): 642–92.

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## Economic Foundations of International Law

by Eric A. Posner and Alan O. Sykes

Cambridge, MA: *Harvard University Press*, 2013

This book begins with the following statement: 'The economic or rational choice approach to public international law assumes that states are rational, self-interested agents that use international law in order to address international externalities and obtain other benefits of international cooperation. This approach also emphasizes that because no external enforcement agent such as a world government exists, international law must be self-enforcing.' The authors, two distinguished academic lawyers from the United States, note that the self-enforcement constraint (meaning sanctions by other governments) is what differentiates international from domestic law.

The purpose of the book is to apply this strict rational choice logic to a host of international legal issues. In doing so, the book fills an important gap. While economic analysis has long been applied to domestic law, such as antitrust and torts, its application to international law has been slow in coming. It has been picking up in recent years, however, and this book provides a nice, comprehensive assessment of where things stand in the hopes of informing scholars and students and encouraging further research.

In essence, the book is an analytical treatise. It covers a broad array of leading international legal topics, discussing the relevant institutions and laws along the way.

It provides much more than description, of course, using the lens of economic analysis to interpret the law, asking why the law does or does not make sense, and asking what problems the law is attempting to solve.

Part I of the book sets out the economic approach in terms of its fundamental postulates and assumptions. Part II discusses general aspects of international law, such as sovereignty, treaties, international institutions, remedies, and the intersection of domestic and international law. Part III applies the economic approach to standard areas of international law, including foreign property and debts, war, and the use of force, human rights, and international criminal law. Part IV examines international environmental law and the Law of the Sea. Part V turns to international trade law, international investment, and monetary arrangements.

Readers of this journal will be most curious about Part V of the book. Because just one chapter is devoted to international trade law, only a very broad overview of the topic is feasible. Consequently, the subject matter of the chapter will be familiar to most readers of this journal. The chapter provides a succinct overview of the rationale for trade agreements, the GATT and WTO system, trade remedies (antidumping and countervailing duties), GATS, TRIPs, and dispute settlement.

Of course, as with any broad overview, there will be statements that one can quibble about. The chapter begins by noting the gains from lower tariffs and then asks why tariffs exist, observing that governments must not be concerned about maximizing national income since tariffs remain in place. The standard terms of trade argument for tariffs is mentioned as an explanation for the trade barriers, but then seemingly dismissed. As the authors note (p. 264) that ‘the pattern of tariffs across industries did not seem tightly related to the market power of the importing nation ... And on the export side, nations seemed more likely to engage in policies such as export subsidization than export taxation, a behavior that cannot reflect national welfare maximization in competitive markets.’

The authors then invoke the Grossman–Helpman protection for sale model, in which governments are assumed to maximize a weighted average of campaign contributions and economic welfare. But when they consider the rationale for countries reaching trade agreements, they turn back to the externalities generated by the impact of tariffs on the terms of trade: ‘The primary reason’ that countries cooperate on trade policy ‘goes back to the fact that countries are often “large” in the sense of possessing monopsony power over the price of their imports’. There is little mention of the domestic commitment hypothesis, that international agreements are a way for governments to reign in domestic groups that lobby for protectionist policies, or the Corden ‘conservative social welfare function’ approach in which governments seek trade liberalization but seek to implement trade policies that minimize the adjustment costs for domestic factors of production.

The authors also advance some debatable propositions, such as that export subsidies may be welfare-improving in moving the world toward a welfare-maximizing ‘free trade’ ideal. The book concedes that ‘it is difficult to imagine any constructive role for export subsidies as a first-best policy’, yet ‘it is important to note that export subsidies arise in practice under “second best” circumstances’. With the existence of protected markets around the world, ‘export subsidies may move the world toward the welfare-maximizing “free trade” ideal’ and therefore ‘it is not obvious that export subsidies are

always undesirable'. This proposition from second-best economics, in which two wrongs make a right, would probably not gain universal agreement. While it is easy to poke holes in the rationale given in WTO texts for regulating subsidies, perhaps the relevant comparison is not to optimal second-best export subsidies (for which the rules would be exceedingly complex) but a political economy equilibrium in which subsidies were much more permissible but also much more countervailable.

It would be far-fetched for an economist to criticize the application of economic reasoning to international law. One shortcoming of the approach taken in the book, however, is that it neglects the domestic politics behind international law. That is, the state is generally not a unified actor with a single, rational view of 'its' interests. Control of the state is usually contested by two or more parties which may disagree about the 'right' approach to such issues as trade negotiations. Political scientists who specialize in international relations refer to this as a two-level game, wherein first there is a domestic political debate about the proper international negotiating strategy, and then nation states come together to negotiate about some outcome. In addition, readers looking for a domestic political economy story about why states create international law in various instances will come up empty. In choosing not to deal with these considerations, the authors have the quite valid excuse that this would detract from the more straightforward goal of the book and that the assumption of the state as a unified actor paves the way for a great deal of analytical insight.

In sum, this book serves as a splendid introduction for economists looking for how international law can be analyzed with the logic of their discipline, for lawyers seeking a more analytical way of understanding international law, and for students who want a solid introduction to the economic approach to international law and ideas for future work. This book is accessible and well written and will clearly be a valuable resource for years to come.

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