How to Free Trade

And Still Protect Democracy

By Petra Pinzler

In the past, it was easy to make the case for free trade. Countries that reduced tariffs and opened their borders for new products and ideas were usually better off than those that shut their markets off.

Free trade agreements seemed to create opportunities, help millions out of poverty, and generate growth. More trade, to cut a long story short, made the world a better place.
Today, a growing number of Europeans and Americans believe that the opposite is true. Free trade agreements have become increasingly unpopular. For example, last autumn, about 250,000 Germans demonstrated in Berlin against the Transatlantic Trade and Investment Partnership (TTIP), the trade pact that is currently being negotiated between the United States and the European Union. Around 3.2 million Europeans signed a petition against it, saying that the EU was “trading away our public services, consumer protection, environmental standards, and in fact, our democracy.” The most prestigious association of judges, known as Deutscher Richterbund, also recently spoke out against an important component of TTIP, a clause on settling trade disputes, arguing that it had “neither a legal basis nor was necessary.”

In the United States, meanwhile, there have been similar protests against the Transatlantic Partnership Agreement (TPP), which Washington signed with 11 Pacific Rim countries but that the U.S. Congress has yet to ratify. Protestors have also argued that the deal “undermines democracy” and allows corporate power to thwart environment and labor protections, as well as the right to free Internet. All the leading presidential candidates have spoken out against it: on the Democratic side, Hillary Clinton has said that she “opposes” TPP, and her party rival, Bernie Sanders, promises that he “will do all” he can to defeat it. Meanwhile, Republican Donald Trump trashes it, calling it a “horrible deal.”

The foreign policy and trade elites usually regard these opinions with contempt. The German Economics Minister and Vice Chancellor Sigmar Gabriel portrayed the TTIP protesters as “hysterical.” His American colleagues dismiss them as a bizarre return of anti-globalization fervor heightened by a whirlwind U.S. election. After all, hysteria often becomes the norm during election cycles. Trade elites also know that, in the last few decades, similar campaigns have almost never changed the course of trade deals, no matter who held the presidency. It stands to
reason that this protest will fade away, too.

And yet, their perspective is shortsighted. Today’s anti–free trade movement has gained a new relevance. It no longer appeals to only the real and self-perceived losers of globalization, such as the American Trade Union members and environmentalists who opposed the North American Free Trade Agreement in the 1990s. Today, the protest digs much deeper into mainstream society, particularly into the Western middle class. At the StopTTIP demonstration in Berlin last autumn, the streets surrounding the Brandenburg Gate were crowded by students and academics, as well as blue- and white-collar workers. These were the people who traditionally believe in cooperation, government, and global rules, but had now become concerned that modern trade policy has undermined democracy.

To understand how this shift happened, it is worth looking at how trade deals have changed. In the past, trade politics largely involved lowering duties. For example, one side offered to erase tariffs on meat if the other side did the same on cars. After some haggling behind closed doors, an agreement would be reached and governments could sign it. All this was deathly dull, but it made products cheaper and doing business across borders easier.
Today, traditional elements, such as eliminating tariffs, make up only a small part of trade agreements. Much more important are “non-tariff trade barriers,” a technical but politically important term that restricts imports through regulations such as food safety standards, public services, or regulation of the Internet. As a result of trying to get rid of such barriers, trade agreements today reach far beyond the traditional sphere of business and into values, social norms, and social progress that have been defined and refined by decades of democratic governance. Today, trade agreements affect issues that people strongly care about and fight to make better.

Consider the example of patent protection. How long should a patent for a life-saving pill remain in place before others can copy it? If the protection is too weak, it diminishes incentives to invest in the product since no one would spend money to develop a product that can immediately be replicated by others. But if the protection is too strong, it hinders competition, harms innovation, and raises health-care costs.

The United States, as with many other developed countries, is usually well equipped to come up with a decent compromise. When democracy works, there is a public debate about an issue, after which a party or a politician might bring it before the legislature to reach a compromise and create a new law. This is what Western societies are supposed to be good at.

Modern trade agreements, however, frequently undermine this democratic process. Their job, in fact, is to create multinational rules to
prevent democracies from setting and changing rules autonomously. To a certain extent this makes sense in the ever more interconnected world of business. However, once trade deals touch upon issues beyond mere logistics—when they start to affect health care and other social issues—it seems irresponsible to leave such decisions to trade experts. Unfortunately, this is exactly what is happening.

A good example is the TPP. This agreement was hashed out behind closed doors and none of its 30 chapters was ever put up for public discussion during the negotiation process. Even members of Congress faced difficulties in getting access to the TPP draft, and both they and the tiny group of civil society advisers who were given clearance still faced criminal prosecution if they discussed it with their own staff. Only after the negotiations were concluded was the text finally made available to a broader public in November 2015. Shortly after its release, U.S. President Barack Obama asked Congress to greenlight the trade deal. At that point, the legislators could only agree to the TPP or refuse it. Rewriting is not an option. They have to decide if the pro-trade arguments—such as the lowering of some tariffs and forming an economic bloc with the 11 other Asian nations to challenge China—outweigh the disadvantages, such as the loss of jobs in some U.S. regions due to the outsourcing of cheap labor. There is also reduced access to health care in poorer countries, because new laws enabling pharmaceuticals to extend their monopolies on patented medicines restrict the availability of more affordable generic prescription drugs.

Some people argue that as long as trade deals promise growth they are fine. Others go even further and state that a bad deal is still better than no deal because it enhances cooperation. Both arguments are wrong. First, not all agreements lead to sustainable growth in all participating countries. Second, not every common boundary increases the political will to collaborate. Just look at the recent referendum in Scotland on leaving the United Kingdom after more that 400 years of common governance, or, more recently, the debate over Brexit, the British
withdrawal from the EU.

In fact, a deal is only as good as the results it produces and this depends on the process through which it was made. A good deal requires broad participation, which not only increases the legitimacy of the agreement but also ensures protection of vulnerable populations or issues. The TPP, for example, does not mention at all the impact of trade on climate change. And it is no wonder, since there wasn’t a single environmentalist on the negotiation team. Human rights is another example. One of the commonly stated aims of U.S. foreign policy is the promotion of human rights around the globe. But when the TPP was written, there was no opportunity for civil rights activists to publicly analyze its impact on partner countries and suggest workable suggestions to protect the human rights of those in the Asia-Pacific. Now, Human Rights Watch is arguing that the TTP’s provisions will not adequately safeguard workers’ rights.
Admittedly, there can be too many cooks. First of all, more participants often means slower deliberation. But the old-fashioned trade policy no longer delivers agreements that promote Western values. For example, in agreements that the United States or the EU signed, protections of human rights, the environment, and public health have often been treated as nuisances rather than as achievements. An unfortunate example is the U.S.-Colombia Free Trade Agreement. The text is filled with compelling language about the protection of human rights. In reality, though, the agreement has merely increased the number of goods imported to the United States that are produced under inhumane working conditions. And not a single paragraph of the agreement has stopped the murder of human rights and labor activists in Colombia.

Even worse, governments and companies have repeatedly used trade laws to undermine those very protections. In a recent ruling, the World Trade Organization struck down the country-of-origin meat labels required by the United States. Allegedly, these labels discriminate against foreign meat producers, even though consumers use them to make informed choices about their food. The TPP is likely to further erode public safeguards. For example, even though the TPP’s proponents argue that the pact requires the legalization of independent labor unions in Vietnam, the legal means to enforce this through trade measures remain limited.

Credibility is easily lost and hard to rebuild. That is why the United States and the EU Commission must tread carefully. This does not mean denouncing the TTIP altogether. It still has the potential to become a model for twenty-first-century agreements, if only the negotiators take seriously what the West stands for. Europe and the United States share many values. They both believe in human rights and the protection of the planet, and appreciate innovation and competition. Why not promote a good mix of theses ambitions through the TTIP?

The way the TTIP could deal with environmental protection is a good
example. In Europe today, many citizens are afraid that the TTIP will lower food standards, forcing people to eat genetically modified vegetables with high levels of pesticide residues or hormone-treated beef. Some of these fears are out of proportion, but they could also be easily calmed if this agreement was negotiated with a clearly pronounced aim to honor higher food standards. This might sound counterintuitive, as trade negotiations are traditionally about getting rid of regulations, but developing high standards is exactly what Europe and the United States have been good at.

Environmental activists in Germany demonstrate against the TTIP, which they fear ... +

Higher standards can also be a boon to trade. According to the former EU trade commissioner Pascal Lamy, high safety standards are the West’s competitive advantage. Standards are about not having to worry about milk formula being tainted with melamine, as has happened in China. High safety standards are what make Western products highly desirable and even enviable. In this month alone, Chinese tourists in
Germany emptied supermarkets of baby milk formula. This practice is quite common across Europe, where there has been a recent growth of baby formula traffickers selling Western baby formula online. Chinese consumers appear to trust Western products more than domestically produced products. Why not use the TTIP to expand upon this effect?

With the TTIP, Europe and the United States can demonstrate to the world how to write agreements that make the world a safer place. Through trade, they can create the most prosperous and best-protected places to live. Together, they can enhance consumer protection and nature conservancy and transform the TTIP into a successful case study of how trade and Western values complement each other.
All this would be much easier, though, if trade negotiations were more open to input from various segments of society, such as regulators, ecologists, and foreign policy and human rights experts. An emphasis should be placed on new recruits to replace the outdated teams in the office of the U.S. Trade Representative and the EU’s trade directorate. These new negotiators should not only support trade and globalization but also emphasize the voices of working people and those who care about democracy and the environment. Doing this would rejuvenate, broaden, and enrich the transatlantic relationship. Unfortunately, however, this
can only happen if the TTIP is redesigned from scratch.

At this point, that seems unlikely to happen, as the negotiation teams on both sides of the Atlantic still prefer to continue business as usual. Yet, they are already in the third year of negotiations and have not made much progress on the issues at stake. Frustrations are rising and protests are growing more aggressive. This could reach a tipping point, which would create more pressure for a reset. Right now, delaying the TPP, which is possible because it’s become so vilified during the election campaign season, could at least offer the time needed to rethink and redesign both it and the TTIP. Most important, it would offer a moment for reevaluating how the West can keep free trade while keeping its democracy functional.