

# Policy Imperialism: Bilateral Trade Agreements as Instruments of Media Governance

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## Introduction

Trade and imperialism have been interdependent for millennia. To be sure, much of the trade in which hegemonic powers have been engaged has shifted from overtly coercive relationships to ones that embrace the veneer of consensus. But this shift is not to suggest that the “armor of coercion” (Gramsci 1971) is missing. It has not been uncommon for the extensive and protracted United States (US) military presence in the Middle East to be characterized as arising out of US oil interests (Harvey 2003). The rise of public relations in international politics and the rituals underlying “soft power” make for new manifestations of imperial domination, along with more complex relationships between military and trade-related hegemony. In the modern world, this is most evident in the preponderant location of the deployed military resources of the current global hegemon – the US – in the part of the world where the most vital strategic resource upon which its economy depends is located.

The inextricable relationship between trade and empire is as old as imperialism itself. Spices, silk, sugar, tea, precious metals, and human flesh are among the treasured commodities that have been foundations for the riches of many empires,

including Mongol, Roman, Venetian, Portuguese, Spanish, Dutch, Ottoman, and British. As to what constitutes “empire,” this subject has drawn attention and efforts at philosophical refinement in recent years, especially in the light of arguments about the decentered-ness of power and about whether there is such a thing as an American Empire (e.g., Hardt and Negri 2000; Walzer 2003; Passavant and Dean 2004). Our aim is not to contribute further to these debates, despite their usefulness for some purposes. Rather, we employ the concept of imperialism in its quotidian sense, the justification for which we believe is made evident in our discussion of how political-economic power is deployed in areas of global trade related to telecommunication and intellectual property. More specifically, we turn our attention to how the policy instruments used in “global media governance” provide complex and sophisticated means by which trade and empire are bound together.

The particular relationship between empire and communication has long been of academic interest. The Canadian political economist Harold Innis pioneered this subject by exploring how the means of communication are central – necessary, but not sufficient – to the rise and fall of empires (Innis 1950/2007). The subject has been taken up by many scholars since (e.g., Schiller 1992;

Hills 2007; Winseck and Pike 2007), and the breadth of coverage is even wider if we include studies with more of a cultural and less specifically media-centric emphasis (e.g., Tomlinson 1991; Saïd 1993). Apart from its scholarly interest, as some of the works cited here demonstrate, the subject of imperialism also has been central to *political practice* in the field of communication policy. This is evident in the post-World War II era through provisions in the United Nations (UN) Universal Declaration of Human Rights (1948) related to freedom of expression and cultural autonomy; in the 1970s with the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Mass Media Declaration (1978), the New World Information and Communication Order (NWICO) and the MacBride Report (ICSCP 1980); and it also has been a theme in various "civil society" initiatives during and since the period of the UN World Summit on the Information Society (WSIS) (Calabrese 2006).

This chapter closely examines the uses of bilateral trade agreements (BTAs) as instruments of transnational media policy. After presenting an argument for how and why trade agreements, both multilateral and bilateral, display modern manifestations of the exercise of imperial power, this chapter focusses on issues of BTAs in the areas of trade in telecommunications technology and intellectual property. Specific cases of problematic bilateral trade in these areas are presented and analyzed, with the aim of highlighting the risks involved. The chapter concludes by acknowledging that it is unlikely that any global governing mechanisms can or will be put into place to eliminate these risks in the foreseeable future. Since such safeguards are not likely to be implemented, the chapter emphasizes ethical norms that should be used to guide such agreements and emphasizes the value of the ongoing public monitoring of trade terms and enforcement mechanisms.

Since this chapter employs a critical stance against bilateralism as a mechanism enabling strong countries to take advantage of weaker ones, we need to look in greater detail at the specific trade-off between multilateralism and bilateralism. This is because BTAs are growing consistently, and we need to explain the possible reasons why these regimes of negotiation remain attractive for countries that are likely to be more exposed to power relations and that, nevertheless, are more attractive

than multilateral ones. In the following two sections, we review arguments for and against the two approaches.

## Multilateralism

According to thinkers as different as Marx (1906) and Schumpeter (1947), the global capitalist economic system was not characterized by stability, but rather by a permanent state of disequilibrium and the possibility of systemic irrational outcomes. Similarly, Polanyi (1957) describes the inherent double movement in capitalism between *laissez faire* and state interventionism. The most noticeable contradiction that Polanyi points out is between the normative view of liberal ideology, which conceives of the market as self-regulating, and the undeniable fact that any market, at both the national and supranational levels, necessarily requires a complex structure of regulations that guarantees and enforces law and is responsive to the calculation of risks and profits.

From this point of departure, one can imagine replacing Adam Smith's (1937) "invisible hand" with a set of interventionist activities in the economy: not just within the state but also among states. Apart from this perspective, one can regard activities such as trade negotiations and the operations of an international arbitration regime dealing with disputes and enforcing common rules as efforts to secure national and international political and economic interests. However, the presence of multiple and competing interests presents at the international level the necessity for policy coordination, and, in this sense, multilateralism is widely embraced as the appropriate, if not the best, method of negotiation and mediation.

Blum (2008) maintains that the reason that multilateralism has captured so much scholarly attention is because it is instinctively associated with the highest levels of politics, security, human rights, environment, and trade. Cooper (2003: 332) argues that multilateralism conveys a sense of universalism often associated with the aspiration for an "international rule of law." That appears as the single most important goal of the international system, one upon which all other goals – peace, prosperity, and effective international cooperation – depend. The idea is normatively driven by the Enlightenment

conviction that an international system of sovereign states ruled by the Kantian notions of *ratio* and *veritas* could guarantee a “perpetual peace” (Kant 1932). By contrast, multilateralism carries symbolic power that is lacking in the particularistic and fragmentary character of bilateralism.

There is also another powerful general argument about the benefits of multilateralism. Viner (1950) examined the two negotiation environments in terms of economic utility and the economic effects of these two paradigms. According to Viner, multilateralism leads to “trade creation” and bilateralism to “trade diversion.” Based on this approach, most academic scholars are critical of the new bilateralism and regionalism which often result in only a modest reduction of mutual trade barriers, claiming that they often cause more trade diversion than trade creation. In similar ways, Bhagwati (1991) frames the debate over multilateralism as about “building blocks” or stumbling blocks to the multilateral freeing of trade. Building blocks contribute to multilateralism by adding new members or by prompting acceleration in multilateral trade negotiations. Stumbling blocks produce the opposite effects.

According to Ó Siochru and Girard (2002), the first attempt that aimed at global coordination emerged from the Congress of Vienna with the objective to re-establish a post-Napoleonic Europe. This first official multilateral European experience was regarded as a way to build consensus and avoid new wars. In the twentieth century, unsurprisingly, the strongest attempts to create a multilateral environment for the discussion and solution of global issues emerged after the two world wars: in the aftermath of the “Great War” in 1919, the League of Nations was created; in 1944, in the final stages of World War II, the International Monetary Fund and International Bank for Reconstruction and Development (later incorporated in the World Bank) were created as a result of the Bretton Woods agreement and the United Nations was ratified in 1945. Those multilateral entities were dedicated to creating a unified international financial system.

The Bretton Woods conference raised the necessity of regulating trade as part of the post-World War II economic recovery. After the failure of the United Kingdom (UK)–US-sponsored International Trade Organization (ITO), the General Agreement on Tariffs and Trade (GATT), formulated in 1947, remained the only working agreement on international trade aimed at reducing the barriers (mainly

through tariff reductions) of global trade (GATT 1947). Finally, in 1995, due to discussions that emerged in the so-called “Uruguay Round,” the GATT was superseded by the World Trade Organization (WTO). The WTO institutionalized the previous agreement, guaranteeing a permanent structure, capable of enforcing authoritative sanctions. The WTO, like the GATT that preceded it, had a distinctively multilateral nature (WTO 2010).

We first turn to arguments that explicitly favor multilateralism, or at least that prefer it, to the negative implications of bilateralism. Viner (1950) offers a strong argument that multilateral, non-discriminatory trade arrangements are more effective in ensuring the efficient allocation of manufacturing resources. This is because, for instance, looking at the GATT, all imports must be treated equally and according to the “Most Favored Nation” (MFN) principle (Article I), thus creating the obligation to allocate the resources to the most efficient foreign producer. Conversely, the preferential nature of bilateral agreements may privilege a less efficient foreign producer so that resources will be inefficiently allocated.

Multilateralism appears also as the solution to those problems requiring fully coordinated action with no defection by any party because, as Stern (2000) notes, some issues may be solved only through coordination of the international legal system. Thus, the success of an international initiative is due to its ability to establish an effective multilateral regime, which no state could afford to violate.

Third, multilateralism offers economies of scale, with lower transaction costs involved in one central negotiation and drafting process that binds parties to one another (Ives 2003).

Further, multilateralism can provide coherence and uniformity of regulation, whereas bilateralism promotes fragmentation. The harmonization of rules can reduce the cost of transaction by avoiding the diversity of “rules of origin.” However, uniformity is not universally regarded as desirable. For instance, Koskenniemi (1990) argues that the increased legalization of international negotiation may be counterproductive because it impedes the development of the widest range of possible solutions to a trade issue.

A final argument in favor of multilateralism is constructed around the idea that it avoids the unfair advantages of the stronger party created by

the bilateral agreement. As Kwakwa (2000) notes, weaker countries frequently become "rule takers" instead of negotiating parties. In opposition to bilateralism, multilateral negotiations offer weaker countries the potential to coordinate their positions and bargain collectively with the stronger countries, which may lead to more balanced results. Odell argues that multilateralism as coalition-building constitutes one of the most important resources for developing countries: "A set of mostly weak states managed to gain significantly from a WTO negotiation despite the unfavorable power asymmetry they faced. They worked together as an explicit coalition, larger than most, creating unusual credibility" (Odell 2006: 109). However, Kingsbury (1998) argues that, in fact, much of the world's inequality is due to the notion of sovereign equality which sanctifies the idea of formal equality over substantive equality.

### Bilateralism

Despite the popularity of multilateralism, in recent years increasing numbers of countries have pursued regional and BTAs. The first significant trade agreement between the US and Israel, the US-Israel Free Trade Area Agreement (2004), came into effect in 1985, followed by one between the US and Canada in 1989, which led subsequently in 1994 to the North American Free Trade Agreement (NAFTA 1992) between the US, Canada, and Mexico. The establishment of NAFTA marked a departure from the WTO format. Rather than focussing on tariff reductions, NAFTA included a discussion of numerous non-tariff barriers to trade and included many topics that attempted to harmonize the commercial legal regimes governing the three states. In addition, NAFTA has been used as a baseline for each of the recent bilateral/regional FTAs.<sup>1</sup>

Greenaway (1990: 1286) connects the surge of bilateral negotiations to the anxiety created by an economic recession that preceded the 1990s. He divides the post-WWII era into two periods: 1948-73 and 1974-90. The first period can be considered a golden age for world trade. The average annual global rate of growth was around 7 percent, with the national economies consistently increasing their openness and growing interdependence. The

second period was inaugurated by a conjunction of factors that sensibly lowered the trend rate: the spectacular growth of the newly industrializing countries (NICs), the intensification of the debt problem, two oil shocks, and the growth of the "new protectionism." The conjunction of those factors created the grounds for the fragmentation of the universalist spirit of Bretton Woods.

Among the arguments in favor of bilateralism is that BTAs allow governments to manage their agreements more freely because they are able to conclude detailed agreements with specific partners. By the same reasoning, bilateral agreements enable the two parties to design such arrangements in the way that best suits their needs and interests. Multilateral agreements, in contrast, have to target some ambiguous and sometimes elusive (and often lowest) common denominator of the many national interests involved, deriving from the need to reach a political consensus among the participants. Small countries have almost no ability to individually influence the outcome of multilateral negotiations. At most, they can create groupings in order to represent at least some of their interests, a process that also often involves compromises between themselves, even before the actual process of bargaining and compromising with the larger, more powerful countries.

A second argument in favor of bilateralism derives from the presumption that in a successful negotiation resulting in an agreement, both parties will bargain to maximize their advantage as a result of it so that both parties are motivated, presumably, to respect the agreement. Keohane (1986) claims that in the international trade context reciprocity is rather common. In opposition to that, as Raustiala (2005) contends, due to the need to accommodate the common values, interests, and preferences of a large number of participants, multilateralism cannot guarantee the compliance to the rules established by all the parties involved in comparison with the enforcing power of a bilateral agreement. Similarly, Simma (1983) criticizes multilateral outcomes because they are constructed around the least common denominator so that there is no strong reciprocal concession that guarantees compliance.

Another common argument is that a process of finding agreement between two parties is likely to be easier than finding agreement among over one hundred WTO Members with different economic

needs and objectives, levels of development, and political agendas. Plus, it is suggested that there are more chances of a Pareto optimal outcome as compared to the “least common denominator” of multilateralism.

Fourth, multilateral rule-making appears to be unable to respond to the pace of changing needs and problems of the modern international economy. For example, the first rounds of GATT negotiations took between one and two years to conclude, whereas the Tokyo (1973–1979) and the Uruguay Rounds (1986–1994) took six and eight years respectively, which does not even include the time it took to reach an agreement on launching the rounds. The current Doha Round started in 2001, and it is still unclear if and when it will come to some conclusion.

Finally, the most controversial argument, which troubles both neoliberals and critics of neoliberalism alike, is the fact that bilateral agreements often are motivated by political and strategic objectives, transcending the immediate subject matter of the agreements in question. The first FTA concluded by the US provides a good example. It was proposed by the US to Israel and Egypt, following the 1978 Camp David Peace Accord. The idea was to reward Israel and Egypt for their courage in concluding this ground-breaking peace agreement and to reinforce the relations between them and the US in the wake of the Accord and throughout its implementation. Another example of ulterior agendas that lack clear connections to trade interests occurred in Southeast Asia. Iftikhar (1990: 285) argues that US policy objectives in South and Southeast Asia, since 1947, can be categorized as follows: filling the power vacuum in the region after the withdrawal of European colonial powers, containment of communism, and regional stability. An interesting juxtaposition is provided by Bloed and Van Dijk (1999), who argue that bilateral negotiations may be employed in order to defend social minorities.

Although there are organizations dedicated to monitoring bilateral trade (such as *Bilaterals.org*), the agreements are not easily monitored because they are not well publicized and, consequently, receive relatively little media attention. And they generally are viewed unfavorably by advocates of multilateral governance bodies. Among the outspoken critics of BTAs is Joseph Stiglitz, former

Chief Economist at the World Bank. Stiglitz has observed that such agreements often are based on unequal relations between economically powerful and weak states, and that they undermine free market principles by creating unique trade relations between two states (or two trading blocs), while excluding other partners from the same terms of trade (Stiglitz 2004).

The fear associated with BTAs and free trade agreements (FTAs) is that they could fragment the previous global system into regional trading blocs. Especially in the case of the US, many perceived the turn of policy associated with the 1988 Omnibus Trade Bill – in particular, the “Super 301” provisions – as the most significant threat to multilateralism. Briefly, “Super 301” refers to a provision in US trade law pertaining to the monitoring of intellectual property rights (IPRs) worldwide. Bhagwati (1991: 48) defines US trade policy as one of “aggressive unilateralism.” Bhagwati also observes that another important departure from multilateralism relates to the position of developing countries – beneficiaries of “special and differential” treatment (S&D) under the GATT for some years.

The US is not the only country that has started using bilateral FTAs. The European Union (EU) is another major player that exercises its influence even with small but strong economies such as Switzerland. Vahl and Grolimund (2006: 47) observe that in the recent BTA between Switzerland and the EU, the former played a negligible role in decision-shaping. Swiss representatives only participated as “rule takers” or, at most, as “active observers.” Another example is provided by the growing rivalry between Japan and China for an economic leadership role in Asia, which prompted them to forge a series of bilateral treaties with other countries in the region.

The fact that bilateralism has been adopted also by developing countries needs a careful examination against the popular perception of multilateralism being the ideally democratic and respectful environment for international trading: on the one hand, bilateral negotiations may in fact be regarded as potentially imperialist maneuvers; on the other hand, developing countries seem to be willing to engage in bilateral negotiations. Moreover, such countries do not necessarily enjoy greater gains through multilateral trade agreements (MTAs).

## The Symbiosis between Multilateralism and Bilateralism

One of the reasons why BTAs are controversial is that, in principle, they lack the transparency and fairness of MTAs, which can be monitored more easily. This is not to imply that MTAs are unproblematic, as already noted. MTAs also tend to favor dominant states or trading blocs (e.g., the US and the EU). One of the principal concerns that has been raised widely about the power of multilateral trade institutions (e.g., the WTO) is that they undermine state sovereignty and the accountability mechanisms that are in place within many national contexts. Worldwide protests against the Multilateral Agreement on Investment (MAI), and mass abandonment of the Agreement by country after country in 1998, was in large part due to the successful publicity brought to bear on how the MAI would undermine the social, economic, and political protections that existed within Member States who were party to the agreement in draft form. Many governments rejected the MAI in response to domestic pressures, once it became publicly recognized how national governments would be at risk of losing control over domestic labor, human rights, and environmental policies. These same concerns were carried over in the following year during mass mobilizations against multilateral trade policies that were being proposed at the 1999 Summit of the WTO in Seattle. In sum, although MTAs generally are viewed more favorably in terms of the potential they offer for greater transparency and fairness, this is not necessarily so, as careful observers of multilateral governance have reported. However, as this chapter demonstrates, there is even greater cause for concern about the lack of transparency and uneven bargaining power that is found in BTAs. BTAs are understood more widely as illustrations of how political-economic disparities can be formalized into international trade processes.

Blum (2008) notes that very frequently multilateralism and bilateralism are mutually implied. First of all, it is important to consider that neither multilateralism nor bilateralism operates in a vacuum. What happens very often is that those two types of negotiation reinforce each other. For instance, FTAs and BTAs often make the outcomes of multilateral

negotiations more binding. In this sense, bilateral and multilateral agreements are intertwined rather than separate. For instance, the outcome of a given tariff negotiation within the GATT/WTO may be the result of bilateral negotiation between two specific countries which, then, according to the MFN principle, extends to third parties. Thus, tariff concessions are in effect given by one state to a multitude of other states but only in return for concessions from the one single state with which it conducted the bilateral negotiations.

In 1995, the year the WTO was founded, at a dinner with the "G-7 Business Round Table," the then WTO Director-General Renato Ruggiero described two incompatible approaches to global trade negotiations: bilateralism and multilateralism. Ruggiero was concerned about the growing tendency to opt for the bilateral solution to trade negotiations: bilateralism and multilateralism are not interchangeable approaches that are alternatively adopted; they are actually different philosophies. Multilateralism provides a negotiating environment characterized by a theoretically enforceable set of rules that impedes discrimination. Bilateralism appears as discriminatory by definition, unstable by nature, and very often extremely expensive in political terms that cannot be solved under WTO ruling.

One main question emerges here: Is multilateralism versus bilateralism the best framework of analysis? According to Saggi and Yildiz (2010; 27) the problem of bilateralism resides in the very multilateral charter of the GATT:

the schizophrenic nature of today's multilateral trading system is reflected in the somewhat conflicting rules of the WTO's key multilateral trade agreement, i.e. the GATT: Article I of the GATT requires member countries to undertake trade liberalization on a most-favored-nation (MFN) or non-discriminatory basis in relation to all its import and export policies. However, there is an important exception: Article XXIV of the agreement permits a subset of WTO members to pursue Preferential Trade Agreements (PTAs) "under which they can grant various concessions to each other that they do not have to extend to others."

The ambiguity of the regulatory framework of the GATT is further reflected by the fact that the vast majority of nation-states has now joined the

WTO, which implies global “voluntary” multilateralism for Member countries involved in an average of six preferential trade agreements (World Bank 2005). Thus, although bilateralism may tend to reproduce asymmetric relations between stronger and weaker countries, the decision for a weaker party to enter into bilateral negotiations with an overwhelmingly stronger party may derive from a complex set of economic and political evaluations that include the self-interest of the weaker state.

This efficiency framework is frequently coupled with the normative idea mentioned above. Ives (2003) discusses a body of literature (e.g., Zartman and Berman 1982; Saunders and Albin 1991; Rothman 1992; Spector 1995; Kelman 1996) that considers multilateralism, compared to bilateralism, as a process in which “the underlying interests and needs of different parties are considered to formulate a new and shared definition of the issue area, permitting movement toward a mutual gains mind set,” which reflects a vision of a new era of interdependence, wherein states negotiate rules for the future based on the spirit of consensus (Ives 2003: 47).

Ethier (1998) argues that Viner’s point of view was not the most useful means of analyzing the new phenomena of bilateralism and regionalism. Rather, Ethier takes the view that regionalism should be assessed in terms of assisting economies in transition to join the international trading system, in entrenching commitments to economic reform, and in distinguishing these countries from other candidates for foreign direct investment. His perspective concentrates mainly on bilateral agreements concluded between countries in the same geographic regions. In his theory, the success of multilateral liberalization will increase trade between neighbors, which, in turn, will create further incentives to *regional* trade pacts. Thus, bilateral regionalism and multilateralism feed each other. However, Ethier’s perspective does not take into account that one of the characteristics of the more recent surge in trade bilateralism is that much of it relates to countries separated by great distances. Consider, for instance, the FTAs concluded by the US with Australia, Bahrain, Chile, Jordan, Morocco, and Singapore, and its declared intention to sign such agreements with Malaysia, South Africa, Thailand, and the United Arab Emirates.

To conclude this comparison, our objective is not to rehabilitate bilateralism but to provide an account of the relationship between multilateralism and bilateralism that would oblige us to not construct a binary opposition between the two types of agreements and, instead, to look at both the complexity and the specificity of historical conditions. This reasoning allows us to take the circumstances that currently affect the areas of intellectual property regulation and telecommunication in their specificity. As Shadlen (2008) maintains, the proliferation of bilateral and regional trade agreements contributes to power asymmetries, especially in the case of US trade relations with its neighbors. Such asymmetries do not occur through overt coercion by way of violence and military occupation, but by the subtle and legal means of enforcing apparently “free” negotiations. Based on this comparison, it is possible to focus on the specific features of international trading in the field of telecommunication and IPRs.

### **Telecommunication and Intellectual Property**

Bilateral negotiation is not necessarily accidental or always a result of political arm twisting, but an apparent option. This can be shown in cases of BTAs in the fields of telecommunication and intellectual property. However, sometimes bilateral agreements are not an option. The qualitative distinction of bilateralism in this area is that, compared to other fields, there is remarkable asymmetry between the few countries producing goods connected to knowledge and information and most of the world demanding them. Among strong countries that may use bilateralism instrumentally in this field in order to fulfill economic and political goals, we will focus in particular on the US case, not because it is the only one employing it but because it is a particularly emblematic one.

The exceptionality of the US case is due to two main reasons. Historically, the US has been the preeminent producer of goods and services in telecommunication and intellectual property. There is then a strong asymmetrical relationship between the countries supplying and demanding such products and services. Since the late 1970s,

the US gradually lost its supremacy as an economic power due to the recovery of the European economies and the emergence of Asian actors such as Japan, China, and India, leading to intensified concern with the regulation of economic sectors in which it continued to enjoy market advantages. Sell (1998) notes that from the early 1980s the US government became active against piracy and in favor of strong IPRs due to its loss of global market share. The same author notes that US firms since the 1970s have attributed the loss of revenues to faulty protection of copyright and IPRs, and this led the US government to take action by filing cases under Special 301. This led the US to focus on economic fields in which it was still hegemonic, namely, telecommunication and intellectual property.

Several scholars (Aronson and Cowhey 1988; Madden and Savage 1998; Zacher and Sutton 1996) have noted that since the 1970s the Organization for Economic Cooperation and Development (OECD) was considering the problem of national monopolies in telecommunication services. Developed countries, headed by the US, eagerly started to develop arguments against the idea of "natural monopoly" in telecommunication services. This first affected its own domestic markets, leading to structural policy changes aimed at privatization and liberalization. Then, the US government started a campaign of bilateral trade negotiations in order to gain access to foreign markets. In part as a reaction to the neoliberal arguments emerging from OECD countries and the already perceived asymmetries between developed and developing countries in this field, important debates took place inside UNESCO during the 1970s that generated calls for a NWICO and the research undertaken by the International Commission for the Study of Communication Problems (ICSCP) – or MacBride Commission.

One of the most important themes during the UNESCO NWICO debates was the recognition of the imbalance in the flow of information and cultural products. Not surprisingly, the target of the critique was mostly the US, which at that time, and in relation to this debate, decided to withdraw from UNESCO. The report produced by the MacBride Commission in 1980 advocated for an information and communication order based on moral and intellectual principles that considered communication and information as a communitarian wealth.

But this reasoning lost out to market principles that favored dominant players, particularly US-based media interests. Evident in the letter from US Secretary of State George Schultz to UNESCO Director-General Amadou-Mahtar M'Bow (see Schultz 1984), announcing the decision of the US government to withdraw its membership from UNESCO, is a clear intent to move away from multilateral cooperation and toward unilateral and bilateral methods of pursuing trade interests in media-related industry sectors (Calabrese 2008).

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement demonstrated that the strongest obstacle against an alternative information and communication order was a political-economic one (WTO 1994). The TRIPS Agreement exemplifies the persistence of the imbalance that is reproduced by bilateralism between the few producers and most of the consumers of intellectual property, since those treaties are imposed by industrialized countries upon the rest of the world to privatize areas previously considered public. Ironic is the fact that even though these agreements are made to create or increase monopolies over knowledge, they often are labelled by their backers as "Free Trade Agreements."

As noted above, the US is not the only country to be caught up in a newfound exuberance for regional and BTAs. In a similar way, the EU, which symbolizes the success of regionalism, is pushing ahead with a range of bilateral and regional trade and investment initiatives, notably the comprehensive Economic Partnership Agreements (EPAs) with the 77 African-Caribbean-Pacific (ACP) countries. The EU is also trying to counter US market advantages from an eventual Free Trade Area of the Americas (FTAA) in Latin America by clinching its own deal with the powerful economies of MERCOSUR. Closer to home, the EU is tightening its bilateral economic and political links in the Middle East and North Africa.

Furthermore, the focus should be not only on powerful countries but also on powerful private actors that influence powerful governments. In this sense, as Bettig (1996) notes, there has been a decline of public control over communication systems and the ascendance of private actors who represent the interests of large transnational corporations. Two examples that elucidate how US industry allies with the US government are the US–Canada FTA controversy about cable television in



the early 1990s and the US–Japan trade disputes (such as the one between Kodak and Fuji in 1997). Devereaux *et al.* (2006: 176) report that private actors in the US system can take the initiative in pressuring Washington to bring a case: “in the instance of Kodak, the firm and its lawyers were the principal source of information on which the USTR [Office of the US Trade Representative] relied to pursue the case.”

These cases are ones in which bilateralism reproduces asymmetric power relations even among developed countries. Possibly even more pronounced is the case of Australia. Capling (2005) discusses how the Australia–US Free Trade Agreement, signed on February 8, 2004, affects domestic policy in areas such as culture, public health, and copyright, while producing very little gain for Australian exporters: “Thus, in trade matters, Australia needs the United States more than it needs us. This imbalance has been exacerbated by US import restrictions against many of Australia’s most competitive exports” (Capling 2005: 39). Capling (2005: 78) is one of the few who explicitly refers to the subordination of Australia as “imperial preference ... imperial preference subordinates trade policies to broad strategic concerns.” According to such a principle, Australia refused to sign a trade agreement with Japan, due to “imperial solidarity” with the US.

Unbalanced power relations can be established even between official allies and developed countries. However, even among developed economies, bilateralism works well to expose weaker negotiating countries to power relations. This raises the question of why countries that are aware of being weaker negotiating parties decide to get involved in bilateral negotiations with the US or the EU. Elkins *et al.* (2004) point out that the diffusion of BTAs is propelled in good part by competition for credible property rights protection which is required by direct investors. BTAs are a credible commitment device because they provide a meaningful signal to investors. To violate or be accused of violating a treaty would risk serious damage to a government’s reputation and its foreign policy interests.

US foreign policy on IPRs consists of encouraging foreign nations to amend their domestic IPR laws by offering favorable trading benefits and economic investment to the countries that comply with the USTR agenda on IPRs. However, if the

country does not comply with the bilateral agreement it can be placed on a “watch list” under the annual “Special 301 Report.” As noted, bilateral agreements have important repercussions in multilateral arenas such as the WTO, since the countries are in fact compelled to accommodate the position of the stronger party in a bilateral agreement in order to not suffer repercussions. Thus, FTAs and BTAs represent effective ways to silence countries in international and multilateral arenas.

The short-term political advantages of favorable trade status with the US are difficult to weigh against national long-term interests of a balanced IPR policy and a rich public domain. Eventually, most countries must accede to the IPR policy demands of the US and sign the bilateral agreement. The governments complying agree to renounce the use of a broad range of policy instruments such as taxation, regulation, currency, and capital restrictions. Smith (2008) states that the US is exporting high levels of IPRs protection, and that such levels not only exceed those required by the TRIPS but frequently *de facto* oblige the weaker parties to rewrite parts of their legal framework. One example of the complexity of the situations in which bilateral negotiations take place is the Central America Free Trade Agreement (CAFTA) between the US and Central American countries. CAFTA carries significant consequences for the weaker parties, namely, the necessity to *de facto* rewrite their constitutions in order to accommodate US businesses. On the other hand, the conformance with the external legal environment may be explained in terms of restructuring their system in ways that can attract foreign investments.

Roffe (2004: np) argues that the US–Chile Fair Trade Agreement (2004) constituted a blueprint for later FTAs, and included a full chapter on IPRs. One notable feature of bilateral agreements with the US, Roffe suggests, is that countries are under an “obligation to adjust internal IP regimes to new IP standards, prior to the entrance into force of the agreement.” Subsequently, the US concluded treaties throughout Latin America.

A concrete example is Costa Rica. Since 2007, due to its participation in CAFTA, Costa Rica dismantled its constitutionally protected state telecommunication monopoly in order to permit market access by private competitors, which illustrates that BTAs are used to impose constitutional

reforms. In Costa Rica, telecommunication was one of several affected public services, including water, electricity, and education. In those fields, multinational companies maintain the right to sue the state for reasons that may affect their profits, thereby preventing the state from maintaining such services under public dominion.

In the cases of CAFTA and NAFTA, one paradox emerges: the settlements are based on the rhetoric of free trade and free markets; however, the guarantee of IPRs necessitates the national enforcement of the property rights of globe-spanning private monopolies.

Even beyond its sphere of geographic proximity, the US has been able to gain access through BTAs and FTAs to domestic telecommunication markets, as in the case of Morocco having granted the use of transmission facilities and the wholesaling of transmission capacities. As in most other bilateral agreements, the main aim of the US in FTA negotiations is to gain access to the services sector, especially finance, insurance, and telecommunication. This is also the case in Thailand, where the then Prime Minister Thaksin Shinawatra has been criticized for selling off the communication and information sector to foreign companies.

The South Korea–US bilateral treaty also illustrates imposed national reforms in intellectual property law. South Korea has had to adopt the US and EU definitions of copyright, extending it to seventy years after the death of the author. South Korea will also have to change its rules on patents, and may have to change its national healthcare policy of reimbursing patients only for certain drugs. All these changes will give patent and copyright holders stronger protection for longer.

## Conclusion

Ruggie (1992: 571) suggests that bilateralism and multilateralism stand apart from imperialism, and he bases his argument on the claim that, unlike the former two arrangements, imperialism coordinates relations among states by “denying the sovereignty of subject states.” But this claim is contradicted by the fact that BTAs and MTAs are both used to force states to change their constitutions to accommodate the agreements. In other words, states may, and often are, forced to compro-

mise their claims to sovereignty as a means of conforming to hegemonic trade frameworks.

Such relations may be considered a form of imperialism. If we consider that beyond natural borders nation-states are entities contained within a Westphalian framework of sovereignty, then the idea of exporting legal systems from one country to another, unless the result of a particular free arrangement, was one of the important elements that characterized colonialism and empires. A classic example of the past was the British Empire, which, in cases such as India and Singapore, transplanted its own juridical system into those colonies with success. The practice is not new to imperialism, but through BTAs it has assumed a particularly insidious character which raises the question of how states involved in ostensibly “free” negotiations decide and accept subjection to such a practice.

Trade agreements are not necessarily the alternative to imperialism; rather, they are formal arrangements that, in fact, enable latter-day impositions of imperial power. Of course, bilateral agreements are far more blatant in the manner in which trade discipline is imposed directly by powerful states upon weaker ones. However, such imbalances can also be found in multilateral accords. As telecommunication and intellectual property continue to represent increasingly vital arenas of economic power struggles between and among states, such resources are likely to continue being correctly understood as fulcrums upon which imperial power pivots.

## Note

- 1 Sometimes, bilateral trade agreements (BTAs) are referred to as free trade agreements (FTAs), especially by the US government. However, FTAs may be distinguished from BTAs in that the former may involve more than two countries. According to this logic, all BTAs are FTAs, but not all FTAs are BTAs.

## References

- Aronson, J. D., and Cowhey, P. F. (1988) *When Countries Talk: Trade in Telecommunications Services*. Washington, DC: American Enterprise Institute.
- Australia–US Free Trade Agreement (2004) *Australia–US Free Trade Agreement*, <http://www.ustr.gov/trade-agreements/free-trade-agreements/australian-fta/final-text> (accessed 14/04/2010).

- Bettig, R. V. (1996) *Copyrighting Culture: The Political Economy of Intellectual Property*. Boulder, CO: Westview Press.
- Bhagwati, J. (1991) *The World Trading System at Risk*. Princeton, NJ: Princeton University Press.
- Bloed, A., and Van Dijk, P. (eds) (1999) *Protection of Minority Rights Through Bilateral Treaties*. The Hague: Kluwer Law.
- Blum, G. (2008) "Bilateralism, multilateralism, and the architecture of international law," *Harvard International Law Journal*, 49(2): 323–379.
- Calabrese, A. (2006) "The symbolism of international summits and declarations: Reflections on the World Summit on the Information Society," *Global Media Journal: Mediterranean Edition*, 1(2): 44–54.
- Calabrese, A. (2008) "UNESCO," in W. Donsbach (ed.) *The International Encyclopedia of Communication*. Oxford: Blackwell Publishing, [http://www.communicationencyclopedia.com/subscriber/tocnode?id=g9781405131995\\_chunk\\_g978140513199526\\_ss7-1](http://www.communicationencyclopedia.com/subscriber/tocnode?id=g9781405131995_chunk_g978140513199526_ss7-1) (accessed 01/04/2010).
- Capling, A. (2005) *All the Way with the USA*. Sydney, NSW: University of New South Wales Press Ltd.
- Central American Free Trade Agreement (2004) *Central American Free Trade Agreement*. <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text> (accessed 14/04/2010).
- Cooper, R. (2003) "How shall we answer Robert Kagan?" *Transatlantic Internationale Politik*, 4(2): 19–25.
- Devereaux, C., Lawrence, R., and Watkins, M. (2006) *Case Studies in US Trade Negotiations*. Washington, DC: Institute for International Economics.
- Elkins Z., Guzman, A. T., and Simmons, B. A. (2004) "Competing for capital: The diffusion of bilateral investment treaties, 1960–2000," *UC Berkeley Public Law Research Paper No. 578961*. Berkeley, CA: UC Berkeley.
- Ethier, W. J. (1998) "Regionalism in a multilateral world," *Journal of Political Economy*, 106(6): 1114–1245.
- General Agreement on Tariffs and Trade (1947) *General Agreement on Tariffs and Trade*, <http://www.worldtradelaw.net/uragreements/gatt.pdf> (accessed 17/04/2010).
- Gramsci, A. (1971) *Selections from the Prison Notebooks*, ed. and trans. Q. Hoare and G. N. Smith. New York: International Publishers.
- Greenaway, D. (1990) "Multilateralism and bilateralism in trade policy," *The Economic Journal*, 100: 1286–1287.
- Hardt, M., and Negri, A. (2000) *Empire*. Cambridge, MA: Harvard University Press.
- Harvey, D. (2003) *The New Imperialism*. New York: Oxford University Press.
- Hills, J. (2007) *Telecommunications and Empire*. Urbana, IL: University of Illinois Press.
- Iftikhar, H. M. (1990) "Pakistan–U.S. security relationship: Testing bilateralism," *Asian Survey*, 30(3): 284–299.
- Innis, H. A. (1950/2007) *Empire and Communications*. Lanham, MD: Rowman & Littlefield.
- Ives P. (2003) "Negotiating global change: Progressive multilateralism in trade in telecommunications talks," *International Negotiation*, 8(1): 43–78.
- International Commission for the Study of Communication Problems (ICSCP) (1980/2004) *Many Voices, One World: Towards a New, More Just and More Efficient World Information and Communication Order*. Lanham, MD: Rowman & Littlefield.
- Kant, I. (1932) *Perpetual Peace*. Los Angeles: US Library Association, Inc.
- Kelman, H. C. (1996) "Negotiation as interactive problem solving," *International Negotiation*, 1(1): 99–123.
- Keohane, R. (1986) "Reciprocity in international relations, international institutions and state power," *International Organization*, 40(1): 1–27.
- Kingsbury, B. (1998) "Sovereignty and inequality," *European Journal of International Law*, 9(4): 599–625.
- Koskenniemi, M. (1990) "The politics of international law," *European Journal of International Law*, 1(1): 4–32.
- Kwakwa, E. (2000) "Regulating the international economy: What role for the state?" in M. Byers (ed.) *The Role of Law in International Politics*. Oxford: Oxford University Press, pp. 227–246.
- Madden, G., and Savage, S. (1998) "CEE telecommunications investment and economic growth," *Information, Economics and Policy*, 10(2): 173–195.
- Marx, K. (1906) *The Capital: A Critical Analysis of Capitalist Production*. London: Swan Sonnenschein & Co.
- North American Free Trade Agreement (NAFTA) (1992) *North American Free Trade Agreement*, <http://www.sice.oas.org/trade/nafta/naftatce.asp> (accessed 14/04/2010).
- Odell, J. (2006) *Negotiating Trade: Developing Countries in the WTO and NAFTA*. Cambridge: Cambridge University Press.
- Ó Siochrú, S., and Girard, B. (2002) *Global Media Governance: A Beginner's Guide*. Lanham, MD: Rowman & Littlefield.
- Passavant, P. A., and Dean, J. (eds) (2004) *Empire's New Clothes: Reading Hardt and Negri*. New York: Routledge.
- Polanyi, K. (1957) *The Great Transformation*. Boston, MA: Beacon Press.
- Raustiala, K. (2005) "Form and substance in international agreements," *American Journal of International Law*, 99(3): 581–614.
- Roffe, P. (2004) "Bilateral Agreements and a TRIPS-Plus World: The Chile–USA Free Trade Agreement." TRIPS Issues Paper No. 4. Ottawa: Quaker International Affairs Programme, QUNO, <http://www.quno.org/geneva/pdf/economic/Issues/Bilateral-Agreements-and-TRIPS-plus-English.pdf> (accessed 13/04/2010).

- Rothman, J. (1992) *From Confrontation to Cooperation: Resolving Ethnic and Regional Conflict*. London: Sage Publications.
- Ruggie, J. G. (1992) "Multilateralism: The anatomy of an institution," *International Organization*, 46(3): 561–598.
- Saggi, K., and Yildiz, H. M. (2010) "Bilateralism, multilateralism, and the quest for global free trade," *Journal of International Economics*, 81(1): 26–37.
- Said, E. W. (1993) *Culture and Imperialism*. New York: Vintage/Random House.
- Saunders, H., and Albin, C. A. (1991) *Sinai II: The Politics of International Mediation 1974–1975*, Vol. 17. Washington, DC: Foreign Policy Institute.
- Schiller, H. (1992) *Mass Communications and American Empire* (second edition). Boulder, CO: Westview Press.
- Schultz, G. (1984) "Letter from U.S. Secretary of State George Schultz to UNESCO Director-General Amadou-Mahtar M'Bow, announcing the decision of the U.S. government to withdraw its membership from UNESCO (28 December 1983)," *Journal of Communication*, 34(4): 82–84.
- Schumpeter, J. A. (1947) *Capitalism, Socialism and Democracy*. New York: Harper & Brothers.
- Sell, S. K. (1998) *North–South: Politics of Intellectual Property and Antitrust*. New York: State University of New York Press.
- Shadlen, K. (2008) "Globalization, power and integration: The political economy of regional and bilateral trade agreements in the Americas," *Journal of Development Studies*, 44(1): 1–20.
- Simma, B. (1983) "Consent: Strains in the treaty system," in R. St. J. MacDonald and D. M. Johnston (eds) *The Structure and Process of International Law*. The Hague: Martinus Nijhoff Publishers, pp. 485–512.
- Smith, A. (1937) *An Inquiry into the Nature and Causes of the Wealth of Nations*. New York: Modern Library.
- Smith, S. (2008) *Intellectual Property in Free Trade Agreements*. Penang: TWN – Third World Network.
- Spector, I. (1995) "Creativity heuristics for impasse resolution: Processes to reframe intractable negotiations," *The Annals of the American Academy of Political and Social Sciences*, 542: 81–99.
- Stern, B. (2000) "How to regulate globalization," in M. Byers (ed.) *In the Role of Law in International Politics: Essay in International Relations*. Oxford: Oxford University Press, pp. 247–269.
- Stiglitz, J. E. (2004) "Unfair trade: U.S. treaties hurt the poorest partners" (July 12), *International Herald Tribune*, <http://www.commondreams.org/cgi-bin/print.cgi?file=/views04/0712-10.htm> (accessed 01/04/2010).
- Tomlinson, J. (1991) *Cultural Imperialism: A Critical Introduction*. Baltimore, MD: Johns Hopkins University Press.
- United Nations (1948) *Universal Declaration of Human Rights*. New York: United Nations.
- UNESCO (1978) "Declaration on fundamental principles concerning the contribution of the mass media to strengthening peace and international understanding, to the promotion of human rights and to countering racialism, apartheid and incitement to war." Paris: UNESCO, [http://portal.unesco.org/en/ev.php-URL\\_ID?13176&URL\\_DO?DO\\_TOPIC&URL\\_SECTION?201.html](http://portal.unesco.org/en/ev.php-URL_ID?13176&URL_DO?DO_TOPIC&URL_SECTION?201.html) (accessed 14/04/2010).
- US–Chile Fair Trade Agreement (2004) *US–Chile Fair Trade Agreement*. Washington, DC: USTR, <http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text> (accessed 01/04/2010).
- US–Israel Free Trade Area Agreement (1985) *US–Israel Free Trade Area Agreement*. Washington, DC: USTR, [http://tcc.export.gov/Trade\\_Agreements/All\\_Trade\\_Agreements/exp\\_005439.asp](http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005439.asp) (accessed 14/04/2010).
- Vahl, M., and Grolimund, N. (2006) *Switzerland's Bilateral Agreements with the European Union*. Brussels: Centre for European Policy Studies.
- Viner, J. (1950) *The Customs Union Issue*. Washington, DC: Anderson Kramer Associates.
- Walzer, M. (2003) "Is there an American empire?" *Dissent*, Fall: 27–31.
- Winseck, D. R., and Pike, R. M. (2007) *Communication and Empire*. Durham, NC: Duke University Press.
- World Bank (2005) *World Bank Annual Report 2005*. Washington, DC: World Bank, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/07/12/000112742\\_20070712170318/Rendered/PDF/324030v20ar051FS0011pdf.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/07/12/000112742_20070712170318/Rendered/PDF/324030v20ar051FS0011pdf.pdf) (accessed 14/04/2010).
- World Trade Organization (1994) *Trade-Related Aspects of Intellectual Property Rights*, [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm) (accessed 14/04/2010).
- World Trade Organization (2010) *A Summary of the Final Act of the 1986–1994 Uruguay Round*. Geneva: WTO, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#General](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#General) (accessed 17/04/2010).
- Zacher, M., and Sutton, B. (1996) *Governing Global Networks: International Regimes for Transportation and Communications*. Cambridge: Cambridge University Press.
- Zartman, I. W., and Berman, M. R. (1982) *The Practical Negotiator*. New Haven, CT: Yale University Press.

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*Edited by*

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