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Golden straitjackets can chafe
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International trade negotiations take place in an environment of Orwellian New-Speak. So-called "free trade" agreements give one country *preferential* access, ahead of cheaper potential suppliers. "Most favoured nation" clauses have the opposite effect, ensuring that all countries are treated in the same way, with no country "most favoured". At a deeper level, the whole notion of horse-trading about access is perverse: what is being offered as a quid-pro-quo bargaining chip (called a "concession") is something that we should do anyway, in our own self-interest. Trade bargaining is the equivalent of saying: "we will remove the rocks from our harbours if you remove the rocks from your harbours".

In this Alice-in-Wonderland world where words can mean just what you want them to mean, it is not surprising that different evaluations of the Australia/US FTA emerge. Weiss, Thurbon and Mathews (AFR Review, 4 June 2004) make their judgement on the basis of what Australia gave away and what we got in return, and on this tit-for-tat basis, they find the outcome to be unsatisfactory. The Government-commissioned CIE study finds a net benefit, but on the basis that removing our investment restrictions will be beneficial – and we could have removed these at any time, without a FTA. Superimpose the doctrinal certainties of economics ("multilateral reduction of restrictions is good, bilateral deals create distortions") on top of the broader context of international relations, and there are boundless opportunities for irreconcilable differences of view.

To make sense of this, we need to distinguish four separate types of arguments:

- First, the economic debate about multilateral versus bilateral, where there is a strong presumption that the first is superior.
- Second, that tit-for-tat trade negotiations should squeeze as much as possible out of the other party (in terms of improved access to their market), even though what we give up in return is generally in our interests to give away.
- Third, there is a wider diplomatic context – the deals may strengthen important political and strategic alliances or enhance our standing in the world.
- Fourth, trade negotiations (whether bilateral or multilateral) are an opportunity to lay down the "rules of the game" for international economic relationships.

This last argument has not figured in the debate so far, but it should have more prominence. One of the text-book fictions of economics is that Adam Smith's "invisible hand" sorts it all out, without the need for any rules: atomistic buyers and sellers meet in a perfectly free market to establish the terms of their dealings, and set prices by a process of impersonal bargaining. The real world is quite different: there are a maze of rules, regulations and practices which help ensure that deals are done with a degree of efficiency, fairness and certainty, with both sides reasonably well-informed on the nature of the deal, and so that all the elements of the deal can be enforced.

While the frameworks of rules for the domestic economy have become increasingly pervasive and complex, the corresponding rules for international economic relationships are much less well-developed. In large part this reflects issues of sovereignty: governments cannot easily enforce rules beyond their borders, and they are reluctant to see other countries' rules imposed on their citizens. But as the world has become more integrated ("globalised"), the need for such rules has become more apparent and pressing. Hence the development of what Thomas Friedman (in *The Lexus and the Olive Tree*) described as the "Golden Straitjacket": a set of rules to govern international economic relationships. Many are norms or standard procedures voluntarily entered into. Where enforcement is required, this comes not through some supra-national source of discipline, but by countries incorporating these rules, to a greater of lesser degree, into their own domestic legislation and regulations.

This does not imply that the rules are onerous or that they infringe our sovereignty. Just as it is in our interests to play soccer or netball using the same rules that are used world-wide (so that we can compete in the World Cup when our time comes), it will help Australia to be part of a standardised set of understandings and specifications to govern our dealings with the outside world. In most cases, this is a voluntary process, just like trading with the outside world is voluntary. We do it not because we are forced, but because it is in our interests.

The development and perfecting of these rules and practices may be as important – perhaps even more important – than the issues of tariffs and border protection (half our tariffs are already zero, and the other half average less than 5 percent). This will be even more true in a world where capital flows and finance are huge, and international trade in services (especially matters such as intellectual property rights - patent and copyright protection) become more important than the Ricardian traditional examples of exchanging cloth-for-wine. While not neglecting the advantages still to be reaped from reducing traditional trade barriers, we need to see these FTAs as part of the process of developing the "rules of the game", accepting that these rules (Friedman's Golden Straitjacket) will be imposed on all of us by the process of globalisation, whether or not we participate in the rule-making. We need to do what we can to ensure that these rules are written in a way favourable to us, or at least that they are "fair" in some sense. And we certainly can't rely on the beneficence of our trading partners to look after our interests. Some rules will be developed in a multilateral context (e.g. the "Basle Rules" which govern the prudential regulation of banks). Others will come out of the bilateral processes (e.g. the increasing uniformity enforced by the US on intellectual property rules). A multilateral framework is too cumbersome for the development of consensual rules governing, for example, international investment, government procurement and competition policy. These will have to be sorted out at a bilateral level. If FTAs provide the forum where the main action in developing the rules takes place, then we need to join this effort in order to influence the rule-making in our favour.

Our bargaining strategy in this rule-making process will be very different from traditional trade negotiation, where the "concessions" which we offer are things that are in our best interests to give anyway. There will be opportunities for "win/win" rules (think of the rules of soccer), but often the interests of the foreign party will differ from ours: lengthening copyright life to keep Walt Disney creations protected has a cost for us. To add to the complexity of the negotiations, there will often be different interests *within* the Australian community, with the loudest voices often coming from those with special pleading, rather than the national interest, at heart. As an example of this tension, our international air negotiations were – in former times – conducted with the interest of Qantas in mind, rather than the travelling public or the tourism industry. When it comes to intellectual property, we need to take into account the users, as well as the producers.

What does that mean in practice? We can draw on the AUSFTA for examples. When we look at aspects of investment rules, are we getting adequate assurance on matters such as transfer pricing and taxation? On intellectual property rights, are the rules fair, reasonable and in our overall national interests? Just because a set of rules is appropriate for the USA (where there is a large market and a strong tradition of government-enforced competition), will it suit Australia? Of course we have to recognise our limited capacity to influence these rules. As well, we know from our experience of domestic rule-making that it is hard to get the right balance between competing interests and objectives, and there will always be persuasive arguments that we have either too many rules or too few. But if we see this rule-making as the "main game", we might be more successful in getting a Golden Straitjacket that doesn't chafe too much.

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