

## TRADE AND SOVEREIGNTY: WHAT YOU CAN SEE BY LOOKING

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Dr. Henry Kissinger, famous American scholar, advisor to presidents, and former Secretary of State, has a widely recognized voice.<sup>1</sup> It is deep, resonant, cultured, and profoundly accented. Henry's brother Walter, who was a year younger than Henry, was a tad less famous. But he was notable, as is a story about both Kissingers. One of Walter's friends is said to have pulled him aside and said, "Walter, I just have to ask you something. You and Henry both came to America from Germany as teenagers. Now, you speak English like everybody else in America, while to this day Henry retains his heavy German accent. Can you explain why that is?" Walter looked him in the eye and said, "Henry actually doesn't speak with a German accent. That's simply the way you speak English if you never listen to anyone."<sup>2</sup>

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1. This essay has been adapted from remarks delivered at the 2021 Federalist Society National Student Symposium in a debate on "Trade and Sovereignty" with Professor Jacques deLisle, Gary N. Horlick, Professor Jide Okechuku Nzelibe, and, as Moderator, Hon. Stephen A. Vaden of the United States Court of International Trade. The original debate can be viewed at The Federalist Society, *Panel II: Trade and Sovereignty followed by Presentation of the Article I Award*, YOUTUBE (Mar. 19, 2021), <https://www.youtube.com/watch?v=wVhWV32hBRQ> [<https://perma.cc/Ry3S-SH7U>].

2. Cf. Katharine Q. Seelye, *Walter Kissinger, Businessman and Brother of Henry, Dies at 96*, N.Y. TIMES (May 27, 2021), <https://www.nytimes.com/2021/05/27/business/walter-kissinger-dead.html> [<https://perma.cc/3F6G-Y9QS>] ("Another overt difference was that Walter shed his Bavarian accent while Henry notably retained his. When asked

Whether Walter's critique of Henry was valid or fanciful, the value of listening to others is undeniable. It was the great American philosopher Yogi Berra who, discussing the game of baseball, reportedly said, "You can see a lot just by looking."<sup>3</sup>

Trade and sovereignty are much the same.

What follows is an essay that describes what can be seen with a modest amount of looking. It reviews the meaning of sovereignty, the basics of international trade and trade policy, and the relation of considerations relevant to the two topics. In particular, the essay discusses the role that open trade plays in both protecting and potentially undermining national security and the impact of trade-related agreements and institutions on national sovereignty. The essay ends with observations about relative risks posed by particular forms of cooperation and with cautions for policymakers in the trade arena.

#### *Sovereignty in a Nutshell*

Start with sovereignty. I will use the term to refer to nation-states, although the concept pre-dates the nation-state (for centuries applying primarily to city-states and smaller principalities<sup>4</sup>) and, for some commentators today, extends beyond nation-states to supranational entities such as the European Union.<sup>5</sup>

Simply put, sovereignty denotes the right and power to do things. It encompasses control over internal governance (the who, how, and what of governing within a nation's jurisdiction), control of borders (regulating people and products crossing a nation's borders), and control over relations with other sovereign entities (how

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why this was the case, Walter would tell interviewers, 'Because I am the Kissinger who listens.'").

3. Christopher H. Achen, *Let's Put Garbage-Can Regressions and Garbage-Can Probits Where They Belong*, 22 CONFLICT MGMT. & PEACE SCI. 327, 327 (2005) (quoting Berra).

4. See ERNST H. KANTOROWICZ, *THE KING'S TWO BODIES* 236-58 (Princeton Univ. Press, reprint ed. 1997).

5. Mujtaba Rahman, *European Sovereignty Has Lost Its Biggest Champion*, POLITICO (Apr. 7, 2021, 4:00 AM), [www.politico.eu/article/european-sovereignty-has-lost-its-biggest-champion-emmanuel-macron](http://www.politico.eu/article/european-sovereignty-has-lost-its-biggest-champion-emmanuel-macron) [<https://perma.cc/H2S3-GWHK>].

the nation relates to other nations, cooperatively or antagonistically, at war or peace).<sup>6</sup>

Sovereignty is not measured by how aggressive a nation is in its exercise of those prerogatives. It is not a matter of the choices a nation makes with respect to these powers, although those choices may affect the quality of life for the nation's residents and even the nation's ability to exercise sovereignty in the future. Whether a nation chooses to have an economy that is controlled by the government or is relatively laissez-faire, implementing either choice is an exercise of sovereign authority. So is the choice between open borders and tightly controlled borders, though, again, that choice may have considerable impact on the quality of a nation's sovereignty going forward, as it can alter the effective power to control different aspects of life within the nation.

*Trade: A Primer*

Trade, here meaning international trade, is equally simple. Although generally thought of in terms of international product (or service) flows and the rules that govern them, the underlying decisions that drive trade are more granular. Trade is best understood by looking first at individual-level decisions.

The essence of international trade is a decision by someone in one sovereign jurisdiction to buy something that will come from another sovereign jurisdiction. This simple version of trade oversimplifies in important respects but provides a useful starting heuristic for understanding trade.<sup>7</sup> The fact that trade takes place across sovereign borders is important, but understanding trade begins with the considerations that drive individuals' decisions on both sides of a transaction.

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6. See MICHAEL ROSS FOWLER & JULIE MARIE BUNCK, *LAW, POWER, AND THE SOVEREIGN STATE: THE EVOLUTION AND APPLICATION OF THE CONCEPT OF SOVEREIGNTY* 63–82 (Penn State Univ. Press 1995).

7. Among other things, the simple heuristic used here should not be understood as drawing a sharp line between source and destination—it does not presuppose that objects of international trade can be said to be wholly products of one nation, making the exchange a simple transfer of product from one nation and funds to pay for it from another nation.

In its most basic sense, trade takes place because one person wants to acquire something that is better, cheaper, or different—something that person values more than his or her next best use of whatever the thing costs—and the person on the other side of the transaction values the money price more than the goods being sold. You buy things because you want them and think they are worth the cost; people sell them to you because they think the price gives them something more valuable than the goods. From a strictly economic standpoint, trade makes parties on both sides better off.

Of course, this does not mean that trade makes everyone better off. If I buy from you instead of John (my former supplier), you and I are both better off, but John is not. That relationship is endemic to competition, domestic or international. And that observation provides an essential insight into much of the controversy about trade. With trade, as with pretty much everything else, people tend to make arguments that are consistent with their own self-interest, whether promoting or opposing trade restraints.

#### *U.S. Trade History*

In the United States, from the nation's inception, international trade has been recognized as both important and politically divisive. The very first substantive law passed by the first Congress was an international trade bill that placed tariffs on a variety of items.<sup>8</sup> The southern states wanted tariffs on agricultural goods (which they produced) but not on finished products (which they primarily purchased).<sup>9</sup> The northern states wanted tariffs on finished products (their own focus for production) but not agricultural goods or inputs to production.<sup>10</sup> And our political forebears did things the way we have always done them: they compromised by putting tariffs on both!<sup>11</sup>

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8. An Act for Laying a Duty on Goods, Wares, and Merchandises Imported into the United States, 1 Stat. 24 (1789)

9. See DOUGLAS A. IRWIN, *CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY 75–77* (Univ. of Chicago Press 2017).

10. *Id.*

11. *Id.*

Our nation has, over time, had an up – and–down relationship with tariffs. From about 1820 to 1900, U.S. tariffs were relatively high compared to most of the world.<sup>12</sup> After that, the tariffs came down substantially until 1930 when the Smoot–Hawley Tariff raised tariffs to prior levels.<sup>13</sup> Other countries placed reciprocal tariffs on our exports to them,<sup>14</sup> and in a period of two years, the GNP of the United States dropped by about a third, and over a four–year period by almost half.<sup>15</sup> The aftermath of Smoot–Hawley showed the difficulty of walking the rising tariffs back quickly and, more generally, illustrated the problem of endeavoring to get agreement to open trade in an environment where each trade adjustment has opponents as well as advocates in each country. The result at the time was that Americans, and citizens in much of the rest of the world, found themselves cut off from access to a wide variety of more complex, more readily available, and more varied goods at better prices than if they had been able to open their economies to trade. That was a loss not just for the economy but for many people’s quality of life as well.

Having (largely) learned that lesson, the United States has followed a relatively open trade policy since that time.<sup>16</sup> One element in that transformation was a change in the process for adopting trade rules. Starting with the Reciprocal Trade Act of 1934, trade

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12. Kevin H. O’Rourke, *Tariffs and Growth in the Late 19th Century*, 110 *ECON. J.* 456, 461 (2000) (making a partial comparison of tariffs over this time period). *See also* UNITED STATES BUREAU OF THE CENSUS, *HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1957*, at 539 (U.S. Gov’t Printing Off. 1960).

13. *See* 19 U.S.C. §§ 1202–1683g (2012); *see also* Douglas A. Irwin, *The Smoot–Hawley Tariff: A Quantitative Assessment*, 80 *REV. ECON. & STAT.* 326, 328 (1998) (Figure 2).

14. *See id.* at 326 (“Smoot–Hawley has been blamed for poisoning international trade relations by triggering a wave of foreign tariff increases that put world commerce on a downward spiral.”).

15. *See* BUREAU OF CENSUS, *supra* note 12, at 139; Irwin, *supra* note 13, at 327.

16. *See* Douglas A. Irwin, *Opinion, How ‘Protectionist’ Became An Insult*, *WALL ST. J.* (June 18, 2010, 12:01 AM), <https://www.wsj.com/articles/SB10001424052748704575304575296610452014710> [<https://perma.cc/LG4B-C6NG>] (“The damage wrought by this tariff had only one silver lining. Ever since, the ghosts of Reed Smoot and Willis Hawley (a Republican congressman from Oregon) have stood in the way of anyone arguing for higher trade barriers. They almost singlehandedly made the term ‘protectionist’ an insult rather than a compliment.”).

was treated as a subject for ordinary legislation rather than a matter of treaties—even when implementing international agreements—meaning trade laws could be adopted by a simple majority in each house rather than by a two-thirds vote of the Senate.<sup>17</sup> That made for an easier time passing trade laws, but over the past seventy-five years, the nation essentially ran through the subjects on which there had been a consensus sufficient for even that legislative format. In other words, the U.S. has reduced a number of different trade barriers but also has reached a point where further reductions in trade barriers are difficult.

It is worth noting that the reductions in trade barriers coincided with the unusual confluence of three events. First, tariffs became less important as the source of funding for the national government. Prior to adoption of the Sixteenth Amendment to the U.S. Constitution in the early 1900s, which authorized the graduated income tax,<sup>18</sup> tariffs and customs duties typically accounted for eighty-five to ninety-five percent of the federal government's revenues.<sup>19</sup> Replacing that with income tax revenues reduced one source of support for trade restrictions.<sup>20</sup> Second, the United States rose dramatically in prominence as a producer of tradable goods, and for a period after the Second World War accounted for almost

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17. See 19 U.S.C. § 1351.

18. U.S. CONST. amend. XVI.

19. See THOMAS L. HUNGERFORD, CONG. RSCH. SERV., RL33665, U.S. FEDERAL GOVERNMENT REVENUES: 1790 TO THE PRESENT 5 (2006) (“Over the 50-year period between 1863 and 1913, excise taxes generated about 40% of federal revenue, and customs duties generated 49%.”).

20. See Douglas A. Irwin, *From Smoot-Hawley to Reciprocal Trade Agreements: Changing the Course of U.S. Trade Policy in the 1930s*, in THE DEFINING MOMENT: THE GREAT DEPRESSION AND THE AMERICAN ECONOMY IN THE TWENTIETH CENTURY 325, 333 (Michael D. Bordo et al. eds., 1998) (“[T]he income tax, which the Democrats had consistently linked to tariff reform, dramatically reduced the dependence of the federal government on revenues from import duties after 1916. Tariffs generated over 90 percent of federal revenue prior to the Civil War, about 50 percent from 1870–1910, but only about 10 percent of federal revenue in the 1920s. The tariff was now free to be set with objectives other than revenue in mind.”).

half the world's manufacturing value.<sup>21</sup> Third, during the post-war and Cold War period, the U.S. sought support from trading partners for containing the Soviet Union's and other Communist regimes' adventurism.<sup>22</sup> To that end, U.S. policymakers were willing to make trade concessions to secure cooperation from other nations.<sup>23</sup> Together, these circumstances provided support for reductions in trade barriers.

#### *Trade and National Security*

Despite general agreement that a mostly open trade regime is beneficial to the United States,<sup>24</sup> there are areas in which Americans believe that restrictions on trade are also beneficial. National security is a special concern that often is cited as a reason for restricting trade.<sup>25</sup>

Many economists say that national security is advanced by open trade because it gives a nation more access to cheaper products that can be used for investments that promote national security—such as purchasing more planes, ships, and tanks for the military—

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21. See Paul Bairoch, *International Industrialization Levels from 1750 to 1980*, 11 J. EUR. ECON. HIST. 269, 284 (1982) (Table 5).

22. See Michael Mastanduno, *Trade as a Strategic Weapon: American and Alliance Export Control Policy in the Early Postwar Period*, 42 INT'L ORG. 121, 122 (1988) ("U.S. officials preferred a strategy of international economic closure in trade with the East during this period. They perceived it to be in America's national security interest to deny the benefits of international economic exchange to the Soviet Union, Eastern Europe and China, and organized a broad export embargo against them.").

23. William A. Lovett, *Rethinking U.S. Industrial-Trade Policy in the Post-Cold War Era*, 1 TUL. J. INT'L & COMP. L. 135, 141 (1993) (stressing the importance to the United States of building freer trade in an integrated world economy with allies in Western Europe and Japan); Norman A. Graebner, *The Cold War: An American View*, 15 INT'L J. 95, 109-10 (1960) (acknowledging toward the beginning of the Cold War that the United States will not be able to have its way in world affairs and will need to "demand less than [it] has in the past").

24. See *The Benefits of Open Trade and Investment Policies*, 2009 ECON. REP. PRES. 127, 129 (2009) ("Many studies have shown that greater openness to trade and investment is associated with faster growth in the long run.").

25. See, e.g., Thad Cochran, *Free Trade and National Security*, 4 TEX. REV. L. & POL. 115 (1999).

within the nation's security budget.<sup>26</sup> In addition, open trade promotes more efficient use of all resources, which makes for a stronger economy. And, ultimately, a stronger economy promotes national security (among other ways, by expanding potential budgets for the military).

At the same time, there are legitimate concerns that, without trade restraints, items important to our economy and our national security could be monopolized by nations that are (or could become) adversaries of the United States. Think, for example, of rare earth metals necessary for a wide range of high-technology products. This concern covers more than potential "hot war" adversaries. A cold war adversary will do. China is the nation that raises most concerns on that front, especially as it relates to trade. China's combination of a single-party authoritarian government, extensive government (especially military) control of economic activity, commitment to expansion of global influence, and particular focus on competition with the United States makes the relation between trade and national security especially problematic.

In addition to concerns about an adversary withholding products or materials essential to American national security, there are concerns about national security threats for certain products that are not being withheld but instead are being exported allegedly at prices that promote their use by Americans. These concerns focus on cases where products that are sold into the United States may have embedded in them attributes that are detrimental to U.S. national security. Consider assertions that trapdoor or backdoor access capabilities may be embedded in communications and computing devices widely purchased and used in the United States. This is part of the complaint animating special attention to products

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26. See, e.g., Harlan Grant Cohen, *Nations and Markets*, 23 J. INT'L ECON. L. 793, 795–96 (2020) (critiquing the practice of states asserting their security interests to hamper the flow of goods); DICK K. NANTO, CONG. RSCH. SERV., R41589, *ECONOMICS AND NATIONAL SECURITY: ISSUES AND IMPLICATIONS FOR U.S. POLICY* (2011) (discussing generally the trade-offs and effects of international trade policy on the United States, both economically and in national security).

from Huawei, for instance, among other firms. Recognition that there can be valid national security concerns about trade provides the rationale for Section 232 of the Trade Expansion Act of 1962.<sup>27</sup>

*Trade and Security: Public Debate and Policy Input*

We should take seriously assertions that national security risks are associated with particular imports. Many claims of national security risks for trade are plausible. But there is always the question of whether claims accurately characterize the risks. Does restricting trade in response to a specific claim address a real security risk or merely one that provides cover to people with other reasons to argue against trade in a given product, perhaps because it competes with products made by advocates of limiting trade?

In just the same way, arguments in favor of open trade—advanced in opposition to calls for restricting imports to advance national security—may be strategic or sincere. Arguments may be made by people with an interest in promoting importation, whether because the imports would be components in those people's products or would help satisfy their customers or because those who are making the arguments receive support tied to the exporter.

Some academic commentary argues that other considerations, such as personal identity and emotional affiliations, explain reactions to and contentions about trade.<sup>28</sup> It certainly is possible that

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27. Many factors are considered during a Section 232 investigation, including national defense requirements, domestic capacity to meet those requirements, and how the import or export of goods affects the United States' capability to meet those requirements. Simon Lester & Huan Zhu, *Closing Pandora's Box: The Growing Abuse of the National Security Rationale for Restricting Trade*, CATO INST. (June 25, 2019), <https://www.cato.org/policy-analysis/closing-pandoras-box-growing-abuse-national-security-rationale-restricting-trade> [<https://perma.cc/K7GH-YRXF>].

28. See, e.g., Cohen, *supra* note 26, at 807 n.58 (noting concerns about "protecting national wealth and pride"); Lan Cao, *Corporate and Product Identity in the Postnational Economy: Rethinking U.S. Trade Laws*, 90 CALIF. L. REV. 401 (2002) (discussing how nationalist pride affects global trade); see also Pierre Sauv e & Americo Beviglia Zampetti, *Subsidiarity Perspectives on the New Trade Agenda*, 3 J. INT'L ECON. L. 83, 92 (2000) (arguing that multilateral trade requires factual agendas, not emotional ones); Jide Nzelibe, *American Identity Politics and International Law*, 58 COLUM. J. TRANSNAT'L L. 332 (2020)

some inclination to identify one's own interests with those of others who seem to be in similar circumstances could be described in those terms. Trade-related voting patterns may even give a patina of support for arguments based in identity politics. After all, those who have concerns about potential loss of economic advantages, jobs, or benefits associated with the presence of strong employment hubs in their own locales will naturally relate to the complaints of others whose interests are more directly implicated in stories respecting trade's effects. That is true irrespective of the accuracy of the links drawn between trade and changes in particular firms', individuals', and locales' economic fortunes.

This is not, however, a story of identity politics in the ordinary sense. Instead, it is a description of people making common cause with those whose circumstances are similar and of people expressing sympathy for those who have similar interests in a particular issue in settings where there is no cost to the expression (a commonplace with voting, which is almost never outcome-determinative for elections in large polities). In the end, people deeply invested in a given trade issue are going to lead arguments about what trade policy should be. In those arguments, analytical commitments and personal self-interest have long been the more powerful motivators in trade debates.

More significantly, given the potential mix of motives and of arguments, we should recognize that the concerns expressed in debates over trade and security present what is often labeled a "thermos problem." The thermos keeps hot liquids hot and cold liquids cold, but the grand philosophical question is, how does it know which to do? Protecting national security is important, and either limiting trade or opening trade can be an essential tool in the right circumstances. Like the thermos, however, we must figure out how to know which to do.

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(arguing that political appeals to identity make it difficult to form durable trade relationships).

*Trade and Sovereignty: Accords and Institutions*

When I became a member of the U.S. International Trade Commission, some people in the trade community warned me that international trade was something that very few people liked. The observation that accompanied this warning was that Republicans did not like international trade because it was international, and Democrats did not like it because it was trade.

True to form, many political “liberals” are not at all liberal with respect to trade, and many political conservatives are skeptics of international agreements and international institutions.<sup>29</sup> That skepticism extends to agreements respecting trade and institutions for overseeing implementation of trade agreements and resolving disputes. This often is cast as a concern for a loss of sovereignty—of national control over the nation’s fate.

In one sense, the concerns are mislabeled or misdirected. After all, each sovereign nation decides whether to join an international agreement and whether to accept a particular institutional arrangement for implementing an agreement and for resolving disputes respecting it. That includes the power for a nation to decide not to accept a particular decision by an international body.

In fact, the history of dispute resolution in the trade arena is one of long-running resistance to acceptance of decisions from the

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29. See Richard V. Reeves, *Yes, Capitalism Is Broken. To Recover, Liberals Must Eat Humble Pie.*, BROOKINGS (Oct. 2, 2019), <https://www.brookings.edu/opinions/yes-capitalism-is-broken-to-recover-liberals-must-eat-humble-pie/> [https://perma.cc/55WM-WF65] (“Capitalism in its liberal variant is under serious pressure. But an inwards turn, away from markets, away from trade, away from competition, away from dynamism, would spell dark times indeed . . .”); Michael Goldfarb, *Liberal? Are We Talking About the Same Thing?*, BBC (July 20, 2010), <https://www.bbc.com/news/world-10658070> [https://perma.cc/9D4M-A9T9] (“Liberals in America question free trade because it costs American workers their jobs.”); Colin Dueck, *Policy Roundtable: The Future of Conservative Foreign Policy*, TEX. NAT’L SEC. REV. (Nov. 30, 2018), <https://tnsr.org/roundtable/policy-roundtable-the-future-of-conservative-foreign-policy/> [https://perma.cc/8U8F-S9DP] (noting that some conservatives are “deeply skeptical regarding the continued benefits of U.S. alliances, free trade agreements, . . . and economic globalization”).

“accepted” dispute resolution bodies. The U.S.–EU disputes over chickens and airplanes are well-known examples.<sup>30</sup>

Large, powerful nations such as the United States are especially well-positioned to decide unilaterally which international rules to accept and which to ignore. So, too, are nations, sometimes referred to as “rogue states,” that simply do not care about international rules.<sup>31</sup> The general absence of enforcement mechanisms analogous to the coercive measures available to enforce domestic law is testament to agreements’ non-interference with sovereignty. It also explains frequent commentary denying the propriety of the term “international law.”<sup>32</sup>

At the same time, agreements and institutions can alter the conversation between representatives of sovereign states. That can be helpful, lubricating the path toward resolving differences where the nations truly have overlapping interests. Or it can be harmful, where the agreements and institutions provide impetus for collaboration that serves the interests of the collaborators—committed regulators whose interests align against competition that advances broader national interests at the expense of well-positioned insiders and established entities.

Given their relative invisibility to outsiders, regulatory harmonization programs among cooperating national bureaucracies are far more likely mechanisms than international agreements for accomplishing results that could not be achieved through constitutionally sanctioned lawmaking. Government-to-government programs—really, administrator-to-administrator programs—tend to reinforce biases common to people in government who deal regularly

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30. See RENÉE JOHNSON & ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., R46241, U.S.–EU TRADE AGREEMENT NEGOTIATIONS: TRADE IN FOOD AND AGRICULTURAL PRODUCTS 1, 14 (2020); Bill Tomson, *US and EU Agree to Lift Tariffs in Deal on Aircraft Disputes*, AGRI PULSE (June 15, 2021), <https://www.agri-pulse.com/articles/16043-us-and-eu-agree-to-lift-tariffs-in-deal-on-aircraft-disputes> [https://perma.cc/53HQ-SWLM].

31. Anthony Clark Arend, *International Law and Rogue States: The Failure of the Charter Framework*, 36 NEW ENG. L. REV. 735, 735 (2002).

32. *Id.*

with international or regulatory topics. These individuals often see government regulatory actions as salutary correctives to problems of unregulated markets. They often also have confidence in their own ideas for achieving better results for society, a confidence seldom shared equally by the populace they nominally serve. Regulatory harmonization projects often are vehicles for forestalling deregulatory forces associated with international trade.<sup>33</sup> These mechanisms for altering national decisions are not directly at odds with national sovereignty, but they certainly are in tension with that concept.

#### CONCLUSION

Trade does not inherently enhance or conflict with the exercise of sovereignty. Nations can adopt different approaches to trade, but each approach—whether internationalist or isolationist—constitutes an exercise of the nation's sovereignty. While true at a definitional level, this does not mean that all policies are equal in their implications for future sovereignty: the way those policies play out can affect the sovereign power enjoyed by a nation down the road.

Open trade generally supports sovereign power by expanding the range of choices for a nation's residents. Allowing trade that undermines national security, however, while equally an exercise of current sovereign power, reduces the nation's likely capacity to exercise that power effectively in the future.

The serious issue for trade and sovereignty is not defining their relationship but crafting policies for trade and trade-related institutions that protect sovereign interests. Decisionmakers should be cautious in listening to pleas either for or against trade restraints, as the most voluble speakers are likely to represent their, and their supporters', self-interest. There is substantial economic analysis on basic trade issues, but applying the lessons from that analysis requires sensitivity to specific facts. On that score, pace Dr. Kissinger, both looking and listening matter.

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33. See, e.g., Ronald A. Cass & John R. Haring, *Domestic Regulation and International Trade: Where's the Race?—Lessons from Telecommunications and Export Controls*, 11 J. ÉCONOMISTES & ÉTUDES HUMAINES 531 (2001).

