

# Compensation and its Limits: Can Trade's Losers be Made Whole?

J. Int'l Econ Law (Vol. 24 2021)

Non-Finalized Version Not For Citation – Refer to Published Version

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*Free trade and global economic integration have been under pressure from populist political movements across the globe. Many of the critiques of trade relate to the losses, both economic and non-economic, that trade's losers suffer. Many economists and trade lawyers consider the case for free trade to be unassailable, and rely on the compensation principle to argue that trade is welfare maximizing if trade's losers could be compensated such that each is as least as well off as they were before. As a corollary, they will argue that the losers of trade should be compensated for their losses through, for example, direct payments, wage insurance, job retraining, or other supports. It is further assumed that such compensation will boost support for liberal trade policy. This Article argues, however, that compensation is conceptually and practically limited in its ability to in fact make trade's losers whole, and is a poor tool to build support for free trade and address the plight of trade's losers. Instead, it is suggested that broadly targeted non-trade specific programs are preferable, as well as perhaps a reconsideration of the purpose of safeguard measures such that they may be explicitly applied in order to mitigate political opposition to trade rather than only when industries are under threat.*

## I. Introduction

Trade has a loser problem. The economic and human impacts of China's entry into the World Trade Organization (WTO) have been significant, with many of economists' conventional, favorable assumptions about the labor market effects of trade liberalization being upended.<sup>1</sup> Concentrated harms to import-competing industries, their employees, and to the communities in which they are located have been substantial.<sup>2</sup> Furthermore, recent political trends have made clear that the problem

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<sup>1</sup> Michael Hirsh, *Economists on the Run*, FOREIGN POLICY (Oct. 22, 2019), <https://foreignpolicy.com/2019/10/22/economists-globalization-trade-paul-krugman-china/> (visited 21 May 2021).

<sup>2</sup> See Daron Acemoglu et al., *Import Competition and the Great US Employment Sag of the 2000s*, 34 JOURNAL OF LABOR ECONOMICS S141 (2016); David H. Autor et al., *The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade*, 8 ANNUAL REVIEW OF ECONOMICS 205 (Oct. 2016); Justin R. Pierce & Peter K. Schott, *The Surprisingly Swift Decline of US Manufacturing Employment*, 106 AMERICAN ECONOMIC REVIEW 1632 (July 2016); David H. Autor et al., *The China Syndrome: Local Labor Market Effects of Import Competition in the United States*, 103 AMERICAN ECONOMIC REVIEW 2121 (Oct. 2013); Hedieh Aghelmaleki et al., *The China Shock, Employment Protection, and European Jobs* (Draft Paper, Düsseldorf Institute for Competition Economics Dec. 2019).

of trade liberalization and the resulting losers from globalization is a significant one that not only threatens the global trading system but also arguably poses a threat to democracies and to domestic political stability, particularly in countries experiencing significant dislocations and rising inequality due to economic liberalization.<sup>3</sup> Legal and trade scholars have taken note of the threat that ensuing populist movements and trade skepticism pose to the global trading system and economic order, trying to understand the narratives that are deployed around trade liberalization<sup>4</sup> and proposing solutions not only to reestablish the trade consensus through social inclusion<sup>5</sup> but also to generally restore the breach in trade's social contract.<sup>6</sup>

The generally accepted economic and policy choice that dominates thinking on how to address the costs of trade adjustment—or the 'loser problem'—is compensation. Compensation can take a number of forms, including direct payments, wage insurance, job retraining, or other supports or help to transition to new employment. Compensation originates from what is generally termed the 'compensation principle', which is a cornerstone of trade theory.<sup>7</sup> The compensation principle provides that a policy transition to free trade is welfare maximizing and thus desirable, if the losers could be compensated by the winners such that nobody is worse off because of the policy choice. The implied preferred policy that follows is compensation for the losers of trade.

In this vein, a number of trade scholars have argued that the roots of anti-globalization can be traced in significant part to a lack of compensation in practice for the losers, and they have proposed economic and policy solutions based on this assumption.<sup>8</sup> Others have argued, although with perhaps greater nuance, that for trade and economic integration to be supported, trade needs to

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<sup>3</sup> Michael Hirsh, above n 1; Lubos Pastor & Pietro Veronesi, *Inequality Aversion, Populism, and the Backlash Against Globalization*, NBER No. w24900 (2018) (finding that countries with more inequality, higher financial development, and trade deficits are more vulnerable to populism).

<sup>4</sup> See Nicolas Lamp, *How Should We Think About the Winners and Losers from Globalization? Three Narratives and Their Implications for the Redesign of International Economic Agreements*, 30 EUROPEAN JOURNAL OF INTERNATIONAL LAW 1359 (Dec. 2019).

<sup>5</sup> See, e.g., Timothy Meyer, *Saving the Political Consensus in Favor of Free Trade*, 70 VANDERBILT LAW REVIEW 985 (Apr. 2017); Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 UNIVERSITY OF ILLINOIS LAW REVIEW 1 (2019); Harlan Grant Cohen, *What Is International Trade Law For?*, 113 AMERICAN JOURNAL OF INTERNATIONAL LAW 326, 327 (2019).

<sup>6</sup> Frank J. Garcia & Timothy Meyer, *Restoring Trade's Social Contract*, 116 MICHIGAN LAW REVIEW ONLINE 78 (2017). Harlan Cohen argues for a narrative of trade in which '[t]he pace and shape of liberalization are dictated by domestic welfare goals, not the other way around.' Cohen, above n 5, at 339.

<sup>7</sup> DOUGLAS A. IRWIN, *AGAINST THE TIDE: AN INTELLECTUAL HISTORY OF FREE TRADE* 183 (Princeton: Princeton University Press reprint ed. 1997). Lamp describes the compensation principle to be a pillar of the 'establishment narrative' about trade. Lamp, above n 4, at 1390.

<sup>8</sup> See, e.g., Luis A. V. Catão & Maurice Obstfeld, *Introduction to MEETING GLOBALIZATION'S CHALLENGES* 18–24 (Luis A. V. Catão & Maurice Obstfeld eds., Princeton & Oxford: Princeton University Press, 2019) (see also the essays contained therein); Meyer, above n 5 (arguing for mandated economic redistribution of the gains of trade to be included in trade agreements); Garcia & Meyer, above n 6.

allow for domestic policies that “facilitate countries’ social policies” to ensure that trade actually benefits domestic societies.<sup>9</sup>

This article argues that compensation as a policy tool, has in fact proved to be ill-equipped to address the backlash against globalization and the populist political waves that have emerged in recent years, or to gain the political support of important voting constituencies in developed political economies. The reasons for this are only partly related to poorly performing policies and legislatively established programs, – the Trade Adjustment Assistance Program (TAA) in the United States is one example that will be discussed.<sup>10</sup>

But the failure of compensation to live up to its promise goes beyond inadequate application of compensation programs. Instead, this Article argues that citizens, and specifically trade’s losers, have a richer and more complicated relationship to work, family, geography, and trade than is accounted for in the traditional policy prescription. Skepticism toward trade, in other words, is deep, and goes beyond just economics, reaching into culture and questions of the good life.<sup>11</sup> The skepticism might not be able to be addressed through compensation. Trade scholars, particularly in the US context, thus need to rethink their dependence on compensation, both as a mechanism to ensure that there is political support for trade and as a social and economic solution to the loser problem that free trade creates. It should also be recognized that the critique of compensation as an adequate policy solution is not only applicable to trade losers, but could also apply to how society addresses losers from technological change, changes in consumer preferences, or other policy transitions. However, this Article focuses on trade, which has its own unique characteristics, and poses unique political and social problems.

The main goal of this Article is not to make highly specific proposals about how trade laws or trade policies should be crafted in response to the limits of compensation, although some ideas are proposed at the end. Nor is it an argument that protectionism is an economically or politically superior arrangement to free trade. To the contrary, from the utilitarian perspective of overall economic benefit, free trade has been shown to help raise the real incomes and living standards of many of the world’s population, and to reduce the likelihood of war between bilateral trade partners.<sup>12</sup> Rather, the goal of this Article is, on a conceptual level, to show that compensation is

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<sup>9</sup> Shaffer, above n 5, at 4.

<sup>10</sup> 19 U.S.C. §§ 2271 ff.

<sup>11</sup> See Yotam Margalit, *Economic Insecurity and the Causes of Populism, Reconsidered*, 33 JOURNAL OF ECONOMIC PERSPECTIVES 152 (Nov. 2019).

<sup>12</sup> Philippe Martin et al., *Make Trade Not War?*, 75 REVIEW OF ECONOMIC STUDIES 865 (2008).

both ill-conceived and impractical as a means of addressing the losers of trade. Therefore, a reconsideration of the policy response to trade liberalization (and, by extension, the embedded liberalism compromise itself) is necessary to ensure that it enjoys the consent of those it is meant to benefit.<sup>13</sup> Further, while it is beyond the scope of this Article to propose an alternative welfare criterion, if compensation is not a realistic policy response, the utility of the compensation principle itself might need to be revisited.

## II. The Loser Problem

The loser problem, simply stated, is that in a move to trade liberalization, there will inevitably be certain industries and workers that will suffer economic losses, at least in the short term and likely in the long term as well.<sup>14</sup> There are two fundamental problems with this: one is social and the other is political.<sup>15</sup>

### A. Social Problem

The first problem is a social welfare and social justice issue. Some people will suffer tangible economic losses that are neither theoretical nor marginal, which is a net bad for society and for individual welfare. In an oft-cited study, it is estimated that some 2–2.4 million jobs were lost in the US between 1999 and 2011 due uniquely to China's entry into the WTO. These lost jobs included not only manufacturing jobs but also other kinds of jobs that were dependent on the manufacturing base, although not directly exposed to Chinese imports.<sup>16</sup> What's more, there is evidence that liberalizing trade can in some ways accelerate the adoption of labor-saving technologies in importing industries, leading to even more job losses.<sup>17</sup> The effects of trade liberalization thus not only are seen in raw job losses but also manifest in a range of outcomes including 'lower cumulative earnings and employment and higher receipt of Social Security Disability Insurance,' as well as increased job churn.<sup>18</sup>

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<sup>13</sup> As Harlan Cohen argues, '[t]he pace and shape of liberalization are dictated by domestic welfare goals, not the other way around.' Cohen, above n 5, at 339.

<sup>14</sup> KIMBERLY CLAUSING, *OPEN: THE PROGRESSIVE CASE FOR FREE TRADE, IMMIGRATION, AND GLOBAL CAPITAL* 75 (Cambridge: Harvard University Press, illus. ed. 2019) (noting that once workers lose manufacturing jobs, they can be hard to reemploy, and that wages are lower when workers are reemployed).

<sup>15</sup> John Quinn & Michael J. Trebilcock, *Compensation, Transition Costs, and Regulatory Change*, 32 UNIVERSITY OF TORONTO LAW JOURNAL 117, 118–19 (1982).

<sup>16</sup> Acemoglu et al., above n 2, at S146–47; Pierce & Schott, above n 2.

<sup>17</sup> Pierce & Schott, above n 2, at 1634.

<sup>18</sup> David H. Autor et al., *Trade Adjustment: Worker-Level Evidence*, 129 QUARTERLY JOURNAL OF ECONOMICS 1799, 1804 (2014).

Such economic shocks can lead to an array of social and health impacts for affected individuals and communities, the character of which might be specific to trade-related job losses as opposed to other kinds of job losses. Research has shown that import competition can lead to increases in crime,<sup>19</sup> household debt,<sup>20</sup> and job-related injuries.<sup>21</sup> Other research has demonstrated that it can lead to reductions in marriage rates and fertility of young men.<sup>22</sup> Other streams of research have demonstrated that mortality rates due to suicide and drug overdoses also increase in trade-exposed localities,<sup>23</sup> and that people living in areas exposed to globalization have higher rates of mental health declines.<sup>24</sup>

### *B. Political Problem*

The second problem is a political one: losers, both individuals and organized industrial lobbies, might advocate for greater trade protection, leading to lower overall economic welfare.<sup>25</sup> Given that losses from trade liberalization are concentrated and that benefits tend to be diffuse, organized loser interests can be particularly motivated and quite effective in influencing politicians to implement tariff and nontariff barriers<sup>26</sup> and, even more radically, to cut economic and political ties to other countries, such as through Brexit.<sup>27</sup>

What's more, trade liberalization and its fallout can also lead to greater political polarization and radicalization. Research has shown that people in highly trade-exposed areas in the United States are prone to holding more extreme political views, particularly in the direction of conservatism.<sup>28</sup> Trade exposure to import competition also appears to increase trends of political isolation and anti-

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<sup>19</sup> Rafael Dix-Carneiro et al., *Economic Shocks and Crime: Evidence from the Brazilian Trade Liberalization*, 10 AMERICAN ECONOMIC JOURNAL: APPLIED ECONOMICS 158 (Oct. 2018).

<sup>20</sup> Jean-Noel Barrot et al., *Import Competition and Household Debt*, SSRN, available at <https://papers.ssrn.com/abstract=3030014> No. ID 3030014 (Apr. 2018).

<sup>21</sup> T. Clay McManus & Georg Schaur, *The Effects of Import Competition on Worker Health*, 102 JOURNAL OF INTERNATIONAL ECONOMICS 160 (Sep. 2016).

<sup>22</sup> David Autor et al., *When Work Disappears: Manufacturing Decline and the Falling Marriage Market Value of Young Men*, 1 AMERICAN ECONOMIC REVIEW: INSIGHTS 161 (2019).

<sup>23</sup> Pierce & Schott, *Trade Liberalization and Mortality: Evidence from US Counties*, 2 AMERICAN ECONOMIC REVIEW: INSIGHTS 47 (2020).

<sup>24</sup> Italo Colantone et al., *Globalization and Mental Distress*, 119 JOURNAL OF INTERNATIONAL ECONOMICS 181, 183 (2019) (summarizing the research).

<sup>25</sup> James J. Feigenbaum & Andrew B. Hall, *How Legislators Respond to Localized Economic Shocks: Evidence from Chinese Import Competition*, 77 JOURNAL OF POLITICS 1012 (2015); Quinn & Trebilcock, above n 15, at 119.

<sup>26</sup> Feigenbaum & Hall, above n 25.

<sup>27</sup> Italo Colantone & Piero Stanig, *Global Competition and Brexit*, 112 AMERICAN POLITICAL SCIENCE REVIEW 201, 201 (2018).

<sup>28</sup> David Autor et al., *Importing Political Polarization? The Electoral Consequences of Rising Trade Exposure*, 110 AMERICAN ECONOMIC REVIEW 3139 (2020).

cosmopolitanism. Italo Colantone and Piero Stanig, for example, have shown that in Great Britain there was greater support for Brexit in regions that were most exposed to Chinese import shocks.<sup>29</sup> Assuming that one supports the economic and political case for free trade, and for the cosmopolitan project of greater political and economic integration, this is problematic.

### III. The Roots of Compensation: The Compensation Principle

The traditional response by policy makers and economists to the ‘loser problem’ is compensation. Compensation as a policy tool is closely related to and derives from the ‘compensation principle.’<sup>30</sup> In welfare economics, the compensation principle stands for the notion that free trade, or any policy or regulatory transition, is economically efficient and welfare-enhancing if those workers that are harmed by free trade *could* be compensated, or made whole, by those who benefit.<sup>31</sup> An expansive conception of compensation includes direct transfers, wage insurance, and measures that facilitate employment adjustment, enabling workers to retrain in order to transition into different jobs, perhaps in different geographical areas, that would ideally pay at least as much as the original jobs.<sup>32</sup>

#### *A. Historical Development*

The compensation principle, which has become a foundation of the trade policy of developed nations, particularly since the end of World War II, was originally formulated by John Stuart Mill in response to arguments to remove the Corn Laws in 19th-century Britain.<sup>33</sup> The compensation principle was further refined in Europe and the US in the welfare economics literature of the late 20th century,<sup>34</sup> developing into the most common economic-efficiency measures of trade-liberalizing policies: Pareto and Kaldor-Hicks. According to Pareto welfare measures, a policy transition to greater trade liberalization is only welfare maximizing (or efficient) if nobody actually becomes worse off due to the liberalization.<sup>35</sup> However, that is a very stringent welfare criterion because it requires actual compensation, which can be difficult, if not impossible, to implement and to measure.<sup>36</sup> The Kaldor-Hicks efficiency criteria, which is the widely adopted standard, addresses that

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<sup>29</sup> Colantone & Stanig, above n 27.

<sup>30</sup> See Ethan B. Kapstein, *Winners and Losers in the Global Economy*, 54 INTERNATIONAL ORGANIZATION 359, 364 (2000).

<sup>31</sup> IRWIN, above n 7, at 183; Quinn & Trebilcock, above n 15.

<sup>32</sup> Quinn & Trebilcock, above n 15.

<sup>33</sup> IRWIN, above n 7, at 93.

<sup>34</sup> See IRWIN, above n 7, ch. 12.

<sup>35</sup> Jules L. Coleman, *Markets, Morals, and the Law*, 8 HOFSTRA LAW REVIEW 509, 512–13 (1979–1980).

<sup>36</sup> Guido Calabresi, *The Pointlessness of Pareto: Carrying Coase Further*, 100 YALE LAW JOURNAL 1211, 1232 (1990–1991).

constraint by holding that a trade-liberalizing move is efficient if the losers can *potentially* be compensated, even if they are not in practice.<sup>37</sup> This permits much more trade liberalization, but ignores the harms that losers might suffer if not in fact compensated. However, if losers are not adequately compensated, then those losers will face harms that might not be socially acceptable, and they and potentially their compatriots will likely fight against trade liberalization.

Compensation of the losers also plays a central role, albeit not specifically identified as such, in John Ruggie's seminal article published nearly 30 years ago which introduced the concept of embedded liberalism. Embedded liberalism is a conceptual framework to describe the compromise that trade-supporting elites understood to be necessary in order to ensure that the negative concentrated effects of trade liberalization on certain sections of the citizenry would not prevent global economic liberalization and integration.<sup>38</sup> Ruggie argued that the postwar economic order was forged with a compromise: that a multilateral economic regime of free trade would be established, but it would be tempered and governed by domestic regulation and social purpose. A central component of the embedded liberalism compromise is that free trade and labor market adjustments within industries that have a comparative advantage are economically a good thing, but domestic states need policy space to provide compensation and other forms of assistance in order to cushion the blow for trade's losers. These cushions would also have the secondary effect of mitigating protectionist pressures, ensuring that free trade has political support.<sup>39</sup> Thus, in order to ensure that the multilateral economic order could maintain legitimacy and win public support, domestic states would have broad policy latitude to preserve domestic stability, as well as to apply various safeguard measures and exceptions to mitigate the economic shocks and smooth economic transitions that result from trade liberalization.

### *B. Social Policies and Implementation*

These policies took different forms in the European welfare states and in the United States' New Deal framework.<sup>40</sup> But, broadly speaking, the domestic policies envisioned in the postwar

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<sup>37</sup> Ibid. at 512.

<sup>38</sup> John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INTERNATIONAL ORGANIZATION 379 (1982).

<sup>39</sup> Alan O. Sykes, *Protectionism As a Safeguard: A Positive Analysis of the GATT Escape Clause with Normative Speculations*, 58 UNIVERSITY OF CHICAGO LAW REVIEW 255 (1991).

<sup>40</sup> Lucien Cernat & Federica Mustilli, *Trade and Labour Adjustment in Europe: What Role for the European Globalization Adjustment Fund?*, CHIEF ECONOMIST NOTE (May 2017), [https://trade.ec.europa.eu/doclib/docs/2017/may/tradoc\\_155512.pdf](https://trade.ec.europa.eu/doclib/docs/2017/may/tradoc_155512.pdf) (visited 21 May 2021).

compromise included wage supports such as unemployment benefits, social and wage insurance, active and passive labor policies, and trade-related initiatives such as temporary safeguard measures.

Notably, not all these approaches get high marks from economists or economics-minded scholars and policy makers. Specifically, some have argued that compensation is second-best to measures like wage insurance, which would better incentivize job seeking.<sup>41</sup> Lawrence Katz, for example, argues for wage loss insurance in which workers are compensated for job and income loss that they might temporarily incur while moving to a lower-wage job. This buffers against what he terms ‘retrospective wait unemployment,’ whereby workers wait to obtain jobs that are more akin to the jobs that they lost.<sup>42</sup> Others even argue that temporary safeguard measures—which constitute, in part, a kind of political safety valve against protectionism<sup>43</sup>—are in fact an undesirable form of ‘administered protection’ that leads to inefficient economic outcomes.<sup>44</sup>

However, undergirding these policies and the embedded liberalism compromise is a central economic and ideological commitment to the shared objective of ensuring that the world is open to free trade. And to make the world safe for free trade, there must be a range of mechanisms available to domestic states to compensate losers and ease transitions into new industries and employment. Greg Shaffer calls this approach to trade liberalization the ‘two-step model.’<sup>45</sup> In step one, countries sign trade agreements to combat protectionist pressures and enhance the size of the pie. In step two, countries then choose the social policies that best suit them to compensate the losers and to retrain them through active or passive labor-adjustment policies to shift to the industries in which the country has a comparative advantage.<sup>46</sup>

This is, in essence, the traditional compromise described by Ruggie as embedded liberalism,<sup>47</sup> and this is the standard policy choice preferred by economists and adherents of the free trade consensus in terms of addressing the problem of trade’s losers. The worst solution, according to the free trade consensus, is to raise tariffs or enact other forms of protectionism.

In their report on social inclusion and trade, the International Labour Office (ILO) and the

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<sup>41</sup> *Long-Term Unemployment: Causes, Consequences, and Solutions: Hearing Before the J. Econ. Comm.*, 111th Cong. 35–47 (Apr. 29, 2010) (testimony of Lawrence F. Katz) [hereinafter Katz Testimony]; see also DOUGLAS A. IRWIN, *FREE TRADE UNDER FIRE: FIFTH EDITION* 172–73 (5th ed., Princeton: Princeton University Press 2020).

<sup>42</sup> Katz Testimony, above n 41, at 43; see also IRWIN, above n 41, at 172–73.

<sup>43</sup> YONG-SHIK LEE, *SAFEGUARD MEASURES IN WORLD TRADE: THE LEGAL ANALYSIS* 18 (3d ed., UK: Edward Elgar Publishing 2014).

<sup>44</sup> *Ibid.* at 10–17.

<sup>45</sup> Shaffer, above n 5, at 4.

<sup>46</sup> Michael Trebilcock & Sally Wong, *Trade, Technology, and Transitions: Trampolines or Safety Nets for Displaced Workers?*, 21 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 509 (2018).

<sup>47</sup> Ruggie, above n 38.



WTO, the United Nations' institutions responsible for labor and trade, neatly sum up the balance necessary between trade liberalization and trade adjustment:

Overall, the benefits from trade or technological progress far outweigh the costs, but this does not mean that the costs and those who bear them can be ignored... Policies aimed at facilitating adjustment can reduce the number of those left behind by trade or technology, while at the same time raising the net gains from trade and technology, improving overall efficiency and boosting income.<sup>48</sup>

In other words, the compensation principle plays a central practical and theoretical role in modern trade regimes and in realizing the embedded liberalism compromise, and has been an important reason for focusing on compensation as the policy solution for addressing the harms of trade.

#### IV. Compensation: Policy Problems

Despite its promise, compensation for trade's losers has not been successfully effectuated in practice through law and policy. The problem is a practical one, which is that although people can in theory be compensated and retrained, they are often not—or at least not adequately.<sup>49</sup>

##### A. *The TAA*

The United States has implemented the most developed trade-specific compensation program, and illustrates the utilization of a broad range of compensation mechanisms. Of the 47 federal job-training programs in the United States,<sup>50</sup> the Trade Adjustment Assistance Program (TAA) is the program singularly focused on job losses due to trade shocks, and it has been central to US trade policy for decades.<sup>51</sup> The TAA relies on two prongs: compensation and adjustment. Its purpose is to facilitate 'exit,' in the sense that it 'is primarily concerned with the ability of trade-displaced workers

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<sup>48</sup> WTO & INTERNATIONAL LABOUR OFFICE, INVESTING IN SKILLS FOR INCLUSIVE TRADE 188 (2017), [https://www.wto.org/english/res\\_e/booksp\\_e/investinsskills\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/investinsskills_e.pdf) (visited 21 May 2021).

<sup>49</sup> Quinn & Trebilcock, above n 15; Jeffrey Frieden, *The Political Economy of the Globalization Backlash: Sources and Implications*, in MEETING GLOBALIZATION'S CHALLENGES 181 (Luis A. V. Catão & Maurice Obstfeld eds., Princeton & Oxford: Princeton University Press Nov. 2019) (calling this the 'failure of compensation').

<sup>50</sup> Jeffrey Selingo, *The False Promises of Worker Retraining*, ATLANTIC (Aug. 1, 2020), <https://www.theatlantic.com/education/archive/2018/01/the-false-promises-of-worker-retraining/549398/> (visited 21 May 2021).

<sup>51</sup> See Trebilcock & Wong, above n 46, at 521–23.

to successfully transition into alternative employment in more economically competitive sectors.<sup>52</sup> The law and its components are complex and multipronged. They ‘include a) income support . . . ; b) wage insurance . . . ; c) tax credits; and d) health care and social welfare benefits.’<sup>53</sup> The law also seeks transition to employment through ‘a) facilitating workers’ search for new employment, b) assisting worker relocation, and/or c) supporting skills training.’<sup>54</sup>

However, as a number of analysts have noted, there are problems with the TAA, both procedural and substantive, that have rendered its effectiveness less than optimal.<sup>55</sup> Indeed, one study by consultants hired by the US Department of Labor to assess the TAA’s impact after the 2002 amendments arrived at the bleak conclusion that ‘the net benefits of the TAA program as it operated under the 2002 amendments were negative, whether calculated from the perspective of society as a whole, participants, or other members of society.’<sup>56</sup>

### 1. Procedural Problems

Procedural problems include confusion over who is eligible, the complicated and time-consuming process that is required to apply, lack of awareness of the program, and the nature of US Department of Labor investigations.<sup>57</sup> The TAA is an application-based program, and petitioners can therefore only be compensated if they can demonstrate that job losses are a result of offshoring or trade shocks. An even bigger roadblock, though, is that petitioners are not always aware of the administrative steps that they need to undertake.<sup>58</sup> In 2019, according to the US Department of Labor, ‘an estimated 88,001 workers became eligible to apply for TAA, up 14 percent from the previous year, and 28,348 participants received benefits and services, down 18 percent from the previous year,’ suggesting a gap between provision of services and need.<sup>59</sup>

The barriers to applying for benefits might not simply be one of information or other

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<sup>52</sup> Stephen Kim Park, *Bridging the Global Governance Gap: Reforming the Law of Trade Adjustment*, 43 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 797, 808 (2011–2012).

<sup>53</sup> Ibid. at 810.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid. at 839–51 (describing the various procedural barriers and substantive deficiencies of the TAA).

<sup>56</sup> RONALD D’AMICO & PETER Z. SCHOCHET, *THE EVALUATION OF THE TRADE ADJUSTMENT ASSISTANCE PROGRAM: A SYNTHESIS OF MAJOR FINDINGS* (Oakland: SPR & Princeton: Mathematica 2012), <https://www.mathematica.org/our-publications-and-findings/publications/the-evaluation-of-the-trade-adjustment-assistance-program-a-synthesis-of-major-findings> (visited 21 May 2021).

<sup>57</sup> Park, above n 52, at 841–47.

<sup>58</sup> For a description of the steps needed to become certified, see *ibid.* at 811–17; U.S. DEPARTMENT OF LABOR, *TRADE ADJUSTMENT ASSISTANCE FOR WORKERS PROGRAM: FY 2019 ANNUAL REPORT* 10–12 (2019), <https://www.dol.gov/sites/dolgov/files/ETA/tradeact/pdfs/AnnualReport19.pdf> (visited 21 May 2021).

<sup>59</sup> U.S. DEPARTMENT OF LABOR, above n 58, at 4.

transaction costs. The issues are also political and ideological. Some research has shown that in districts in which legislators have negative views of trade compensation, constituents of those legislators are less likely to apply for and receive it.<sup>60</sup> And, in practice, the program contributes far less to compensation to trade losers than do other forms of social support programs.<sup>61</sup>

## 2. Substantive Problems

In addition to procedural problems, there are also substantive problems with the TAA. One problem is a lack of sufficient funding that does not meet demand.<sup>62</sup> Compared to other Organisation for Economic Co-operation and Development (OECD) countries, the US spends substantially less on both wage supports (passive labor market policies) and retraining (active labor market policies).<sup>63</sup> But there are also serious problems identified with the jobs retraining element of the program. Trainees usually end up in a different job than the one for which they trained, and the program is not fleet-footed enough and does not coordinate well enough with industry and community colleges to prepare workers for the jobs that are hiring.<sup>64</sup> Furthermore, coordination between the federal government and states is poor,<sup>65</sup> especially considering that training programs often result in workers moving out of state to obtain the jobs for which they have trained.<sup>66</sup> In sum, the TAA at best has had mixed results over the years, and at worst has been described by one commentator as having done ‘little or nothing to aid those harmed by the new competition.’<sup>67</sup>

In assessments of the program’s success, even after workers received job training and compensation, wages for worker groups 40 years and older were found to have decreased. For workers over 60, the wage replacement percentage was only 69 percent.<sup>68</sup> And job placement does not fare much better. According to the US Bureau of Labor Statistics, only 70 percent of workers who lost their jobs between 2017 and 2019 were employed by January 2020.<sup>69</sup> Critics claim that

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<sup>60</sup> Sung Eun Kim & Krzysztof Pelc, *Trade Competition and Worker Compensation: Why Do Some Receive More Than Others?* 1–2 (SSRN Working Paper, Paper No. 3483249, Sept. 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3483249](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3483249) (visited 21 May 2021).

<sup>61</sup> David H. Autor et al., above n 2, at 2149.

<sup>62</sup> Park, above n 52, at 847.

<sup>63</sup> Trebilcock & Wong, above n 46, at 520.

<sup>64</sup> Selingo, above n 50.

<sup>65</sup> Trebilcock & Wong, above n 46, at 521.

<sup>66</sup> Ibid. at 524.

<sup>67</sup> EDWARD ALDEN, *FAILURE TO ADJUST: HOW AMERICANS GOT LEFT BEHIND IN THE GLOBAL ECONOMY* 126 (London: Rowman & Littlefield 2017).

<sup>68</sup> U.S. DEPARTMENT OF LABOR, above n 52, at 33.

<sup>69</sup> Economic News Release, U.S. Bureau of Labor Statistics, *Displaced Workers Summary* (Aug. 27, 2020), <https://www.bls.gov/news.release/disp.nr0.htm> (visited 21 May 2021).

funding has been inadequate,<sup>70</sup> which some observers argue is due to a lack of representation by affected citizens in the mainstream political institutions.<sup>71</sup> Many commentators have also suggested myriad ways that the TAA could be improved.<sup>72</sup> These failures spur critics of the TAA and labor-adjustment policies to argue that the benefits simply do not outweigh the costs, and also spur trade skeptics to argue that protectionism might just be a better solution than risking the shift to a new job that might not pay as well in the end or that might result in a worker being somewhere that the worker doesn't want to be.<sup>73</sup>

### *B. European Globalization Adjustment Fund*

In Europe, there is generally more unemployment insurance and wage support than in the US, regardless of the cause of job loss.<sup>74</sup> The main EU compensation scheme for trade-related job loss, the European Globalisation Adjustment Fund, does not provide any direct monetary compensation—only job retraining for job losses due to trade, but also technological and environmental changes.<sup>75</sup> Like its TAA counterpart, the EU's success at placing displaced workers in new jobs is not stellar. According to a midterm evaluation of the fund, the average reemployment rate stood at just 56 percent.<sup>76</sup>

### *C. Investment Issues*

The *reasons* for inadequate compensation and only partially successful job retraining programs are complicated, and beyond the scope of this Article, touching in part on debates about the effectiveness of passive versus active retraining programs.<sup>77</sup> But some scholars have also highlighted structural problems that limit the ability of governments to adequately invest in worker compensation and retraining, even if it they intend to do so.

## 1. Tax Issues

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<sup>70</sup> Park, above n 52, at 847; Frieden, above n 49.

<sup>71</sup> Frieden, above n 49.

<sup>72</sup> Park, above n 52, at 849–51.

<sup>73</sup> IRWIN, above n 41, at 153–54.

<sup>74</sup> Alberto Alesina et al., *Why Doesn't the United States Have a European-Style Welfare State?*, 2001 BROOKINGS PAPERS ON ECONOMIC ACTIVITY (2001).

<sup>75</sup> Swati Dhingra, *Open Markets: Trade Creates Losers; Here's How to Help Them*, ECONOMIST (May 28, 2018), <https://www.economist.com/open-future/2018/05/28/trade-creates-losers-heres-how-to-help-them> (visited 21 May 2021); Cernat & Mustilli, above n 40, at 12–18.

<sup>76</sup> Cernat & Mustilli, above n 40, at 19.

<sup>77</sup> See Trebilcock & Wong, above n 46 (discussing the merits and demerits of active versus passive labor market policies).

One problem is perhaps a result of economic liberalization itself: even in countries that are ideologically and politically open to compensation schemes, such as in a number of social welfare states, tax competition policies that often coexist with open trade policies deprive countries of revenue to redistribute the gains of trade to the losers.<sup>78</sup> Shaffer addresses this issue, arguing that in the US, antitax ideology and policy making, combined with tax-sheltering practices of wealthy Americans, have deprived the state of resources to redistribute. Accordingly, he argues, trade agreements should be conditioned on the enactment of tax treaties that would be incorporated by reference into the agreements.<sup>79</sup> Then, presumably, the higher tax base would be used by states to compensate the losers. In a similar vein, Timothy Meyer and Ganesh Sitaraman argue that trade agreements should include provision that prevent tax havens by requiring all parties to adopt a common tax formulary.<sup>80</sup>

## 2. Capital Mobility Issue

Another problem is that trade and investment liberalization itself possibly undermine the ability of states to implement compensation regimes. Ruggie suggested as early as 1994 that the very nature of globalization and delocalization of production make it harder to enact the social policies that the postwar compromise was meant to enable.<sup>81</sup> Dani Rodrik and others have further argued that the increased mobility of capital enables firms to influence governments to reduce taxes, play labor off each other by threatening to move offshore, drive down labor and collective bargaining rights, and drive beggar-thy-neighbor mutually assured destruction policies of tax competition.<sup>82</sup>

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<sup>78</sup> Dani Rodrik, *Populism and the Economics of Globalization*, 1 JOURNAL OF INTERNATIONAL BUSINESS POLICY 12, 22 (2018).

<sup>79</sup> Shaffer, above n 5, at 21.

<sup>80</sup> Timothy Meyer & Ganesh Sitaraman, *A Blueprint for a New American Trade Policy* (2018), <https://rooseveltinstitute.org/publications/a-blueprint-for-a-new-american-trade-policy/>

<sup>81</sup> John Gerard Ruggie, *Trade, Protectionism and the Future of Welfare Capitalism*, 48 JOURNAL OF INTERNATIONAL AFFAIRS 1, 8 (1994).

<sup>82</sup> Shaffer, above n 5, at 3; Rodrik, above n 78, at 22-23; Italo Colantone & Piero Stanig, *The Trade Origins of Economic Nationalism: Import Competition and Voting Behavior in Western Europe*, 62 AMERICAN JOURNAL OF POLITICAL SCIENCE 936, 938 (2018).

In short, capital has used the power it has gained through trade and technological change to erode the ability of governments to enact social policies that might actually drive up support for trade,<sup>83</sup> at least among working-class constituencies that might be amenable to trade liberalization if they felt that they benefited.<sup>84</sup> This leads to a kind of death spiral for the ability of states to compensate and spend domestically, as is called for in embedded liberalism and the compensation model.

## V. Compensation: Social and Political Problems

In addition to policy problems, social and political issues (the human element) have affected the efficacy of compensation as a policy tool, as well as the political goal of preserving support for trade that compensation was meant to achieve as part of the embedded liberalism compromise.

### *A. Preferences for Protectionism*

One reason why losers are not compensated in some countries is due to political preferences and ideology—in particular, a preference for protectionism over compensation.

Studies in the United States and Japan, for example, demonstrate that ideological preferences about who is deserving of protection and welfare supports are significant impediments to instituting compensation programs.<sup>85</sup> Utilizing coordinated survey experiments, Megumi Naoi demonstrates that citizens in the United States and Japan exhibit high preferences for trade protection for farmers through tariffs. But whether or not they support compensation for farmers who suffer from trade shocks is contingent on their political leanings.<sup>86</sup>

Researchers have shown that citizens have preferences for protectionism over compensation particularly when there is a labor market shock resulting in job losses.<sup>87</sup> Rafael Di Tella and Rodrik looked at several kinds of shocks to the labor market, including, inter alia, technology-induced shocks and demand shocks. They found that when those surveyed in the United

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<sup>83</sup> See Sung Eun Kim & Krzysztof J. Pelc, *The Politics of Trade Adjustment Versus Trade Protection*, COMPARATIVE POLITICAL STUDIES 1 (Sep. 2020), available at <https://journals.sagepub.com/doi/full/10.1177/0010414020957687> (accessed May 25, 2021)

(arguing that countries with more successful TAA petitions see fewer calls for trade protection).

<sup>84</sup> SEAN D. EHRLICH, *THE POLITICS OF FAIR TRADE: MOVING BEYOND FREE TRADE AND PROTECTION* (New York: Oxford University Press 2018).

<sup>85</sup> Megumi Naoi, *Survey Experiments in International Political Economy: What We (Don't) Know About the Backlash Against Globalization*, 23 ANNUAL REVIEW OF POLITICAL SCIENCE 333, 336 (May 2020).

<sup>86</sup> *Ibid.* at 344.

<sup>87</sup> Rafael Di Tella & Dani Rodrik, *Labour Market Shocks and the Demand for Trade Protection: Evidence from Online Surveys*, 130 ECONOMIC JOURNAL 1008 (2020).

States are exposed to news stories about job losses in a factory due to trade, or outsourcing, there is a significant increase in demand for protectionism that far outpaces demands for compensation.<sup>88</sup> Indeed, protectionism is ‘nearly always the factored response to labour market shocks at the margin, even when job losses are due to non-trade factors such as technology and demand shocks... [but] trade shocks elicit a much more protectionist response by a factor between two and three’.<sup>89</sup> And when the source of the trade shock is a developing country, the effect is even greater.<sup>90</sup>

The causes of the preference for protectionism over compensation are complicated and likely culturally contingent. Resistance to explicit and transparent redistribution, especially when out groups are the perceived beneficiaries, is one explanation. Andrea Guisinger argues, for example, that compensation and welfare schemes trigger feelings of racial resentment and that Whites in racially heterogenous geographies tend to support trade protection *because* trade protection tends to be portrayed in the media and by politicians as generally benefiting Whites.<sup>91</sup> These reasons might shed some light on the failure of the TAA to achieve its goals.

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<sup>88</sup> Ibid. at 1009.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid. at 1010.

<sup>91</sup> ALEXANDRA GUISINGER, *AMERICAN OPINION ON TRADE: PREFERENCES WITHOUT POLITICS* 157, ch. 6 (New York: Oxford University Press 2017).

### *B. Relationship to Government Supports*

Another consideration is how individuals, particularly working-class people, relate to government benefits.

In *Strangers in Their Own Land*, sociologist Arlie Hochschild describes the resentment that poor, working-class Whites hold toward welfare recipients.<sup>92</sup> The belief that undeserving groups are ‘cutting the line’ taints views of federal and state assistance in the United States —views that are often shaped by a complex mix of race, gender, and class.<sup>93</sup>

Joan Williams notes that the white working class tends to be reluctant to accept governmental supports.<sup>94</sup> Social supports tied to income rather than work are particularly stigmatizing. Hochschild bears this out with her interviews of white working-class interviewees in Louisiana, who despise the money given by the government and consider it shameful to take.<sup>95</sup> Describing her subject Janice’s feelings, Hochschild observes that ‘[g]etting little or nothing from the federal government was an oft-expressed source of honor. And taking money from it was—or should be, Janice felt—a source of shame.’<sup>96</sup> Clearly, the group that is perhaps most skeptical of government supports and programs is the group that is also most directly affected by trade- and technology-induced job displacement. Thus, to think that a government benefit will easily replace, even as a short-term transition payment, the dignity of a job is something that scholars need to seriously consider when making policy prescriptions.

In *Why Americans Hate Welfare*, Martin Gilens argues that Americans’ attitude toward ‘welfare’ is complicated. This is reflected in the relatively paltry welfare supports to which poor Americans are entitled. As Gilens shows, support for government supports are among the lowest in America compared to other OECD countries, and American spending on government support is among the lowest per capita despite America’s wealth.<sup>97</sup>

At a more granular level, Americans tend to oppose some kinds of government assistance more than others. Unemployment insurance, for example, the kind that the TAA partially provides,

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<sup>92</sup> ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* 146–51 (New York: New Press 2016).

<sup>93</sup> *Ibid.*

<sup>94</sup> JOAN C. WILLIAMS, *WHITE WORKING CLASS: OVERCOMING CLASS CLUELESSNESS IN AMERICA* 22 (Boston: Harvard Business Review Press May 2017).

<sup>95</sup> See HOCHSCHILD, above n 92, at 157.

<sup>96</sup> *Ibid.*

<sup>97</sup> MARTIN GILENS, *WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY* 26–27 (2009).



receives mixed support.<sup>98</sup> Notably, retraining programs, at least in the 1990s when the study was first published, received support; approval of unemployment insurance and food aid was ambivalent; and support for direct payments to what people believed to be able-bodied people of working age was low.<sup>99</sup> The strongest opposition was to welfare programs that run counter to individual American cultural orientations, as well as to ones that are perceived to favor racial minorities.<sup>100</sup> Perhaps not surprisingly given the racialized nature of redistribution, the black working class are more likely than the white working class to accept government supports due in part to the recognition of structural inequalities in the American economy.<sup>101</sup>

This is not to say that the opposition to government supports dooms the TAA. Sean Ehrlich and Eddie Hearn report that compensation programs increase support for trade among low-income individuals. But at the same time, compensation programs might in fact increase opposition among high-income individuals and trade's winners, who might be opposed to redistribution programs because they are inefficient or costly.<sup>102</sup>

### *C. Psychology and Bounded Rationality*

There are also challenges in determining what constitutes adequate compensation because of the different ways that individuals value a job loss, many of which can be understood through the lens of human psychology.<sup>103</sup>

In particular, individuals have a difficult time conceptualizing the utility that they might experience in a future state of affairs. Thus, the compensation level that they might require or expect in order to consider themselves adequately compensated due to a loss might be more or less than the amount that reflects the actual amount of the monetary loss that they experienced as a result of the trade-induced job loss.<sup>104</sup>

There are at least two related issues. First, people might in fact derive greater utility from

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<sup>98</sup> Ibid. at 29.

<sup>99</sup> Ibid. at 27–29.

<sup>100</sup> Ibid. at 30.

<sup>101</sup> WILLIAMS, above n 94, at 22–23 (citing MICHÈLE LAMONT, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION* (Cambridge: Harvard University Press June 2009)).

<sup>102</sup> Sean D. Ehrlich & Eddie Hearn, *Does Compensating the Losers Increase Support for Trade? An Experimental Test of the Embedded Liberalism Thesis*, 10 FOREIGN POLICY ANALYSIS 149, 162 (2014).

<sup>103</sup> Anne van Aaken & Jürgen Kurtz, *Beyond Rational Choice: International Trade Law and the Behavioral Political Economy of Protectionism*, 22 JOURNAL OF INTERNATIONAL ECONOMIC LAW 601 (2019); Simon Kemp, *Psychology and Opposition to Free Trade*, 6 WORLD TRADE REVIEW 25 (2007); MICHAEL J. TREBILCOCK, *DEALING WITH LOSERS: THE POLITICAL ECONOMY OF POLICY TRANSITIONS* 22 (Oxford: Oxford University Press 2015).

<sup>104</sup> See Kemp, above n 103, at 31.

their current jobs than they might from a gain in consumption power due to trade liberalization.<sup>105</sup> This is due, in part, because, as Simon Kemp notes, ‘people derive benefits from their work which go beyond income or the consumption obtainable from this income, and which [are] not easily compensated for by income changes and adjustments.’<sup>106</sup> Indeed, the phenomenon of endowment effects can mean that the job that a person possesses becomes more valuable than the one that person might have, perhaps even if the new job promises to pay more.

A second reason why compensation is difficult to properly value is because, as behavioral economists have long recognized, people are loss averse. That is, the pain that they suffer from losses is greater than the pleasure that they experience from gains. Indeed, the pain people experience from losses is estimated to be more than twice the pleasure that they experience by gains of the same amount.<sup>107</sup> This phenomenon is also likely applicable to trade policy: individuals who experience loss due to trade liberalization will value that loss more than they would value a gain from that liberalization, perhaps by twice as much.<sup>108</sup> Indeed, research shows that contrary to standard economic theory, loss aversion leads to protectionist policies for industries that are in decline, even though it might result in greater economic costs to society.<sup>109</sup>

Thus, producers are far less willing to give up something that they have, even if they are compensated accordingly. This so-called status quo bias means that individuals are much more likely to oppose trade liberalization, regardless of their individual levels of risk aversion or other individual characteristics that might impact their general openness to trade liberalization.<sup>110</sup> This discrepancy could make it especially difficult for governments to compensate those that lose from trade at a level that would make losers feel justly compensated for real and psychological losses.<sup>111</sup>

#### *D. Gender and Identity*

Another assumption underlying the conventional response to displacement is that those who lose their jobs can and should retrain, perhaps with government aid, to take jobs in other sectors. However, the power of identity and traditional gender roles in the working-class psyche is often

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<sup>105</sup> Ibid. at 29.

<sup>106</sup> Ibid.

<sup>107</sup> Patricia Tovar, *The Effects of Loss Aversion on Trade Policy: Theory and Evidence*, 78 JOURNAL OF INTERNATIONAL ECONOMICS 154, 154 (June 2009).

<sup>108</sup> van Aaken & Kurtz, above n 103, at 614;.

<sup>109</sup> Caroline Freund & Çağlar Özden, *Trade Policy and Loss Aversion*, 98 AMERICAN ECONOMIC REVIEW 1675 (2008)

<sup>110</sup> Eiichi Tomiura et al., *Individual Characteristics, Behavioral Biases, and Trade Policy Preferences: Evidence from a Survey in Japan*, 24 REVIEW OF INTERNATIONAL ECONOMICS 1081, 1089 (2016).

<sup>111</sup> Ibid.; van Aaken & Kurtz, above n 103, at 615.

underappreciated, and even derided as being retrograde or backward.<sup>112</sup>

In the United States, many of the fastest-growing jobs are in the pink-collar sector—that is, fields traditionally occupied by women, such as nursing or caregiving—including home health aides, and occupational and physical therapy assistants.<sup>113</sup> But men often have a difficult time accepting these jobs.<sup>114</sup> For a male worker without a college degree, taking a job in a traditionally female occupation is not a small ask. As one welder said in a *New York Times* article on the issue, ‘I ain’t gonna be a nurse; I don’t have the tolerance for people. . . . I don’t want it to sound bad, but I’ve always seen a woman in the position of a nurse or some kind of health care worker. I see it as more of a woman’s touch.’<sup>115</sup>

The solution to this challenge for the labor market is not straightforward. It would be somewhat paternalistic and also unrealistic to expect that deeply embedded gender norms should be simply ignored by policy makers and the law, and that workers would overcome gender norms and stereotypes in order to get a job in a new industry. And a policy move to free trade that would require a major shift from manufacturing to service or caregiving work that is traditionally ‘feminized’ might lead to outcomes that are unjust or even inefficient in that workers might choose not to work rather than suffer the loss in status and self-esteem that such a shift might require.

#### *E. Consumer Versus Producer Identity*

A final human-element challenge to compensation is a competing narrative to the traditional account of the benefits of comparative advantage and free trade.

The traditional economic account of free trade, and its solution to the loser problem, prioritizes our identity and needs as *consumers*.<sup>116</sup> In other words, states liberalize trade to lower prices and costs, the benefits of which are broadly distributed across society’s citizenry in citizens’ capacity

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<sup>112</sup> See WILLIAMS, above n 94; Claire Cain Miller, *Why Men Don’t Want the Jobs Done Mostly by Women*, NEW YORK TIMES (Jan. 4, 2017), <https://www.nytimes.com/2017/01/04/upshot/why-men-dont-want-the-jobs-done-mostly-by-women.html> (visited 21 May 2021).

<sup>113</sup> Miller, above n 112.

<sup>114</sup> See Alexia Delfino, *Breaking Gender Barriers: Bringing Men in the Pink-Collar Jobs of the Future* (IZA, Discussion Paper No. 14083, Jan 2021).

<sup>115</sup> Dionne Searcey et al., *Health Care Opens Stable Career Path, Taken Mainly by Women*, NEW YORK TIMES (Feb. 22, 2015), <https://www.nytimes.com/2015/02/23/business/economy/health-care-opens-middle-class-path-taken-mainly-by-women.html> (visited 21 May 2021).

<sup>116</sup> Timm Betz, *Consumers and the Sources of US Trade Openness*, 17 FORUM 601 (2020); Kemp, above n 103, at 28.

as purchasers of those goods and services.<sup>117</sup>

In fact, though, research shows that citizens' identity as consumers, and presumably as low-price maximizers, is less salient than their identity as producers.<sup>118</sup> In other words, we value work above and beyond the compensation and income that we derive from it.<sup>119</sup> Ed Diener and Martin Seligman show that citizens of modern societies in which basic needs are met value happiness and satisfaction over income per se.<sup>120</sup> Moreover, happiness in life is significantly impacted by work satisfaction.<sup>121</sup> And unemployment, or lack of work, is a highly significant determinant of unhappiness, leading to higher rates of depression and suicide.<sup>122</sup> In fact, unemployment can cause significantly lower measures of well-being in affected individuals for several years after the layoff event, even if the affected workers have found new jobs with pay almost equal to their original jobs.<sup>123</sup>

A further complication of the citizens-as-consumers narrative is that despite the fact that the case for trade is strongly grounded in its benefits to consumers, tariff classes are highest on the products with the highest consumption shares. If citizens prioritized their identity as economic consumption maximizers, those classes of goods would have the lowest tariffs.<sup>124</sup> This fact led Timm Betz to argue that what drives US trade openness is special interests. That is, importing firms that stand to benefit the most from trade openness are the political drivers of tariff reductions.<sup>125</sup> Another example of the low salience of consumer identity is demonstrated in the work of David Bearce and Samantha Moya, who show, in survey experiments, that citizens are not persuaded by arguments for free trade when primed with arguments that free trade is good for consumers. But citizens become more trade sympathetic when told that it will have beneficial employment outcomes.<sup>126</sup>

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<sup>117</sup> Kemp, above n 103, at 29 (quoting 2 ADAM SMITH, *THE WEALTH OF NATIONS* 159 (London: Methuen 1776/1904) ('Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer.').

<sup>118</sup> Ibid.

<sup>119</sup> Ed Diener & Martin E.P. Seligman, *Beyond Money: Toward an Economy of Well-Being*, 5 *PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST* 1 (2004).

<sup>120</sup> Ibid. at 2. This argument is similar to those made by Amartya Sen in his theory of development as freedom. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999) (arguing the end of development should be the development of capabilities, not simply of economic growth).

<sup>121</sup> Diener & Seligman, above n 119, at 12.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Betz, above n 116, at 603.

<sup>125</sup> Ibid. at 604.

<sup>126</sup> David H. Bearce & Samantha L. Moya, *Why Is the Mass Public Not More Supportive of Free Trade? Evidence from the United States*, 64 *INTERNATIONAL STUDIES QUARTERLY* 380, 389 (2020).

The implication of this for the compensation principle and for compensation policies, is that if indeed citizens prioritize the producer identity more than the consumer identity, then they might be less willing to accept compensation or retraining as a substitute for the losses experienced by themselves as producers, or by producers in their community or polity with whom they feel solidarity. If in fact citizens prioritized their consumer identity, they would perhaps be more willing to accept compensation as a substitute so that they could benefit from the gains in buying power that free trade would entail. One might argue that such a perspective disregards the social welfare of non-working retired pensioners, or of children. Normatively this might be true. But, in fact, surveys show that in the US, higher age positively correlates with negative views on trade, thus they, too, seem to disregard their own interests as consumers in favor of other concerns.<sup>127</sup>

## VI. The Limits of Active Labor Market Policies

Compensation for trade adjustment often takes the form of active and passive labor market policies.<sup>128</sup> Passive labor market policies can encompass market deregulation, but also unemployment and disability insurance, which are policies related to the issues discussed in the previous section. Active labor market policies proactively seek to aid workers in transitioning into new jobs.

Economists have traditionally assumed that there is a fairly fluid job market that can respond well in the short run to demand shocks to the economy, making that training a helpful tool to facilitate the transition.<sup>129</sup> Autor, describes the conventional wisdom that ‘[i]f displaced by trade, workers employed in regions specializing in import-competing sectors could easily move to other labor markets.’<sup>130</sup>

However, this has proven to be untrue, at least in the US since the 1980s.<sup>131</sup> Autor, et al.’s work demonstrates the limited labor mobility of American workers in response to China’s trade shock to US manufacturing.<sup>132</sup> Similarly, other work has shown that US geographic labor mobility

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<sup>127</sup> Karl C. Kaltenthaler et al., *Explaining Citizen Support for Trade Liberalization*, 48 INTERNATIONAL STUDIES QUARTERLY 829, 844 (2004); Pew Research Center, *Support for Free Trade Agreements Rebound Modestly, but Wide Partisan Differences Remain* (Apr 25, 2017), available at <https://www.pewresearch.org/fact-tank/2017/04/25/support-for-free-trade-agreements-rebounds-modestly-but-wide-partisan-differences-remain/>

<sup>128</sup> Trebilcock & Wong, above n 46, at 530 (promoting job retraining in place of compensation programs).

<sup>129</sup> Mai Dao et al., *Regional Labor Market Adjustment in the United States: Trend and Cycle*, 99 REVIEW OF ECONOMICS & STATISTICS 243, 243 (Nov. 2016) (citing previous research finding this result).

<sup>130</sup> David H. Autor, Mass. Inst. of Tech., *Trade and Labor Markets: Lessons from China’s Rise*, IZA WORLD OF LABOR 2 (2018), <https://wol.iza.org/articles/trade-and-labor-markets-lessons-from-chinas-rise> (visited 21 May 2021).

<sup>131</sup> Dao et al., above n 129, at 243.

<sup>132</sup> Autor et al., above n 18, at 1805 (‘Exposure to trade induces workers to move between employers and industries but

has in fact been declining overall for at least a few decades.<sup>133</sup> There was indeed significant labor mobility between 1950 and 1992 in the US, with intercounty mobility remaining consistent at 6 percent.<sup>134</sup> But those rates have significantly declined, and since 2008 the share of US residents that have moved across counties has stood at 3.9 percent.<sup>135</sup> It is also important to note that even prior to the drop that began in the 1980s or before, a significant portion of the 20<sup>th</sup>-century working-class labor mobility that occurred prior to the beginning of the decline was due to the special circumstance of black laborers migrating from the South in what is known as the ‘Great Migration,’ so the higher levels of migration might have been a special case.<sup>136</sup> Indeed, according to Mike Zabek, ‘the typical American does not move very far—the median US born adult lives within around 100 miles of where they were born.’<sup>137</sup> As a result, economists are increasingly viewing labor mobility, including and particularly interstate labor mobility, to be a less salient response and remedy for economic shocks to certain regions.<sup>138</sup> But why is this the case?

#### *A. Policy Effects on Mobility*

The explanations for low mobility vary and are inconclusive. Economists have suggested various macro- and microeconomic reasons that possibly contribute to the phenomenon. These include ‘benign’ reasons such as better matching between workers and firms,<sup>139</sup> greater training requirements for jobs,<sup>140</sup> and employers that are better able to compensate workers based on productivity.<sup>141</sup> Less benign explanations include the increasing age of the workforce,<sup>142</sup> declines in social capital as

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generates little spatial mobility.); Autor, above n 130, at 5.

<sup>133</sup> See Patrick J. Purcell, *Geographic Mobility and Annual Earnings in the United States*, 80 SOCIAL SECURITY BULLETIN (2020), <https://www.ssa.gov/policy/docs/ssb/v80n2/v80n2p1.html> (visited 21 May 2021); Raven Molloy et al., *Understanding Declining Fluidity in the U.S. Labor Market*, 47 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 183, 210 (Spring 2016), <https://www.brookings.edu/wp-content/uploads/2016/03/molloytextspring16bpea.pdf> (visited 21 May 2021).

<sup>134</sup> Benjamin Austin et al., *Saving the Heartland: Place-Based Policies in 21st Century America*, BROOKINGS 157 (Mar. 2018) (showing that on a three-year average, 6 percent of family units move intercounty).

<sup>135</sup> Ibid.

<sup>136</sup> Ibid. An estimated 6 million Blacks migrated from the South to the North roughly between 1915 and 1970. This was far greater than the other significant American migrations, such as the California Gold Rush in the 1850s and the Dust Bowl migration of the 1930s. ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* 9–10 (New York: Random House 2010).

<sup>137</sup> Mike Zabek, *Local Ties in Spatial Equilibrium*, FINANCE AND ECONOMICS DISCUSSION SERIES 2019-080, at 2 (Washington: Board of Governors of the Federal Reserve System, Nov. 7, 2019), <https://doi.org/10.17016/FEDS.2019.080> (visited 21 May 2021).

<sup>138</sup> Dao et al., above n 129.

<sup>139</sup> This refers to the notion that a worker would not be more productive in another job than the one she currently possesses. Molloy et al., above n 133, at 210.

<sup>140</sup> Ibid. at 215.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid. at 216.

measured by social network strength,<sup>143</sup> and restrictive land-use policies that inhibit the ability of workers to easily move.<sup>144</sup>

The legal scholar David Schleicher emphasizes legal impediments to labor mobility, arguing that a mix of federal and local policies and regulatory regimes create incentives and frictions. These include land-use regulations, occupational licensing, differing state standards to qualify for public benefits, property law that privileges fee simple ownership, and—perhaps most notably—incentives to own homes, especially the mortgage interest tax deduction.<sup>145</sup> Robert Ellickson makes a similar argument by comparing the legal structures of property law in the United States and France, concluding that France’s legal policies greatly increase what he calls ‘residential lock-ins.’<sup>146</sup>

Indeed, the ‘American dream’ of homeownership is a value and a policy choice that arguably runs counter to the economic goal of flexible labor markets,<sup>147</sup> which is to efficiently reallocate labor resources to industries that seek workers. If one owns a home in an area that has undergone a trade shock, that home is likely to lose value and come underwater, making it hard to sell and thus making it harder to move.<sup>148</sup> Some research, for example, shows that that negative home equity reduces mobility by some 30 percent, with every \$1,000 of extra mortgage or property taxes decreasing mobility by 10 percent to 16 percent.<sup>149</sup> While this remains a concern, research in the United States and Europe on this issue has not yet necessarily shown a conclusive connection between homeownership, falling home prices, and low labor mobility.<sup>150</sup>

While the research is inconclusive, this discussion makes it clear that there are important interlinkages between cross-cutting policies and policy goals that might mitigate the effectiveness of compensation strategies, or at least elements of them. Advocates for compensation must be clear-eyed about competing policy objectives, and how those other policies impact the objectives of enabling job market transitions and building support for trade liberalization.

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<sup>143</sup> Ibid. at 219

<sup>144</sup> Ibid. at 221. It should be noted that Molloy et al. do not find strong evidence to support most of these explanations.

<sup>145</sup> David Schleicher, *Stuck: The Law and Economics of Residential Stagnation*, 127 YALE LAW JOURNAL 78 (2017–2018).

<sup>146</sup> Robert C. Ellickson, *Legal Sources of Residential Lock-Ins: Why French Households Move Half As Often As U.S. Households*, UNIVERSITY OF ILLINOIS LAW REVIEW 373, 381 (2012).

<sup>147</sup> David G. Blanchflower & Andrew J. Oswald, *Does High Home-Ownership Impair the Labor Market?* (National Bureau of Economic Research, Working Paper No. 19079, May 2013).

<sup>148</sup> CLAUSING, above n 13, at 230.

<sup>149</sup> Laurie S. Goodman & Christopher Mayer, *Homeownership and the American Dream*, 32 JOURNAL OF ECONOMIC PERSPECTIVES 31, 51–52 (Feb. 2018)(citing research).

<sup>150</sup> Molloy et al., above n 133, at 52; Hana M. Broulíková et al., *Homeownership, Mobility, and Unemployment. Evidence from Housing Privatisation* (WIFO, Working Paper No. 548, Jan. 2018), <https://ideas.repec.org/p/wfo/wpaper/y2018i548.html> (visited 21 May 2021).

*B. Individual Motivations: Normative and Descriptive*

We have already seen that job mobility, at least in the United States, has significantly declined. But embedded in the active labor market policies as a form of compensation is a strong normative claim about how individuals and society ought to structure their work lives and, by extension, their family and community lives. The assumption that workers *will* move is thus closely associated with normative claims that workers *should* move in order to promote economic growth—and perhaps reflects underlying assumptions about what constitutes a good society and good life. As Ganesh Sitaraman et al. put it, the conventional elite perspective ‘is that regulatory changes ought to incentivize movement of workers to where the jobs are, not move the jobs to where the workers are.’<sup>151</sup>

Schleicher makes the normative element explicit in his argument that lower mobility is a macroeconomic problem that creates challenges for ‘monetary policy, overall economic output and growth, and the efficacy of federal safety net spending.’<sup>152</sup> Similarly, Michael Trebilcock argues that low labor mobility is problematic because it discourages agglomeration economics and because declining mobility also leads to greater economic inequality.<sup>153</sup> Clausing, likewise, argues for more worker mobility assistance to help workers move to places like the Dakotas, for example, where the boom in fracking had created employment opportunities.<sup>154</sup> Ellickson, perhaps going beyond the normative economic argument, plants himself squarely in the American tradition of mobility, firmly declaring that a ‘nation’s rate of residential mobility . . . is an under-appreciated measure of the well-being of the populace.’<sup>155</sup>

Yet even if policy makers were able to introduce interventions that could reduce the frictions of mobility, there are other normative reasons that militate against incentivizing geographic labor mobility. And as we have seen with other assumptions about what people, and particularly working-class people, do and should value, these assumptions are worth investigating.

First, the liberal American conception that we should value mobility and flexibility in our work needs to be reconsidered from a social and political perspective. It is a controversial moral and political claim that society should encourage, facilitate, and value geographic mobility and communal

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<sup>151</sup> Ganesh Sitaraman et al., *Regulation and the Geography of Inequality*, 70 DUKE LAW JOURNAL 1763, 1778 (2021).

<sup>152</sup> Schleicher, above n 145, at 83.

<sup>153</sup> Trebilcock & Wong, above n 46, at 525.

<sup>154</sup> CLAUSING, above n 13, at 229.

<sup>155</sup> Ellickson, above n 146, at 374.



flexibility over communal stability. This perspective on work and life, in which stability is valued less than geographic and residential mobility, is somewhat peculiar to the United States.<sup>156</sup> The culture of mobility dates to the early days of the United States, with Alexis De Tocqueville famously observing in 1862 in his opus *Democracy in America* that as soon as an American ‘settles in a place...he soon afterwards leaves, to carry his changeable longings elsewhere.’<sup>157</sup> Earlier that century, the English observer Morris Birkbeck marveled at how much Americans are ‘a migrating people; and even when in prosperous circumstances, can contemplate a change of situation,’<sup>158</sup>

While this deracination instinct perhaps still applies to certain segments of society, it is no longer the norm in others. Indeed, white-collar workers and middle-class professionals are ‘groomed to fly away,’<sup>159</sup> some argue, inculcating the idea that one’s primary identity is work and professional gratification.<sup>160</sup> The assumption is that they should, and do, desire to conform their personal lives and community life around work identities. In contrast, blue-collar workers, the group that is most subject to job dislocation because of import competition, do not necessarily hold the same set of values or goals. According to Williams, working-class men consider this obsession with work to be a kind of narcissism.<sup>161</sup> For many in the working class, community takes priority over work life. If anything, the latter is meant to facilitate the former. Mobility in itself, therefore, has significant social and psychological costs and is, in fact, counter to the preferences of a significant portion of the population. Furthermore, for blue-collar workers, community rootedness serves both economic and personal ends. Childcare is often provided by family and social networks, creating opportunities to work outside the home and to provide stable and productive care environments for children. Social lives take place in person and are centered around religious institutions or, for example, bowling, as Robert Putnam argues in his classic work on geographic self-segregation and community.<sup>162</sup> Thus, a churn in communities has real impacts that must be fully considered.

But there might also be compelling reasons for society to generally value geographic stability and to reconsider favoring an economic and political regime, through law, policy, and social values,

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<sup>156</sup> Ibid. (noting that the French rate of mobility is about half of that in America).

<sup>157</sup> 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 164 (Henry Reeve trans., Cambridge: Sever and Francis 1862).

<sup>158</sup> MORRIS BIRKBECK, *NOTES ON A JOURNEY IN AMERICA: FROM THE COAST OF VIRGINIA TO THE TERRITORY OF ILLINOIS* 35–36 (Bishopsgate: Severn & Company 1818).

<sup>159</sup> WILLIAMS, above n 94, at 36.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid. at 37.

<sup>162</sup> ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (New York: Simon & Schuster, 20th anniversary ed. 2020).

that devalues community or subordinates stability to privilege mobility in the name of economic efficiency. As Sitaraman et al. argue, policies that draw people away from geographic areas risk exacerbating the problems of those who are left behind in those areas.<sup>163</sup> This becomes particularly problematic where industries affected by trade are concentrated in particular regions, such as in the American rust belt. That is, if the proposed solution to address the problem of job loss in a given region is to have workers move to industries and services in other regions, then there will be sharp geographic economic and social impacts on the “left behind” areas.

There are also reasons to value stable communities. Communitarianism is one prominent normative framework that helps conceptualize the centrality of networks of human relationships and communities over individualism.<sup>164</sup> In the context of trade, according to Trebilcock, the communitarian perspective argues that the mobility, or ‘exit option,’ might be ‘unjustified if it involves severing the bonds to extended family, neighborhood or community, and workplace colleagues. Loss of a significant part of one’s human identity may simply not be compensable through redistributive policies.’<sup>165</sup> That is, a communitarian perspective acknowledges that, unlike an economic perspective, certain psychological and emotional losses cannot be fully compensated by cash payments and new, and perhaps even better, employment opportunities. Moreover, the informal and formal connections that people have in their communities, churches, institutions, and families are difficult to quantify for the purposes of compensation, either by the state or by the injured parties, partly for the psychological reasons described earlier. Thus, it is unclear if the compensation principle could in practice adequately or sufficiently remunerate trade’s losers in such a way as to fully compensate their economic, as well as noneconomic and psychic losses, which are also of value and constitute a component of an individual’s utility function.<sup>166</sup>

## VII. Alternatives to a Compensation Approach?

The question of how to address the limits of compensation is a challenging one for those who advocate trade and global economic integration. While the primary aim of this Article is not policy prescription, I sketch here a preliminary set of ideas about how scholars and policymakers should

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<sup>163</sup> Sitaraman et al. above n 151, at 1778-9.

<sup>164</sup> See, e.g., AMITAI ETZIONI, *SPIRIT OF COMMUNITY* 26 (1994); DAVID GOODHART, *THE ROAD TO SOMEWHERE: THE POPULIST REVOLT AND THE FUTURE OF POLITICS* (Oxford University Press 2017) (describing conflict between liberal cosmopolitan views and communitarian views held by the white working class in Britain).

<sup>165</sup> TREBILCOCK, above n 103, at 69; see also Michael J. Trebilcock et al., *Adjusting to Trade: A Comparative Perspective* 25 (Economic Council of Canada Discussion Paper 1988).

<sup>166</sup> Kemp, above n 103, at 29.

readjust the focus away from compensation, per se, towards a trade policy that re-embeds itself in political consent, and economic development.

A number of scholars have already begun to propose ways that trade policy ought to be altered to achieve social equity goals and build support for trade liberalization.<sup>167</sup> One set of suggestions argues that compensation programs should be enhanced and improved, addressing the procedural and substantive problems with the programs described above. Timothy Meyer, for example, focusing on the American legal context, but proposing ideas that could be generalizable across countries, has made a number of well-considered proposals to improve TAA by expanding eligibility and benefits to communities as well as individuals. These include targeted infrastructure education spending in communities that have suffered trade harms, and expanding various tax benefits to investors in certified trade harmed communities. Some of his suggestions, including community targeted funding, have been included in current proposed legislation that would ease the procedural hurdles to obtain benefits, and increase benefits once qualified for.<sup>168</sup> Meyer also argues that trade agreements themselves should include economic development chapters which would bind the Parties to address the losers in their own countries by identifying trade effects, and mandating various forms of compensation.

Meyer and Sitaraman, in a separate paper on American trade policy, but much of which could be broadly applicable, make further suggestions on how to address the distributional and structural problems of trade policy and its institutions.<sup>169</sup> Their arguments are less focused on compensation, but rather on changing the focus of trade policy. Specifically, they argue that trade policy needs to be more embedded in domestic economic priorities, and propose restructuring American administrative institutions to realize those priorities. They also argue that the government should conduct geographic impact assessments before entering into trade agreements, and take more aggressive action on countervailable subsidies and social dumping for agreements that are entered into. The authors further propose that the winners of trade should be taxed, the proceeds of which would go into a trade adjustment fund. Many of these suggestions, I believe, are more persuasive than a pure

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<sup>167</sup> See Joseph E. Stiglitz, *The Overselling of Globalization*, 52 BUSINESS ECONOMICS 129 (Jul. 2017)(advocating for shared prosperity in trade policy).

<sup>168</sup> See Trade Modernization Act of 2021, <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/TAA%20Section-by-Section.pdf>

<sup>169</sup> Meyer & Sitaraman, above n 80.

compensation approach.<sup>170</sup> This is because they aim to explicitly reorient trade policy towards the goals of domestic economic development broadly, and to assess its actual domestic impacts on growth and inequality. If trade policy is to be legitimized in the eyes of citizens, this is an important connection to be made.

Given that technology-induced job loss is greater than trade-induced trade loss, and given that it is often difficult for workers to discern the cause of their job loss, I would also argue that it would be more effective to have broad based wage insurance and job training that is applicable for everyone regardless of the cause of job loss. Indeed, some commentators have argued for such a broadening of the TAA, and legislation has been introduced in the United States Congress to expand the law accordingly.<sup>171</sup> Joseph Stiglitz has argued similarly for non-trade related remedies of market failures, tax policy and intergenerational wealth, creating a learning economy, and social insurance.<sup>172</sup>

In this vein, I believe a generalized policy of infrastructure development, non-trade specific government subsidies, and geographic specific job creation programs, for example, would be better strategies to address the material harm of losers, and strengthen the case for trade among citizens. This non-trade specific set of policies has the added benefit of not explicitly connecting job loss and trade in citizens' minds, perhaps bolstering trade's status. Another suggestion is to revisit the nature of safeguard measures. Currently, Article XIX of GATT and the Agreement on Safeguards permits safeguard measures when a specific domestic industry is under threat. But perhaps safeguard measures ought to be permitted when it can be shown that domestic political support for free trade is falling, and that fall in support threatens to undermine current or future free trade arrangements. This would serve the same purpose of the safeguard measures as currently implemented, but more explicitly address the problem.

## VIII. Conclusion

Many scholars and policy makers have been surprised by the populist backlash to trade liberalization. Much of this opposition has been driven not only by real economic impacts on certain industries—and, more specifically, their workers and the communities in which those industries

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<sup>170</sup> While scholars such as Shaffer, above n 5, and Meyer & Sitaraman, above n 80, advocate for social dumping measures, I believe that these are problematic for reasons that I do not have space to address here.

<sup>171</sup> Andrew Stettner, *How to Respond to Job Losses from Technology, Trade, and Policy Choices* (2019), <https://tcf.org/content/report/respond-job-losses-technology-trade-policy-choices/>.

<sup>172</sup> Ibid. at 135.

were located—but also by the cultural and political implications of economic liberalization.<sup>173</sup>

The traditional policy response to the losers of trade has relied on compensation. For policy makers, it is a tool to ensure that opposition to trade will be mitigated and that the so-called ‘free trade consensus’ can be sustained.<sup>174</sup> As the argument above has made clear, however, I am skeptical that compensation strategies to address the losers of trade will be a) successful, or b) normatively desirable. I am also skeptical that they will be successful in winning support for trade liberalization because of the reasons proffered above, including: people’s preferences for protectionism over compensation; the relationship to government supports and the inherent desire of people to work rather than receive benefits; loss aversion; gender and work identity issues, and the problems of labor mobility. I do not believe free trade coupled with compensation strategies will be normatively desirable if those compensation efforts do not succeed in stabilizing communities both sociologically and geographically.

The failure of compensation to adequately address the rich set of concerns that citizens have about trade liberalization and its implications for the organization of social life has important implications for how scholars think about the way in which law and policy should be shaped. It also should make them reconsider the conventional response to proposals from those on both the Left and the Right who question the merits of trade, and who seek to impose various trade barriers in the name of what they might term fair trade.<sup>175</sup>

An important question, then, is whether there is a way to think about and propose institutions and policies that will truly build up widespread support for, and legitimacy of, liberalized trade regimes and deeper economic integration. Certainly, trade scholars need to take a step back from their free trade inclinations and concede that the process of economic liberalization must be more tightly paired with the preferences and realities of human nature, and political and social preferences—even though this might mean slower transitions to free trade regimes, or greater implementation of safeguard measures that are directed not towards protectionism, but rather anti-trade political sentiment. And scholars and policy makers must be informed by an approach to addressing the losers of trade that recognizes that some losses and transitions may not be compensable, that values membership in stable communities, and that acknowledges the political resistance to the cosmopolitan ideals that are dominant among policy elites.

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<sup>173</sup> Margalit, above n 11.

<sup>174</sup> See Meyer, above n 5.

<sup>175</sup> See Ehrlich, above n 84.

A final implication for this argument is for the compensation principle itself. If the losers of trade are not easily compensated, and if some losses from trade are even non-compensable, then what are the implications for the criterion itself, and what is its utility as a public policy tool?