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ECONOMIC PROTECTIONISM AND THE PHILOSOPHY OF FRÉDÉRIC BASTIAT

Robert W. McGee*

ABSTRACT

Frédéric Bastiat (1801-1850) was a French economist and journalist. One of his classic works, The Candlemakers' Petition, uses the reductio ad absurdum philosophical technique to dismantle the arguments the French protectionists put forth to protect French industry in the mid-nineteenth century. His Petition has been reprinted in numerous college economics texts and it has been cited in the scholarly economics literature.

But Bastiat's writings on protectionism include much more than his Candlemakers' Petition. This paper discusses The Candlemakers' Petition as a starting point, then explores his other, lesser known writings on protectionism and applies his theories to current conditions.

INTRODUCTION

Frédéric Bastiat (1801–1850) was a French journalist, economist, and pamphleteer. Several authors have written biographies about his life and work.¹ Mülberger devoted a full volume to his debate with Proudhon about the justification for interest.²

Although not as frequently cited in the economics literature as some other economists of the period, his writings have lived on and have stood the test of time.³

Bastiat has penned several works that have been labeled as classics. His essay, *What Is Seen and What Is Not Seen*, proposes a methodology economists, political philosophers, and policy makers should use to

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1. ADOLPHE IMBERT, *FRÉDÉRIC BASTIAT ET LE SOCIALISME DE SON TEMPS* (1913); GEORGES DE NOUVION, *FRÉDÉRIC BASTIAT: SA VIE—SES ŒUVRES—SES DOCTRINES* (1905); GEORGE C. ROCHE, III, *FRÉDÉRIC BASTIAT: A MAN ALONE* (1971); P. RONCE, *FRÉDÉRIC BASTIAT: SA VIE, SON ŒUVRE* (1905); DEAN RUSSELL, *FRÉDÉRIC BASTIAT: IDEAS AND INFLUENCE* (1969).

2. ARTHUR MÜLBERGER, *KAPITAL UND ZINS: DIE POLEMIK ZWISCHEN BASTIAT UND PROUDHON* (1896).

3. See FRÉDÉRIC BASTIAT, *THE BASTIAT COLLECTION* (2007) [hereinafter *THE BASTIAT COLLECTION*]; FRÉDÉRIC BASTIAT, *ECONOMIC HARMONIES* (W. Hayden Boyers trans., George B. de Huszar ed., 4th prtg. 1996) [hereinafter *BASTIAT, ECONOMIC HARMONIES*]; FRÉDÉRIC BASTIAT, *ECONOMIC SOPHISMS* (Arthur Goddard ed. & trans., 5th prtg. 1996) [hereinafter *BASTIAT, ECONOMIC SOPHISMS*]; Frédéric Bastiat, *La Loi* [The Law] (first published as a pamphlet in 1850), *reprinted in* *ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME QUATRIÈME* 342–93 (3d ed. 1873), *reprinted in English in* *THE BASTIAT COLLECTION, supra*, VOL. 1, at 49–94 (2007) *and* FRÉDÉRIC BASTIAT, *THE LAW* (Dean Russell trans., 2d ed. 1998) [hereinafter *BASTIAT, THE LAW*]; FRÉDÉRIC BASTIAT, *SELECTED ESSAYS ON POLITICAL ECONOMY* (Seymour Cain trans., George B. de Huszar ed., 4th prtg. 1995) [hereinafter *BASTIAT, SELECTED ESSAYS*].

examine economic, political, and policy issues.⁴ In it, he shows that it is necessary to examine the effects a policy has on all groups, in both the long-run and the short-run. Hazlitt states that the failure to examine the effect a policy has on all groups is the main reason so many economic theories are faulty.⁵ At a recent conference on international business and public administration, I applied the Bastiat approach to show why much of the international relations literature inadequately explains the failure of most economic sanctions.⁶

Another classic, *The Law*, discusses and illustrates the difference between good law and bad law.⁷ It addresses the interplay between major legal and moral concepts, such as when the laws are used to obtain what one could not obtain privately without committing a crime (modern economists refer to this as “rent-seeking”⁸) or when it is used to redistribute wealth. It also points out that the reason we have laws is because of property, not the other way around.⁹ His third classic, *The Candlemakers’ Petition*,¹⁰ is discussed below.

Bastiat was an active participant in the free trade debate of the 1840s.¹¹ He was a friend of Richard Cobden and John Bright—the founders of the

4. Frédéric Bastiat, *Ce Qu’on Voit et Ce Qu’on ne Voit Pas* [What Is Seen and What Is Not Seen] (first published as a pamphlet in 1850), *reprinted in* ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME CINQUIÈME, at 336–92 (1873); *reprinted in English in* BASTIAT, SELECTED ESSAYS, *supra* note 3, at 1–50, and THE BASTIAT COLLECTION, *supra* note 3, VOL. I, at 1–48 [hereinafter Bastiat, *What Is Seen and What Is Not Seen* in BASTIAT, SELECTED ESSAYS].

5. HENRY HAZLITT, ECONOMICS IN ONE LESSON (1952).

6. Robert W. McGee, Ethical Aspects of Economic Sanctions: A Third Theory (Apr. 23–26, 2009) (unpublished manuscript) (on file with the Brooklyn Journal of Corporate, Financial and Commercial Law).

7. BASTIAT, THE LAW, *supra* note 3.

8. Gordon Tullock identified the concept of rent seeking in a 1967 article. See Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies, and Theft*, 5 W. ECON. J. 224 (1967). See also Anne O. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291 (1974). A ProQuest search failed to find a single mention of the term prior to Krueger’s article. Bastiat discussed the concept of rent seeking in THE LAW in 1850, thus anticipating Tullock by more than 100 years. See BASTIAT, THE LAW 7–9.

9. BASTIAT, THE LAW, *supra* note 3.

10. Frédéric Bastiat, *Pétition des Fabricants de Chandelles, Bougies, Lampes, Chandeliers, Réverbères, Mouchettes, Éteignoirs, et des Producteurs de Suif, Huile, Résine, Alcool, et Généralement de Tout Ce Qui Concerne L’Éclairage*, *reprinted in* ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME QUATRIÈME, at 57–62 (3d ed. 1873), *available at* http://files.libertyfund.org/files/946/0137-04_Bk_Sm.pdf, *reprinted in English in* THE BASTIAT COLLECTION, *supra* note 4, VOL. I, at 227–32 and BASTIAT, ECONOMIC SOPHISMS, *supra* note 3, at 56–60 [hereinafter Bastiat, *Petition* in BASTIAT, ECONOMIC SOPHISMS].

11. Frédéric Bastiat, *Cobden et la Ligue*, *reprinted in* ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME TROISIÈME (3d ed. 1864), *available at* http://files.libertyfund.org/files/945/0137-03_Bk_Sm.pdf [hereinafter Bastiat, *Cobden et la Ligue*]; Frédéric Bastiat, *Correspondance Mélanges*, *reprinted in* ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME PREMIER (2d ed. 1862), *available at* http://files.libertyfund.org/files/943/0137-01_Bk.pdf; BASTIAT, ECONOMIC HARMONIES, *supra* note 3; BASTIAT, ECONOMIC SOPHISMS, *supra* note 3; Frédéric Bastiat, *Essais—Ébauches—Correspondance*, *reprinted in* ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME SEPTIÈME (1861), *available at* http://files.libertyfund.org/files/949/0137-07_Bk_Sm.pdf;

British Corn Law League—and engaged in detailed correspondence with them.¹²

His contributions to the economics literature have been sufficient for him to earn a place in Mark Blaug's *Great Economists before Keynes*.¹³ Robert Heilbroner devotes a major portion of a chapter to Bastiat in his classic book *The Worldly Philosophers*, first published in 1953 and used in economics classrooms ever since.¹⁴ Rothbard devotes nine pages to Bastiat in volume two of his history of economic thought¹⁵ and credits Bastiat with refuting the Keynesian multiplier theory nearly 100 years before it was advanced by Keynes.¹⁶ Skousen spends seven pages discussing Bastiat in his history of economic thought.¹⁷ Schumpeter referred to him as a "brilliant economic journalist."¹⁸ Haney devotes chapter 15 of his *History of Economic Thought* to Bastiat.¹⁹

A number of authors have applied Bastiat's theories and approaches to modern economic problems. Henry Hazlitt, an American economic journalist, used Bastiat's approach to examine a number of economic theories and policies in his classic *Economics in One Lesson*.²⁰ Dean Russell, an economist, also applied Bastiat's theories and approaches to a wide range of economic issues.²¹

Frédéric Bastiat, *L'État*, reprinted in ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME QUATRIÈME 327–41 (3d ed. 1873) and THE BASTIAT COLLECTION, *supra* note 3, VOL. I, at 95–107; Frédéric Bastiat, *Harmonies Économiques*, reprinted in ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME SIXIÈME (6th ed. 1870), available at http://files.libertyfund.org/files/948/0137-06_Bk_Sm.pdf; Frédéric Bastiat, *Le Libre-Échange*, reprinted in ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME DEUXIÈME (2d ed. 1862) [hereinafter Bastiat, *Le Libre-Échange*], available at http://files.libertyfund.org/files/944/0137-02_Bk_Sm.pdf; Bastiat, *Petition*, in BASTIAT, ECONOMIC SOPHISMS, *supra* note 10; BASTIAT, SELECTED ESSAYS, *supra* note 3; Frédéric Bastiat, *Sophismes Économiques, Petits Pamphlets I*, reprinted in ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME QUATRIÈME (3d ed. 1873), available at http://files.libertyfund.org/files/946/0137-04_Bk_Sm.pdf; Frédéric Bastiat, *Sophismes Économiques, Petits Pamphlets II*, reprinted in ŒUVRE COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME CINQUIÈME (3d ed. 1873), available at http://files.libertyfund.org/files/947/0137-05_Bk_SM.pdf; Bastiat, *What Is Seen and What Is Not Seen* in BASTIAT, SELECTED ESSAYS, *supra* note 4.

12. Bastiat, *Cobden et la Ligue*, *supra* note 11.

13. MARK BLAUG, *GREAT ECONOMISTS BEFORE KEYNES* (1986).

14. ROBERT L. HEILBRONER, *THE WORLDLY PHILOSOPHERS* (7th ed. 1999).

15. MURRAY N. ROTHBARD, *CLASSICAL ECONOMICS: AN AUSTRIAN PERSPECTIVE ON THE HISTORY OF ECONOMIC THOUGHT*, VOL. II, at 444–53 (1995).

16. *Id.* at 445. Bastiat was able to refute the Keynesian multiplier theory 100 years (actually about 86 years) before Keynes advanced it because the theory did not originate with Keynes. The concept had been prevalent in France in the 1840s, when Bastiat did his writing.

17. MARK SKOUSEN, *THE MAKING OF MODERN ECONOMICS: THE LIVES AND IDEAS OF THE GREAT THINKERS* 59–65 (2d ed. 2009).

18. JOSEPH A. SCHUMPETER, *HISTORY OF ECONOMIC ANALYSIS* 400 (1954).

19. LEWIS H. HANEY, *HISTORY OF ECONOMIC THOUGHT* (4th ed. 1949).

20. HAZLITT, *supra* note 5.

21. DEAN RUSSELL, *GOVERNMENT AND LEGAL PLUNDER: BASTIAT BROUGHT UP TO DATE* (1985).

One defining characteristic of Bastiat was his wit. He deployed the *reductio ad absurdum* technique to highlight the illogic in his opponents' arguments. Nowhere is this approach better illustrated than in his *Candlemakers' Petition*,²² to which we turn next.

I. THE CANDLEMAKERS' PETITION

The Candlemakers' Petition, also referred to as *The Petition of the Candlemakers* in some reprints and originally titled *Pétition des Fabricants de Chandelles, Bougies, Lampes, Chandeliers, Réverbères, Mouchettes, Éteignoirs, et des Producteurs de Suif, Huile, Résine, Alcool, et Généralement de Tout Ce Qui Concerne L'Éclairage*²³ [*Petition of the Manufacturers of Candles, Waxlights, Lamps, Candlesticks, Street Lamps, Snuffers, Extinguishers, and of the Producers of Tallow, Oil, Resin, Alcohol, and Generally Everything Connected with Lighting*],²⁴ has become a classic of the free trade literature. It has been reprinted many times in economics textbooks and in other trade publications.²⁵

The Petition was instigated in response to the French Chamber of Deputies, which passed legislation that increased duties on all foreign products; a measure they thought would benefit French industry.²⁶ It begins as follows:

You are on the right track. You reject abstract theories and have little regard for abundance and low prices. You concern yourselves mainly with the fate of the producer. You wish to free him from foreign competition, that is, to reserve the *domestic market* for *domestic industry*.

We come to offer you a wonderful opportunity for applying your—what shall we call it? Your theory? No, nothing is more deceptive than theory. Your doctrine? Your system? Your principle? But you dislike doctrines, you have a horror of systems, and, as for principles, you deny that there are any in political economy; therefore we shall call it your practice—your practice without theory and without principle.²⁷

The Petition goes on to complain about the suffering French producers are incurring as a result of a foreign competitor “who . . . works under conditions [that are] so far superior to” those of the French manufacturers that they are unable to compete.²⁸ This competitor is flooding the French market with light at such an “incredibly low price” that French producers of light such as candle makers, makers of lanterns, street lamps, and the

22. Bastiat, *Petition*, in BASTIAT, *ECONOMIC SOPHISMS*, *supra* note 10.

23. *Id.* at 10.

24. THE BASTIAT COLLECTION, *supra* note 10, VOL. I, at 227.

25. *See, e.g.*, HEILBRONER, *supra* note 14.

26. *Id.* at 179–80.

27. Bastiat, *Petition* in BASTIAT, *ECONOMIC SOPHISMS*, *supra* note 3, at 56.

28. *Id.*

secondary industries that support those industries—such as the producers of oil, tallow, resin, alcohol and extinguishers—are threatened with stagnation if not total destruction.²⁹

This foreign competitor, of course, is the sun. Bastiat's *Petition* asks the French legislature to pass a law requiring everyone to close their windows, sky lights, dormers, inside and outside shutters, curtains and anything else that allows light to enter.³⁰

He goes on to explain the benefits of passing such a law. Shutting off as much natural light as possible creates a need for artificial light, which would encourage a wide range of French industry.³¹ In order to consume more tallow it would be necessary to have more cattle and sheep, which would require more cleared fields, leather, wool, meat and manure, which is the basis of all French agricultural wealth.³²

But that is not the end of the story. If the French consume more oil it would be necessary to expand cultivation of several agricultural products, including the olive, rapeseed and the poppy.³³ The fact that these plants exhaust the soil would not be a problem because the increased breeding of cattle would result in the production of more manure to fertilize the fields where these items are being grown.³⁴

French moors would be “covered with resinous trees.”³⁵ French mountains would be swarming with bees.³⁶ All sectors of agriculture would vastly expand.

The shipping industry would also expand.³⁷ Thousands of French vessels would be employed by the whaling industry, to the glory of France. The Parisian manufacturing sector would also prosper. One would soon see gilding, bronze and crystal in lamps, candle sticks, chandeliers and candelabra. There will not be a resin collector or miner who will not enjoy increased wages and prosperity. There is not one Frenchman, from the wealthy stockbroker to the humblest match vendor whose condition would not be improved by outlawing the sun.

Bastiat goes on to address the objections that the French Chamber of Deputies might raise and responds to them. One might object that, although French industry may benefit from protectionism, France itself will not benefit because consumers will have to pay. Bastiat answers:

29. *Id.*

30. *Id.* at 57.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

You no longer have the right to invoke the interests of the consumer. You have sacrificed him whenever you have found his interests opposed to those of the producer. You have done so in order to *encourage industry and to increase employment*. For the same reason you ought to do so this time too.³⁸

Bastiat points out that when the argument was made that consumers have a stake in the free importation of iron, coal, sesame, wheat and textiles, the Chamber of Deputies responded that French producers have a stake in their exclusion. Likewise, if they raise the objection that French consumers have a stake in the admission of natural light, producers have a stake in preventing consumers from obtaining it for free.

Free traders might also assert that the producer and the consumer are the same person. If manufacturers benefit from the protection, they will cause farmers to also benefit. The protection will open markets for manufactured goods. If the Chamber of Deputies would grant a daytime monopoly over the production of light, “large amounts of tallow, charcoal, resin, wax, alcohol, silver, iron, bronze, and crystal,”³⁹ would be purchased, making those industries rich. They will consume the products of all other French industries, causing a ripple effect throughout the French economy.

He then raises another free market argument. “[S]un[light] is a gratuitous gift of [n]ature.”⁴⁰ Rejecting such a gift “would be to reject wealth itself under the pretext of encouraging [production].”⁴¹ He then points out that if the Chamber of Deputies takes that position they “strike a mortal blow at [their] own policy.”⁴² On previous occasions the French Chamber of Deputies argued in favor of excluding foreign goods “*because and in proportion* as they approximate gratuitous gifts.”⁴³

Labor and nature combine to produce various commodities.⁴⁴ The relative proportion of labor and nature depend on the country and the climate. The portion provided by nature is free. It is only the labor component that we must pay for. “Thus, when an orange [arrives] . . . from Portugal, [it can be said that it is given to the French nation] half free of charge, or . . . at *half price* . . . compared [to oranges] from Paris.”⁴⁵

It is precisely on the basis that the product is half free that protectionists argue it should be barred. That being the case, how can it be argued that a totally free product should be admitted into competition? Such an argument involves inconsistency. If something that is half free is harmful to French

38. *Id.* at 58.

39. *Id.* at 59.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

domestic industry, one must exclude something that is totally free with twice the zeal.

Bastiat then gives another example. When a product such as iron, coal, wheat or textiles comes from abroad, enabling French consumers to obtain it for less labor than if it were produced domestically, the difference is a gratuitous gift. The size of the gift is in direct proportion to the difference in cost. The gift is as complete as it can be when the donor – the sun – provides us with light and asks for nothing in return.

The question Bastiat then poses is whether what they desire for France is the benefit to be gained by this free consumption or the alleged advantages of onerous production. He instructs them to make their choice but to be logical. Since they ban foreign iron, coal, wheat and textiles in proportion as their price approaches zero, it would be utterly inconsistent to admit sunlight, which has a price of zero all day long.

The point Bastiat was trying to make is that the arguments the Chamber of Deputies had used in the past to justify protection for other commodities were absurd when taken to their logical conclusions. Outlawing the sun, to the extent possible, would be a stupid and irrational policy, since the sun costs nothing and all of France benefits. What is less obvious is that foreign products that cost less than French products constitute partial gifts to the French people.

Bastiat uses another approach in his essay, *What Is Seen and What Is Not Seen*,⁴⁶ to make the same point. He argues that what is seen by protecting a wide range of French industry from competition by the sun is an increase in sales for candle makers and other industries that are involved in the artificial light industry, but what is not seen is all the business that never takes place in other industries because French consumers now have to pay for something that was formerly free. If consumers must pay more for light products, they will have less to spend on every other industry and service. All the non-light industries and service providers will suffer as a result of protecting the French artificial lighting industry.

As was mentioned, Bastiat was a vigorous advocate of free trade. He wanted to do for France what Cobden and Bright were doing for England, namely, abolishing restrictions to trade.⁴⁷ Two tools in his toolbox were ridicule and *reductio ad absurdum*. He also employed logic, utilitarian analysis, and, at times, rights theory to make his point. We now turn to some of his other writings on free trade.

46. Bastiat, *What Is Seen and What Is Not Seen* in BASTIAT, SELECTED ESSAYS, *supra* note 4.

47. Bastiat, *Le Libre-Échange*, *supra* note 11.

II. DIFFERENTIAL TARIFFS

In a short essay on differential tariffs, Bastiat illustrates the effect such tariffs have on the common man.⁴⁸ In the example, an impoverished French farmer who lovingly tended his vines finally raises enough grapes to make a cask of wine, which he takes to the nearest town, telling his wife that he will use the proceeds from the sale to purchase enough material for her “to furnish a trousseau for our daughter.”⁴⁹

When he arrives he meets a Belgian and an Englishman. The Belgian offers to give him fifteen parcels of yarn for his wine. The Englishman offers him twenty parcels, explaining that the reason he can offer more is because the English spin at lower cost than the Belgians.⁵⁰

Before he can make the trade, a customs officer who was there said: “My good man, trade with the Belgian, if you wish, but my orders are to keep you from trading with the Englishman.”⁵¹

“What?” the farmer exclaimed. “You want me to be content with fifteen parcels of yarn from Brussels, when I could have twenty from Manchester?”⁵²

The customs official replied, “Certainly; do you not see that France would lose if you received twenty parcels instead of fifteen?”⁵³

The farmer found that result difficult to understand. The customs official replied that he found it difficult to explain, stating only that “it is a fact; for all our deputies, cabinet ministers, and journalists agree that the more a nation receives in exchange for a given quantity of its products, the poorer it becomes.”⁵⁴

Because of this policy the farmer had to be content dealing with the Belgian. As a result, his daughter got only three-fourths of a trousseau and the farmer’s family is still trying to figure out how a person can be ruined by receiving four parcels of yarn instead of three, and why a person is richer with three dozen towels than with four dozen.

Bastiat’s example makes obvious what politicians and some economists try to obscure: that consumers are better off if they are not prevented from trading with whomever they want. Protectionists would argue that tariffs or outright bans on imports are necessary to protect French industry. But in this case there was no Frenchman present other than the farmer. There were two losers in this exchange, the Frenchman and the Englishman, and only

48. Frédéric Bastiat, *Droits Différentiels*, reprinted in ŒUVRES COMPLÈTES DE FRÉDÉRIC BASTIAT, TOME QUATRIÈME 63–66 (3d ed. 1873), available at http://files.libertyfund.org/files/946/0137-04_Bk_Sm.pdf, and BASTIAT, ECONOMIC SOPHISMS, *supra* note 3, at 61–62 [hereinafter Bastiat, *Differential Tariffs* in ECONOMIC SOPHISMS].

49. *Id.* at 61.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 62.

one winner, the Belgian. Since the losers exceed the winners, the result is what economists would call a negative-sum game. Utilitarians would call it an unethical policy, since utilitarian ethics treats positive-sum games as ethical and negative-sum games as unethical.⁵⁵ Rights theorists would consider the policy of imposing tariffs unethical because it violates contract and property rights.⁵⁶

One might counter that the transaction is positive-sum, since all trade is a positive-sum game. Both parties are better off after than before the trade. Otherwise they would not have entered into the trade. That is perfectly true. Both the farmer and the Belgian are better off as a result of the trade. But the farmer is not as well off as he would have been in the absence of the legal restriction.

Which argument wins depends on how you define negative-sum game, and this is one of the problems with economic analysis. The definition sometimes determines the conclusion. Under Bastiat's definition, the Englishman was a loser, although he was not a party to the transaction. He would have been a winner if the transaction had been allowed to take place.

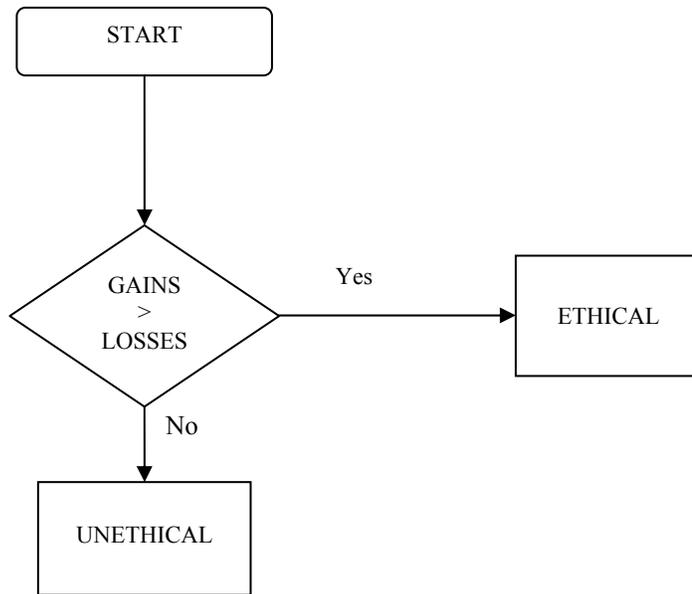
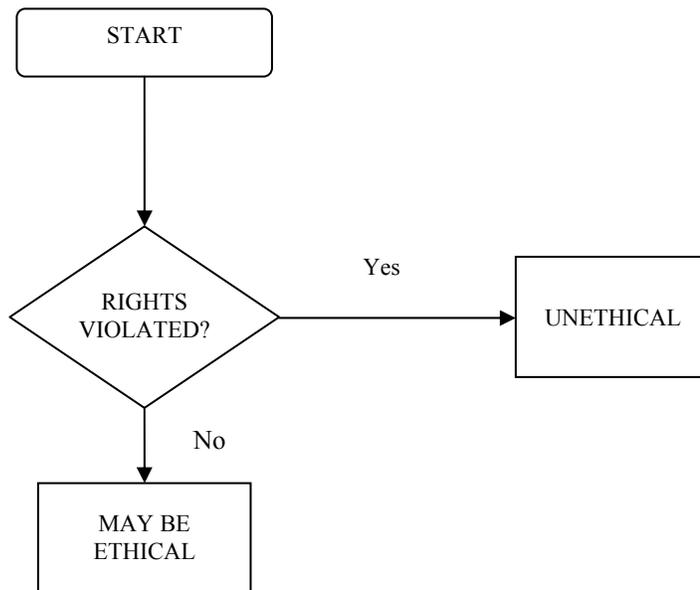
III. UTILITARIAN AND RIGHTS PERSPECTIVES

Regardless of how one might consider the outcome of the French farmer and Belgian merchant example from a utilitarian perspective, the outcome from a rights perspective is clear. Someone's rights have been violated; therefore, the policy is unethical.

The utilitarian and rights perspectives might be summarized by the following two flowcharts:

55. One of the basic premises of utilitarian ethics is that an act is ethical if the good exceeds the bad or if winners exceed losers, which is not quite the same thing. Utilitarian ethics is discussed below.

56. See Robert W. McGee, *Ethical Aspects of Using Government to Subvert Competition: Antidumping Laws as a Case Study of Rent Seeking Activity*. 83 J. BUS. ETHICS 759–71 (2008).

UTILITARIAN ETHICS**RIGHTS-BASED ETHICS**

According to utilitarian ethics, an act or policy is ethical if the result is more winners than losers, or if the result is a positive-sum game, which is not quite the same thing. Early utilitarians⁵⁷ stated that an act or policy is good if the result is the greatest good for the greatest number, a condition that is impossible to achieve, since it is not possible to maximize two variables at the same time.⁵⁸

With respect to Bastiat's French farmer, one might conclude that the transaction meets the utilitarian ethics test because both parties to the transaction—the French farmer and the Belgian merchant—are better off as a result of the trade. While it may be argued that the Englishman has lost as a result of the trade, he is, in fact, in exactly the same position as he was before the trade. Before the transaction, he had twenty parcels and after it he has the same twenty parcels, although his rights have been violated by being prevented from entering into the trade.

But the French farmer is not as well off as he would have been if he had been allowed to trade with the Englishman instead of the Belgian. Utilitarian ethics has a problem dealing with this kind of fact situation, but it is not a totally insurmountable one. A more sophisticated approach would be to take the position that “an action is right if and only if it brings about at least as much net happiness as any other action the agent could have performed; otherwise it is wrong.”⁵⁹ In other words, even if the outcome is positive, it is unethical unless it is the most positive of all possible outcomes.

Under this more holistic utilitarian perspective, the fact that the trade restriction leads to a suboptimal result makes it wrong. Bastiat's example illustrates this point without coming right out and saying it.

The second flowchart illustrates the rights position. According to this view an act or policy is inherently unethical or unjust if someone's rights are violated by it, even if the winners' gains exceed the losers' losses. For example, if two wolves and one sheep were to take a vote on what to have for lunch, a utilitarian would conclude that voting to eat the sheep was an ethical act because the winners exceeded the losers, whereas a rights theorist would conclude the act was unethical because the rights of the sheep were violated. The fact that some majority benefited is totally irrelevant.

One of the inherent flaws in utilitarian ethics is that it ignores rights. Bentham, one of the early utilitarians, would disagree, since he believes that

57. See, e.g., JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* (J.H. Burns & H.L.A. Hart eds. 1982); JOHN STUART MILL, *UTILITARIANISM* (Roger Crisp ed., 1998).

58. JOHN VON NEUMANN & OSKAR MORGENSTERN, *THEORY OF GAMES AND ECONOMIC BEHAVIOR* 11 (60th Anniversary ed. 2004); G. Hardin, *The Tragedy of the Commons*, 162 *SCIENCE* 1243 (1968).

59. WILLIAM H. SHAW, *CONTEMPORARY ETHICS: TAKING ACCOUNT OF UTILITARIANISM* 10 (1999).

there is no such thing as inherent rights,⁶⁰ but we will leave discussion of this issue for another day.

Bastiat addressed trade issues from a predominantly utilitarian point of view. His arguments are utilitarian in the sense that he consistently argues that free trade results in more winners than losers and that society benefits from free trade. But his philosophical outlook was not limited to utility. He was also, at times, a rights theorist. The most complete exposition of his rights position was laid out in *The Law*.⁶¹ In it, Bastiat describes how the law can be perverted into a tool of legal plunder. “Under the pretense of organization, regulation, protection, or encouragement,” Bastiat writes, “the law takes property from one person and gives it to another; the law takes the wealth of all and gives it to a few—whether farmers, manufacturers, shipowners, artists, or comedians.”⁶²

Some economists call this practice rent-seeking, or using the law to feather the nests of the few (special interests) at the expense of the many.⁶³

But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.

Then abolish this law without delay, for it is not only an evil itself, but also it is a fertile source for further evils because it invites reprisals. If such a law—which may be an isolated case—is not abolished immediately, it will spread, multiply, and develop into a system.⁶⁴

Bastiat applied this view in the following trade example.

60. BENTHAM, *supra* note 57; NONSENSE UPON STILTS: BENTHAM, BURKE AND MARX ON THE RIGHTS OF MAN (Jeremy Waldron ed., 1987) [hereinafter WALDRON]. “That which has no existence cannot be destroyed—that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts.” *Id.* at 53 (quoting Bentham’s famous quote is from ANARCHICAL FALLACIES (1843)). In other words, all rights come from government. Bastiat would disagree. In *THE LAW*, Bastiat takes the position that rights come before government. BASTIAT, *THE LAW*, *supra* note 3. Governments are formed to protect life, liberty and property. *Id.* Governments that limit themselves to these functions are just. *Id.* Governments that go beyond these functions are unjust because they use the force of government to redistribute wealth. *Id.*

61. BASTIAT, *THE LAW*, *supra* note 3.

62. *Id.* at 13. Bastiat also discusses plunder in *Plunder and Law*, reprinted in BASTIAT, *SELECTED ESSAYS*, *supra* note 3, at 229–39, and *The Physiology of Plunder*, reprinted in BASTIAT, *ECONOMIC SOPHISMS*, *supra* note 3, at 129–46.

63. For discussions of the concept of rent seeking, see 40 YEARS OF RESEARCH ON RENT SEEKING 2 (Roger D. Congleton, Arye L. Hillman & Kai A. Konrad eds., 2008); EFFICIENT RENT-SEEKING: CHRONICLE OF AN INTELLECTUAL QUAGMIRE (Alan Lockard & Gordon Tullock eds., 2001); THE POLITICAL ECONOMY OF RENT-SEEKING (Charles K. Rowley, Robert Tollison & Gordon Tullock, eds., 1988); GORDON TULLOCK, *THE ECONOMICS OF SPECIAL PRIVILEGE AND RENT SEEKING* (1989).

64. BASTIAT, *THE LAW*, *supra* note 3, at 17.

IV. RESTRAINT OF TRADE

In his essay, *What is Seen and What Is Not Seen*,⁶⁵ Bastiat discusses the case of an industrialist—whom he calls Mr. Protectionist—who “devote[s] his time and . . . capital to converting ore from his [property] into iron.”⁶⁶ However, because nature has blessed Belgium with more natural ore than France, the Belgians are able to sell their iron for a lower price.⁶⁷ This gift from nature meant that Frenchmen in various industries such as “nailmakers, metalworkers, cartwrights, mechanics, blacksmiths, and plowmen” are prompted by their self-interest to buy their iron from Flanders rather than from domestic suppliers like Mr. Protectionist.⁶⁸

“His first [thought] was to stop this abuse . . . with his own two hands.”⁶⁹ He would take his carbine, four pistols, cartridges, and a sword to the border and kill the first French tradesman he sees who attempts to buy this cheap Belgian iron.⁷⁰ It would teach them a lesson. How dare they put their own self-interest above that of Mr. Protectionist?

But as he began to leave he started having second thoughts.⁷¹ Perhaps some of his countrymen might not allow themselves to be killed.⁷² They might kill him instead.⁷³ Even if he took all his servants with him, they would not be able to guard the entire border.⁷⁴ Furthermore, the cost of trying to stop this trade would cost more than his entire net worth.⁷⁵

Just as he was becoming resigned to the fact that he must settle for being free like everyone else “he had a brilliant idea.”⁷⁶ “He remembered that there is a great law factory in Paris” that made laws everyone must conform to “whether . . . good or bad.”⁷⁷ Police are paid to enforce these laws out of the national wealth.⁷⁸ Perhaps he could get this Parisian factory to make “a nice . . . law [stating that] ‘Belgian iron is prohibited.’”⁷⁹ Rather than incurring the cost of sending his few servants to the border, the State could send 20,000 sons of those tradesmen who were buying Belgian iron to act as customs officials, to be paid with the taxes extracted from those

65. Bastiat, *What Is Seen and What Is Not Seen* in BASTIAT, *SELECTED ESSAYS*, *supra* note 4, at 25–30.

66. *Id.* at 25.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 25–26.

71. *Id.* at 26.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

very same tradesmen.⁸⁰ It would cost Mr. Protectionist nothing; he would be protected from the brutality that might be inflicted on him if he were to try to do the job himself; and it would enable him to sell the iron at his price.⁸¹ He would also have “the sweet pleasure of seeing . . . [the] people shamefully hoaxed.”⁸²

So he went to members of the legislature and

presented to their excellencies the following argument: “Belgian iron is sold in France at ten francs, which forces me to sell mine at the same price. I should prefer to sell it at fifteen and cannot because of this confounded Belgian iron. Manufacture a law that says: ‘Belgian iron shall no longer enter France.’ Immediately I shall raise my price by five francs, with the following consequences:

“. . . I shall enrich myself more quickly; I shall employ more men. . . . My employees and I will spend more, to the great advantage of our suppliers for miles around. These suppliers, having a greater market, will give more orders to industry, and gradually this activity will spread throughout the country. This lucky hundred-sou piece that you will drop into my coffers, like a stone that is thrown into a lake will cause an infinite number of concentric circles to radiate great distances in every direction.”⁸³

His argument was an early example of the Keynesian multiplier, of course.⁸⁴ Some funds injected into one part of the economy will have a ripple effect throughout all parts of the economy, having a multiplier effect.

The legislators, seeing “that it is so easy to increase the wealth of a people simply by legislation,” decided to pass the law.⁸⁵ After all, why bother to work and save when you can easily create wealth by legislative fiat?⁸⁶

In fact, the law did everything Mr. Protectionist said it would do. Unfortunately, it had other effects as well. What is seen is the prosperity of Mr. Protectionist and the people who work for him. What is not seen are the negative secondary effects that offset the gains of Mr. Protectionist and his workers.

The scenario Mr. Protectionist presented to the members of the legislature was incomplete. There are more people affected than merely himself and his workers. While it is true that the extra five francs are channeled into the pockets of Mr. Protectionist, which benefits himself and his workers, the extra five francs “did not come down from the moon; [it

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 26–27.

84. See *supra* note 16 and accompanying text.

85. Bastiat, *What Is Seen and What Is Not Seen* in BASTIAT, *SELECTED ESSAYS*, *supra* note 4, at 27.

86. *Id.*

came] from the pocket of a metalworker, a nailmaker, a cartwright, a blacksmith, a plowman,⁸⁷ and other individuals who use iron in their businesses. Mr. Protectionist's profit is "counterbalanced" by the losses of these other groups.⁸⁸ Any encouragement of industry that Mr. Protectionist could have done by spending his five extra francs could have equally been done by those metalworkers and nailmakers. "The stone is thrown in at one point in the lake only because it has been prohibited by law from being thrown in at another."⁸⁹

"[*W*]hat is not seen [offsets] what is seen . . ."⁹⁰ The result "is an injustice [that is made worse by the fact that it was] perpetrated by the law."⁹¹ But that is not the end of the story. There is a third person, lurking "in the shadow[s]" who cannot be seen who has also lost five francs.⁹² So there are two losers, not merely one.

These tradesmen who now have to pay fifteen francs for their iron have five francs less to spend on other things. Before the law was passed, they could buy the iron they needed and still have five francs left to buy other things.⁹³ After the law is passed they have only enough to buy the iron.⁹⁴ They cannot use it to buy some other manufacture, or perhaps a book.⁹⁵

There is another moral to the story aside from the fact that protectionism results in a negative-sum game, or what Bastiat calls a "dead loss."⁹⁶ It is the lesson Bastiat teaches in *The Law*. "There are people who think that plunder loses all its immorality as soon as it becomes legal."⁹⁷ But it does not. Mr. Protectionist has used the law to do what he could not do without committing a crime. He cannot stop Belgian iron sellers at the border with guns and he cannot prevent his fellow Frenchmen from buying Belgian iron by using force without committing a crime. But he can use the law to do it for him. Thus, for Bastiat, the law is "perverted."⁹⁸

V. ANTIDUMPING—A MODERN EXAMPLE

Protectionism involves both winners and losers. The winners are domestic producers, who stand to gain because foreign producers are prevented from selling their products on domestic markets at a price they would otherwise charge. Tariffs on the importation of foreign products raise

87. *Id.* at 28.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 28–29.

94. *Id.*

95. *Id.*

96. *Id.* at 30.

97. *Id.* at 29.

98. *See id.*

the price of those products, making them less competitive and making it easier for domestic producers to keep their prices at a higher level than would be possible in a free market, where foreign producers are able to compete on price. But there are also losers. The losers consist of just about everyone else, since protectionism causes prices to rise above the market price and causes some products to be totally unavailable, which forces consumers to be content with their second or third choice rather than their first choice.

While one might argue that tariff rates have come down since 1999—which is partly true—not all tariff rates have come down. As tariffs have been reduced, domestic producers have shifted their attention to antidumping law—a different kind of protectionist tariff—which they have found to be a very effective tool to thwart foreign competition.⁹⁹

Antidumping laws¹⁰⁰ serve the same purpose today as they did in Bastiat's time. Such laws have been in existence in the U.S. since World War I, if not earlier. They punish foreign producers for selling their products on domestic markets for less than the cost of production or for a lower price than what they charge in their home markets. You might ask, "Why would anyone care?" After all, low prices are good for consumers, and in the case of steel and chemicals and other products that domestic producers purchase to turn into finished products—like automobiles—

99. For more on this point, see ANTIDUMPING: HOW IT WORKS AND WHO GETS HURT (J. Michael Finger, ed., 1993); JAMES BOVARD, THE FAIR TRADE FRAUD 107–68 (1991); GARY CLYDE HUFBAUER, DIANE T. BERLINER & KIMBERLY ANN ELLIOTT, TRADE PROTECTION IN THE UNITED STATES: 31 CASE STUDIES (1986); BRINK LINDSEY & DANIEL J. IKENSON, ANTIDUMPING EXPOSED: THE DEVILISH DETAILS ON UNFAIR TRADE LAW (2003); Wesley K. Caine, *A Case for Repealing the Antidumping Provisions of the Tariff Act of 1930*, 13 LAW & POL'Y INT'L BUS. 681 (1981); Ronald A. Cass & Stephen J. Narkin, *Antidumping and Countervailing Duty Law: The United States and the GATT*, in DOWN IN THE DUMPS: ADMINISTRATION OF THE UNFAIR TRADE LAWS 200–52 (Richard Boltuck & Robert E. Litan eds., 1991); Seema P. Chandnani, *European Community Antidumping Regulation: Law and Practice*, 13 B.C. INT'L & COMP. L. REV. 391 (1990); Stuart A. Christie, *Anti-Dumping Policy of the European Community and the Growing Spectre of Protectionism in Technology-Related Goods*, 16 RUTGERS COMPUTER & TECH. L.J. 475 (1990); Gilbert B. Kaplan, Lynn G. Kamarck & Marie Parker, *Cost Analysis Under the Antidumping Law*, 21 GEO. WASH. J. INT'L L. & ECON. 357 (1988); Michael S. Knoll, *United States Antidumping Law: The Case for Reconsideration*, 22 TEX. INT'L L.J. 265 (1987).

100. The Revenue Act of 1916—also referred to as the Antidumping Duty Act of 1916—was perhaps the first major piece of antidumping legislation. Revenue Act of 1916, 15 U.S.C. § 72, *repealed by* Pub. L. No. 108-429, § 2006(a), 118 Stat. 2597 (2004). It was passed in response to alleged predatory dumping by Germany during World War I. The law made it a crime to import foreign goods for less than the wholesale or actual market value. Since it was a criminal law, which had an intent requirement, it was difficult to obtain convictions. Thus, there was a (perceived) need for a civil statute that would lower the barrier to conviction. Knoll points out that there was only one (unsuccessful) prosecution under this act in the first 50 years of its existence. See Knoll, *supra* note 99, at 268 n. 22. The Antidumping Act of 1921 was a response to these difficulties. It established the rules and procedures used today to determine liability and penalties. The Antidumping Act of 1921, 19 U.S.C. §§ 160–171, *repealed by* Pub. L. No. 96-39, § 106(a), 93 Stat. 193 (1979).

allowing such a practice also benefits domestic producers. Lower steel prices for auto makers means lower costs for automakers, which translates into lower consumer prices for cars and higher profits for domestic auto manufacturers. Lower costs of production also make domestic auto makers more competitive in international markets.

Antidumping laws, protect special interests¹⁰¹ at the expense of the vast majority. They actually obstruct trade rather than foster it.¹⁰² There may be legitimate and rational reasons for dumping a product on the market. For example, it makes sense for a flower monger to sell wilted flowers for whatever price they can get, since the alternative is not selling them at all.¹⁰³ Furthermore, the microeconomic theory of discriminatory pricing actually justifies the practice of selling the same product for different prices in different markets as a way to increase sales and profits.¹⁰⁴ This is the reason movie theaters give senior citizen discounts and restaurants give discounts to people who arrive for dinner before the normal rush hour. It is a perfectly acceptable practice when movie theaters and restaurants engage in discriminatory pricing but illegal when foreign producers do it.¹⁰⁵

101. Domestic producers can be labeled as a special interest group, since they represent only a small percentage of the total population. There are only a few hundred or a few thousand orange juice producers in the United States, mostly located in either Florida or California, compared to more than 300 million potential consumers of orange juice in the United States. There are only a few auto and steel producers in the United States, compared to more than 300 million potential customers.

102. Sungjoon Cho, *Anticompetitive Trade Remedies: How Antidumping Measures Obstruct Market Competition*, 87 N.C. L. REV. 357 (2009).

103. "Commerce effectively compared the price of a fresh flower sold in Amsterdam with the price of a wilted flower sold in New York." BOVARD, *supra* note 99, at 120. Bovard examines numerous examples of the abuse of U.S. antidumping laws. For instance, the Commerce Department increased the dumping margins for a company that donated some unsold televisions to charity, charging it with selling the televisions at a zero price. *Id.* Companies have also been punished for selling TVs to employees at a discount and for selling damaged and faulty TVs at a reduced price. *Id.* When computing the cost of production the Commerce Department has been known to misclassify direct and indirect costs in a way that leads to a finding of dumping where it might not have occurred. *Id.* at 123–25. The way Commerce calculates the cost of production has also been criticized as unfair. *Id.* at 126–31. For example, Matsushita withdrew a telephone from the U.S. market after the Commerce Department demanded that it translate 3,000 pages of Japanese financial documents into English by Monday morning. The demand had been made the previous Friday afternoon. *Id.* at 135–36. For a discussion of the procedural shortcomings of antidumping law in the U.S., see N. David Palmetier, *Torquemada and the Tariff Act: The Inquisitor Rides Again*, 20 INT'L L. 641 (1986).

104. For a discussion of price discrimination from a law and economics perspective, see Daniel J. Gifford & Robert T. Kudrle, *The Law and Economics of Price Discrimination in Modern Economies: Time for Reconciliation?*, 43 U.C. DAVIS L. REV. 1235 (2010).

105. Antidumping laws also invite retaliation. For countries, like China, whose producers that have been the target of numerous antidumping investigations, the government might decide (and has decided) to retaliate by targeting any number of industries in the countries that have launched antidumping actions against Chinese companies. For a discussion of retaliation in trade, see Gabriel L. Slater, Note, *The Suspension of Intellectual Property Obligations Under TRIPS: A Proposal for Retaliating Against Technology-Exporting Countries in the World Trade Organization*, 97 GEO. L.J. 1365 (2009).

No one's rights are violated by dumping. From a utilitarian perspective, voluntary trade is an ethical act because there are two winners and no losers. Trade is not a zero-sum game where one party's gain is exactly offset by another party's loss.¹⁰⁶

A number of studies have attempted to estimate the cost of various protectionist measures such as antidumping laws. Messerlin¹⁰⁷ did a massive study of the cost of protectionism in Europe. He computed the costs of tariffs and other nontariff barriers in a wide range of industries for 1990, 1995, and 1999, and stated that the 1999 levels would likely not change until at least 2005.¹⁰⁸ For 1999 the overall rate of protection for all industries included in the study was 11.7 percent.¹⁰⁹ The average tariff rate was 7.0 percent and antidumping charges, which act like tariffs, averaged 22.4 percent,¹¹⁰ making many target companies uncompetitive, since very few companies in competitive industries can afford to raise their prices by 22.4 percent and still compete against domestic producers.

Messerlin's study also demonstrated that the cost of antidumping laws varies by industry. Some industries are targeted more than others. Overall, antidumping rates averaged 17.5 percent in 1990, 21.8 percent in 1995 and 22.4 percent in 1999,¹¹¹ but the rates for some industries were much higher than the average. For leather and leather products the 1999 rate was 27.9 percent; for petroleum and coal products it was 30.0 percent; for radio, TV and communication it was 37.7 percent.¹¹² Fifteen of the twenty-two sectors in the Messerlin study had an overall protection rate of more than 30 percent; 19 of the sectors had an overall protection rate of over 15 percent.¹¹³ Foreign producers find it very difficult to make a profit with such high penalties, which makes it possible for domestic producers to raise their prices without fear of rigorous price competition.

Studies similar to the Messerlin European study have been conducted for China,¹¹⁴ Korea,¹¹⁵ and the United States.¹¹⁶ The findings in those studies were similar to those of Messerlin. These studies all strongly suggest that trade barriers increase costs to consumers while reducing efficiency and welfare.

106. This point is discussed in depth in MANUEL F. AYAU, NOT A ZERO-SUM GAME: THE PARADOX OF EXCHANGE (2007).

107. PATRICK A. MESSERLIN, MEASURING THE COSTS OF PROTECTION IN EUROPE (2001).

108. *Id.* at 21.

109. *Id.* at 23.

110. *Id.*

111. *Id.* at 22–23.

112. *Id.* at 23.

113. *Id.* at 45.

114. ZHANG SHUGUANG, ZHANG YANSHENG & WAN ZHONGXIN, MEASURING THE COSTS OF PROTECTION IN CHINA (1999).

115. NAMDOO KIM, MEASURING THE COSTS OF VISIBLE PROTECTION IN KOREA (1996).

116. GARY CLYDE HUFBAUER & KIMBERLY ANN ELLIOTT, MEASURING THE COSTS OF PROTECTIONISM IN THE UNITED STATES (1994).

Dean et al. estimated the price effects of non-tariff trade barriers for forty-seven consumer products grouped into four categories for more than sixty countries.¹¹⁷ They found that non-tariff trade barriers often caused significant increases in consumer prices. Table 1 summarizes their findings.

**Table 1: Price Rises in Consumer Products¹¹⁸
as a Result of Non-Tariff Trade Barriers**

Product Group	Range of Price Increases (%)	Mean Increase (%)
Fruits & vegetables	2-61	44
Bovine meat	2-90	54
Processed food	34-53	41
Apparel	8-97	50

Non-tariff trade barriers increased the price of fruits and vegetables by an average of 44 percent, with a range of 2–61 percent. The average for bovine meat was 54 percent, with a range of 2–90 percent. The category of processed food had the lowest average price increase, 41 percent, although none of the countries included in the study had price increases of less than 34 percent. Apparel prices increased by an average of 50 percent as a result of non-tariff trade barriers, with a range of 8–97 percent. Since consumers have to pay more for food products, they have less to spend on other things, like autos, vacations, entertainment, education and a wide range of other products and services.

The conclusion is that using protectionist measures to save jobs or protect domestic industry results in an inefficient allocation of resources. It would be far cheaper simply to pay people three or six months worth of salary and let them find a new job.¹¹⁹

An argument penned by Bastiat in his *Candlemakers' Petition*,¹²⁰ discussed above, may be one of the best arguments against antidumping measures. The gist of his argument is that it is in the best interest of those on the receiving end of this gift of low prices to accept this gift. Doing so would free up assets that would otherwise be used to purchase the product

117. Judith M. Dean, et. al., *Estimating the Price Effects of Non-Tariff Barriers*, 9 B.E. J. ECON. ANALYSIS & POL'Y, art. 12, 1 (2009), available at <http://www.bepress.com/bejeap/vol9/iss1/art12>.

118. *Id.* at 25.

119. Forcing taxpayers to pay people not to work is ethically questionable. Rights theorists would conclude that paying people not to work is inherently unethical because it takes property from the rightful owners and gives it to those who have done nothing to earn it. See BASTIAT, THE LAW, *supra* note 3, at 17; BERTRAND DE JOUVENEL, THE ETHICS OF REDISTRIBUTION (1952). Bastiat would have considered forcing taxpayers to pay people who do not work to be a form of legalized plunder. See BASTIAT, THE LAW, *supra* note 3, at 6–9, 13–19.

120. Bastiat, *Petition* in BASTIAT, ECONOMIC SOPHISMS, *supra* note 10.

(illumination, in Bastiat's example) to purchase other things, thus increasing the standard of living for the vast majority.

His argument was utilitarian, of course, since the underlying premise is that the vast majority benefit,¹²¹ what modern economists call a positive-sum game. But the real issue is one of rights. Do individuals have the right to exchange what they have for what they want or don't they, and if not, why not? One cannot use a public policy argument to justify preventing free trade, since free trade benefits the vast majority,¹²² albeit at the expense of the special interests.

Bastiat discussed this perversion of definitions. Those who would justify protectionism on the basis of promoting the general welfare would include plunder in the definition of the general welfare, which is in conflict with the definition of justice.¹²³ For Bastiat, justice exists when the government confines itself to the protection of life, liberty and property. When it goes beyond these basic functions it engages in redistribution. It takes property from those who are entitled to it and gives it to those who are not entitled to it. The result is injustice.¹²⁴

121. It is a valid premise. One study estimated that Americans are \$1 trillion better off each year as a result of international trade. See I.M. DESTLER, AMERICAN TRADE POLITICS 311, n.1 (4th ed., 2005) (citing Scott C. Bradford, Paul L.E. Grieco & Gary Clyde Hufbauer, *The Payoff to America from Global Integration*, in THE UNITED STATES AND THE WORLD ECONOMY (C. Fred Bergsten ed., 2005)).

122. For discussions of free trade from the perspective of utilitarianism, see JAGDISH BHAGWATI, FREE TRADE TODAY (2002); JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION (2004); JAGDISH BHAGWATI, PROTECTIONISM (1988); TYLER COWEN, CREATIVE DESTRUCTION: HOW GLOBALIZATION IS CHANGING THE WORLD'S CULTURES (2002); DANIEL GRISWOLD, MAD ABOUT TRADE: WHY MAIN STREET AMERICA SHOULD EMBRACE GLOBALIZATION (2009); DOUGLAS A. IRWIN, FREE TRADE UNDER FIRE (3d ed. 2009); TOMAS LARSSON, THE RACE TO THE TOP: THE REAL STORY OF GLOBALIZATION (2001); JOHAN NORBERG, IN DEFENSE OF GLOBAL CAPITALISM (2003); MARTIN WOLF, WHY GLOBALIZATION WORKS (2004).

123. Bastiat discusses these points in *Conflict of Principles*, in BASTIAT, ECONOMIC SOPHISMS, *supra* note 3, at 86–89.

124. BASTIAT, THE LAW, *supra* note 3, at 12–15, 20–21.