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THE LOGIC OF SECOND ORDER COMPLIANCE WITH INTERNATIONAL TRADE REGIMES

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THE LOGIC OF SECOND ORDER COMPLIANCE WITH INTERNATIONAL TRADE REGIMES

Introduction

Nation states, points out Louis Henkin, comply most of the time with international law.[1] Nevertheless, despite the routine of compliance, we know that states sometimes do not comply with international legal regimes. Occasional violations of international rules by state governments, however, need not threaten the maintenance of an international regime. For, if the noncompliant act does not injure another state or its citizens, or if it causes only minor injury to another state, other states may ignore the violation. For example, the Japanese import ban on leather goods and non-rubber footwear long violated the GATT Article XI prohibition against quotas. The Japanese government policy was neither an international problem nor a threat to the GATT regime until American leather goods manufacturers decided that they wanted to sell on the Japanese market. American exporters felt injured and asked their government to encourage the Japanese government to change their import policy.

When states do not comply with international trade regimes, i.e., the law of GATT, of other multilateral commercial treaties, and of bilateral treaties of Friendship, Commerce, and Navigation, then a trade dispute exists. When such a trade dispute exists, then the question: Why do states agree to change

their national trade policies so that they comply with international regimes? Why do states second order comply with international trade regimes?

Drawing on Robert Putnam's analogy of inter-state diplomacy as a two-level, international and domestic game, foreign policy theory, organization theory, negotiation theory, and theory regarding first order international regime compliance, I offer an explanation of the logic of second order compliance with international trade regimes. Following Putnam, a sub-national, bureaucratic politics level of analysis is used here. I employ case studies of American trade disputes with Japan, Korea, and Taiwan in order to propose several hypotheses about second order international trade regime compliance.

All trade disputes, of course, do not involve allegations of noncompliance with international regimes. Rather, all trade disputes involve commercial injury and some trade disputes involve regime noncompliance. Hence, we may classify trade disputes into two general types: injury trade disputes and regime compliance trade disputes, with the latter understood to be a sub-set of the former. Injury trade disputes include regime-sanctioned disputes (such as dumping, subsidy/countervail, and safeguard/escape clause) and non-regime-sanctioned disputes (such as aberrant disputes which should have been resolved through the escape clause but instead result in OMAs or VERs). In such a case, the complaining state asserts that it has been injured by the trade practices of another state, but does not allege that a trading partner is violating a rule of a regime.

Injury disputes are sanctioned by the GATT regime under antidumping, countervailing duty, and escape clause procedures, if carried out in compliance with GATT procedures. On the other hand, regime disputes are either rule disputes or procedure disputes. For example, rule disputes include bi- or multilateral tariff level commitments and the Article XI no quantitative restraints rule of GATT. Procedure disputes are those such as when a state complains that a partner's national antidumping, countervailing duty, or safeguard policies are not being implemented in compliance with GATT regime commitments.

Figure about here

The distinction made here between first order regime compliance and second order regime compliance is drawn from legal scholarship. Compliance with law may be divided conceptually into two forms: to comply with the rules; to comply with the dispute settlement procedure and settlement agreement. The first type of compliance--compliance with the rules--is called first order compliance by Roger Fisher, a legal scholar.[2] The second type of compliance--compliance with the dispute settlement procedure and settlement agreement--is called second order compliance.

Both types of law compliance are important to the study of international regimes. A regime is a "set of implicit or

explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."[3] First order compliance refers to regime rule compliance; second order compliance refers to regime decision-making procedure compliance. A necessary, but not sufficient, condition for the maintenance of a regime is substantial first order (rule) and second order (dispute settlement procedure) compliance.[4] However, unless first order noncompliance is so widespread that one wonders whether the law remains in force, this type of noncompliance poses no substantial problem for a legal regime.

Evidence of second order noncompliance, on the other hand, can be a significant problem for a legal regime because it leaves a regime participant injured and dissatisfied. The injured participant may question the utility of the regime and may even renounce its participation in the regime. If we are to understand regime maintenance, one of the things we must understand is how and why states come to second order comply with a regime. I offer a contribution to theory regarding regime maintenance through the examination of second order compliance.

I argue that second order compliance with international trade regimes is a two-level game played by Commercialists, Diplomats, and Traders within the government bureaucracies of the Pacific Basin. The Commercialists, I suggest, concede to policy change only under threat of economic *sanction*. The Diplomats implore policy change in order to preserve their government's international *reputation*. The Traders endorse policy change so

that they might demand similar *reciprocity* from other international regime participants. The logic of second order compliance with international trade regimes, then, is that national policy change toward compliance occurs when the Level I negotiations weaken the Level II capabilities of the disputed-market Commercialists and strengthen the Level II capabilities of the sanction-threatened Commercialists, the Diplomats, and the Traders. This logic applies to all trade dispute settlement, whether of the regime compliance type or injury type.

This paper first presents the research design, then draws from theory regarding compliance and noncompliance with international regimes, then presents the logic of second order compliance with international trade regimes. The discussion of the case studies follows. The paper concludes with a discussion of implications for the maintenance of regimes.

Research Design

No region in the world can claim to have experienced faster economic development and greater trade expansion during the 1970s and 1980s than the Pacific Basin. No region in the world can claim to have experienced more or, for international trade regimes, more interesting problems during the 1970s and 1980s than the Pacific Basin. Indeed, the trade problems of the Pacific Basin are of a different character from trans-Atlantic trade problems. Trans-Atlantic trade problems are bound up primarily in agriculture market distorting subsidies, European integration, and the opening of Eastern Europe. The trade

problems of the Pacific Basin are primarily about export-led national development strategies and market access. The region has been replete with charges of first order noncompliance with international trade regimes, offering excellent evidence for the study of second order compliance.

Only Pacific Basin disputes were selected in order to hold the diplomatic and foreign policy milieu relatively constant. Only American-initiated cases were studied in order to hold the asymmetrical power relationship of the trade disputants constant. Only Japan, Korea, and Taiwan were selected in order to make the study manageable. Only 1980s disputes were selected in order to hold the US domestic and international economic and political milieu relatively constant. For these reasons, American-initiated Pacific Basin trade dispute settlement is examined here to propose a logic of second order compliance with international trade regimes.

However, the logic does not appear to be regionally bound. The logic flows from premises about how governments operate and how foreign policymakers behave. But, because the conclusions here are drawn here without power variation, the conclusions may be applied with some confidence to similar situations but should be applied only with great care to different situations. In a related study of trade dispute settlement outcome, we vary for power.[5]

In order to study these issues, through US government documents, press sources, and interviews with policymakers, I compiled the (approximate) universe of American-initiated,

bilateral trade disputes with Japan, Korea, and Taiwan in the post World War II era. Many of these disputes arose under the US Section 301 trade law, though some pre-dated the Section 301 law and some were not formally "initiated" by the Office of the United States Trade Representative (the administrator of Section 301 investigations). I have not included the antidumping, countervailing duty, and escape clause disputes because they have specialized dispute settlement procedures which make them analytically different from Section 301-type cases. Nevertheless, a few disputes undoubtedly escaped my net. Table 1 presents my compilation of 47 cases.

Table 1 about here

The research study was designed according to the case study method of structured, focused comparison.[6] From the 47 cases, I varied by state (Japan, Korea, Taiwan) and by market (manufacturing, service, agriculture) in order to select nine cases from which to build theory regarding second order compliance. Variation by state and market introduces a variety of national environments, government agencies, and political economic interests. It also introduces a variety of disputed activities (quota, customs procedures, subsidy, etc.) and dispute types (rule compliance and injury). For the purposes of this study, I coded the fascinating Japan semiconductor case as an

injury case because no rules of an extant international trade regime appear to have been violated. I selected the footwear dispute because it was the only case which involved all three states, thus allowing me to hold the particular market constant. See Table 2.

Table 2 about here

Evidence for the case studies was marshaled through (1) interviews in Washington, Tokyo, Seoul, and Taipei with many of the participants in the disputes, (2) US government documents from the Departments of Commerce and State, the Office of the United States Trade Representative, the International Trade Commission, and Congress, (3) GATT documents, (4) legal briefs and documents filed with the US government by attorneys for the disputants, (5) correspondence among US government officials, East Asian government officials, and private attorneys available in the public files of the Office of the US Trade Representative and US Department of Commerce, (6) press accounts in *The International Trade Reporter*, *The Journal of Commerce*, *The New York Times*, *The Wall Street Journal*, *The Far Eastern Economic Review*, and other Pacific Basin region periodicals.

Policymakers bring different interests and power bases to policy decisions. Policy decisions have different stakes. Bruce Bueno de Mesquita, David Newman, and Alvin Rabushka provide the

single most systematic, parsimonous model for the prediction of policy outcome which I have found.[7] Bueno de Mesquita and colleagues assume that policy actors are rational decision makers. That is, each policy actor

> rates alternatives as more or less desirable and chooses his or her most preferred alternative. . . .Rational decision makers not only select their most preferred alternative, they also act on their preferences to accomplish what they *believe* is in their best interest. We emphasize *believe* to point out that in our model, as in the real world, rational decision makers are perfectly capable of making decisions that, in retrospect, seem wrong or even foolish.[8]

In order to predict policy outcome, they suggest that the analyst must identify (1) the relevant internal and external political actors who may wish to influence the policy, (2) a range of policy alternatives that encompass all possible outcomes, (3) the policy preference of each actor or group of actors, (4) the relative political capabilities of each actor or group of actors, (5) the importance of salience of the issue to each actor or group of actors.[9] In carrying out the case studies, I was guided by this model.

The nine cases studied are summarized here:

Japan, Korea, Taiwan footwear: Lawyers for the Footwear Industries of America, Inc., the Amalgamated Clothing and Textile Workers International Union, and the United Food and Commercial Workers International Union filed in October 1982 a massive Section 301 petition with USTR.[10] The petition, the text of

which alone ran to nearly 175 pages, complained of unfair trade policies toward non-rubber footwear by the governments of Brazil, Taiwan, Korea, Japan, the European Community as a whole as well as France, Italy, Spain, and the United Kingdom separately. Footwear Industries charged that these government engaged in policies of excessive tariffs, quotas, restrictive licensing practices, and subsidies.

Japan tobacco: USTR initiated a Section 301 action against Japan for its import policies regarding tobacco in September 1985.[11] Ambassador Clayton Yeutter announced at the time of the initiation that, despite some Japanese policy steps to liberalize their tobacco market, Japan persistently maintained high tariffs, imposed discriminatory rules on marketing, advertising, and distribution, and held a monopoly on the importation and sale of tobacco products.[12] The dispute centered on the activities of the state-owned tobacco distribution companies, the Tobacco Haiso companies. Japan Tobacco possessed a monopoly on the import, distribution, and sale of all tobacco products in the country.

Japan semiconductor: The (American) Semiconductor Industry Association (SIA) filed a Section 301 petition with USTR in June 1985.[13] SIA charged the Japanese government with a wide range of allegeldy unfair practices, from overt barriers such as quotas and tariffs, to more subtle nontariff barriers. SIA contended that the Japanese government had identified semiconductors as an industry essential to its national economic development and security and had targeted it as an industry to be promoted. The Japanese government, said SIA, had encouraged a small number of

large, integrated electronics firms, such as Hitachi, NEC, Matsushita, Fujitisu, and Toshiba, to interlink their research, development, production, and sales of semiconductors so that US firms could sell in Japan only certain types of semiconductors not produced by Japanese firms and only when there were spot market shortages. SIA claimed that despite aggressive marketing efforts by US firms and despite its dominance of American, European, and all other semiconductor markets, the US market presence in Japan in 1985 remained what it had been in 1975--about ten percent.

Korea insurance: USTR self-initiated a Section 301 investigation against South Korean insurance trade policies and practices in September 1985.[14] Several American companies[15] charged that Korean Ministry of Finance licensing restrictions prohibited them from competing in Korean life and compulsory (i.e., insurance required of Korean citizens as a matter of national public policy) insurance markets, a violation of the national treatment clause of the Treaty of Friendship, Commerce, and Navigation between the US and the Republic of Korea.[16] The American companies further charged that the 1981 agreement between the United States and Korea to open the Korean fire insurance market had been thwarted by Korean government tolerance of the close business relationships among Korean insurance companies and banks. Korean banks, according to American firms, "directed" their customers to purchase fire insurance from Korean companies.

Korean intellectual property: USTR initiated a Section 301

investigation against South Korea's policies and practices regarding the protection of intellectual property rights.[17] First, USTR investigated Korean patent laws, especially regarding chemicals and pharmaceuticals, which protected only the specific process for making the product, not the product itself. Second, USTR investigated Korean trademark protection, which allegedly offered foreign firms little hope of redress with regard to trademark infringements, because Korean courts employed a "famous in Korea" test for trademarks. The courts had held that a trademark had merited protection only if it were well-known to Korean consumers. Hence, products new to the Korean market, even if already well-known in other parts of the world, were denied trademark protection. Third, USTR investigated allegations by the American publishing, music, motion picture, and software industries that Korean piracy of their books, records and cassettes, films and video cassettes, and computer software was widespread and that Korean copyright law offered little protection for foreign copyright-holders.

Korea beef: The American Meat Institute in February 1988 charged in a Section 301 petition that since May 1985 the Korean Ministry of Agriculture, Forestry, and Fisheries had banned the importation of American beef.[18]

Taiwan rice: The (American) Rice Millers Association filed with USTR in July 1983 a Section 301 complaint against the Republic of China (Taiwan) asserting that Taiwan had violated GATT Article XVI (the subsidy article) as well as the GATT Subsidies Code.[19] The Rice Millers charged that the Taiwanese

government purchased rice from its farmers at prices significantly higher than prevailed in world markets, then dumped the rice in foreign markets at prices below world market prices. Furthermore, RMA charged that Taiwan's price support system, an export subsidy under GATT law, encouraged overproduction of rice in Taiwan.

International Regime Compliance Theory

We may think of compliance with international regimes as a special kind of social cooperation. Robert Axelrod, in his widely-cited *Evolution of Cooperation*, finds that it is the iterative nature of social relations which prompts social actors to cooperate with each other.[20] When the game is to be played and re-played without end, actors find it in their self-interest to cooperate. When the game is to be played but once or when the end of the relationship is within sight, they may find it in their interests not to cooperate. Building on this finding, Axelrod and Robert Keohane specify four crucial factors which lead national decision makers to calculate cooperative policy choices: long time horizons, regularity of stakes, reliability of information about the other's actions, and quick feedback about changes in the other's actions.[21]

International institutions--laws and governmental organizations--explains Harold Jacobson, help to create the more stable and predictable milieu for state decision making which affords cooperative state behavior.[22] They are international public goods. Keohane, pointing out that the structure of the

relationship between states and international institutions on one hand and business enterprises and national institutions on the other hand is the same, explains that international institutions reduce the costs of carrying out inter-state relations.[23] Indeed, they apparently do so even for those who do not know well the other actors with which they will interact and even for those who doubt a "shadow of the future" exists for their interactions. In his learned *Rules, Norms, and Decisions*, Friedrich Kratochwil explains that

> We need norms precisely for the reasons that many actors face each other in single-shot rounds and/or in the absense of sufficient information concerning each other's payoff structure. In other words, the interacting parties can often neither rely on a common history nor expect future gains. . . . Precisely for this reason, it is the function of norms to fortify socially optimal solutions against the temptations of individually rational defections. And it is precisely the internalization of the norms' generalized validity claim which bridges the gap among actors who know very little, or virtually nothing about each other. It is therefore more this generalized attitude--obviously counteracted by the incentives of defection--than specific utility calculations which explain why socialized actors follow rules.[24]

For Kratochwil, international laws and the decisions of international governmental organizations, *qua* norms of social behavior, influence national decision makers to comply, to

cooperate. Rules, explains Kratochwil, offer reasons for action.

Henkin, for his part, explains that states comply as a matter of routine because compliance confers the benefits which led the state to sign the treaty in the first place. States fail to comply, he says, when they determine that the benefits of noncompliance exceed the costs of noncompliance.

Oran Young in *Compliance and Public Authority* generates a list of reasons why decision makers choose compliance over noncompliance: (1) self-interest, (2) enforcement, (3) inducement, (4) social pressure, (5) obligation, and (6) habit.[25] Motivated by concerns about reciprocity, reputation, and/or the continued viability of the compliance system, decision makers calculate that the expected value of compliance exceeds the expected value of noncompliance. Says Young: "[He] may conclude that others will be more likely to comply if he complies and more likely to violate if he violates." Regarding reputation as a reason for compliance, in the words of Keohane: "A good reputation is like a capital asset: It will make it easier to enter future international agreements, at lower cost. States with bad reputations--like businesses with bad credit ratings--will have to pay more to enter into agreements."[26]

In some circumstances, explains Young, decision makers choose compliance because some public authority has raised the cost of noncompliance through enforcement of rule by sanction. On the other hand, some public authority may induce compliance by raising the expected value of compliance. Furthermore,

utilitarian decision makers may choose compliance over noncompliance because of social pressure to conform behavior to some norm. On the other hand, decision makers may comply out of a sense of obligation, out of a sense of duty. Obligation here means a non-utililitarian decision making process. (Analytically, at least, since some argue that to speak of a "non-utilitarian decision making process" does not make any sense.) Finally, decision makers may comply habitually, as a routine of practice which is not the result of individualized, deliberate choice. Actors are socialized to act in certain ways: Some societies condition compliance.

For all these reasons, it has been argued, states usually comply with international law and even comply when narrow calculations of self-interest might urge noncompliance. Yet, despite the many incentives for compliance, states sometimes are motivated to violate international regimes. When they do, and when they injure another state in the process, a bilateral trade dispute exists. The dispute is resolved through international trade diplomacy. Trade regimes specify the procedures which are to be used to resolve disputes concerning alleged noncompliant behavior.

The basic dispute settlement procedure provided in the GATT regime[27] is "consultation" under Article XXIII, i.e., bilateral negotiation. Bilateral Friendship, Commerce, and Navigation treaties, which may be traced to about 1200 AD and in their present form to eighteenth century Europe and in the US to 1778, usually provide these same dispute settlement possibilities.[28]

Though the United States has signed about 135 such treaties, only about 40 remain in force today. The GATT has largely supplanted the bilateral FCN treaties. However, the FCN treaties remain important sources of international law and of regimes, especially with regard to issues such as investment and services not yet covered by the GATT and with regard to countries such as Taiwan which are not yet members of the GATT.

In addition to bilateral consultation under Article XXIII, the GATT regime provides through its treaties other special dispute settlement procedures. Indeed, over thirty distinct procedures can be identified in the original GATT treaty and in the additional multilateral codes of conduct negotiated in the Tokyo Round multilateral trade negotiations (MTN).[29] Separate procedures exist under the GATT concerning, for example, antidumping, countervailing duty, safeguard (escape clause), and customs procedures. In order to implement these dispute settlement procedures, national governments transpose the international regime into domestic laws. Hence, each GATT contracting party state has its own particular procedures to resolve disputes brought by their citizens. So, for example, American and European Community countervailing duty procedures are not identical in every detail; American and Korean antidumping procedures are not identical in every detail.

Nevertheless, despite their differences in detail, the antidumping, countervailing duty, and safeguard dispute settlement procedures among the GATT members are similarly unilateral, quasi-adjudicatory processes. Under United States

law the cases are investigated and resolved by the International Trade Administration office of the Department of Commerce and the International Trade Commission. Under EC law the cases are investigated and resolved by the European Commission. The administrators investigate the charges made by their business interests and unilaterally impose a compensatory measure. Only in exceptional cases will bilateral negotiations occur.[30] Though still de-centralized in administration, these special, quasi-adjudicatory procedures represent a higher level of dispute settlement diplomacy than is simple bilateral negotiation.

Yet, this type of trade dispute settlement does not necessarily demand or indicate a change in policy or practice: If State B is found by State A to have violated its laws regarding subsidies, State A unilaterally imposes a countervailing duty as compensation for the injury. State B, however, need not change its government policy.

We are now ready to consider the central question addressed in this paper: Why do states second order comply with international regimes? Why do states choose to change their trade policies so that they comply with the rules of the trade regime?

The Logic of Second Order International Trade Regime Compliance

Theory about inter-state cooperation and first order international regime compliance is quite helpful as far as it goes. Abstracting the state as a unified, rational, utility-

maximizer, this body of theory specifies a compelling chain of reasoning to explain why states comply in the first place with international regimes. Yet, the level of analysis employed by this body of theory does not afford satisfactory explanation of precisely how and why states swallow the bitter pill of trade policy change when the economic, social, and political pain make first order regime *non*compliance the rational policy choice. Hence, we must supplement international regime compliance theory with theories about foreign policy formation and implementation and about negotiation.

National policy goals drive the strategy of inter-state conflict resolution.[31] Government trade negotiators, it follows, aim to achieve national policy goals when attempting to settle bilateral disputes regarding unfair trade activity. Pursuing national policy goals through bilateral dispute settlement involves matters of both foreign and domestic policy for the state participants. The states attempt to settle their dispute within the context of their broader bilateral diplomatic relationship, while at the same time attempting to settle the dispute in a way that balances domestic policy needs against foreign policy demands.[32] National policy goals do not appear only as either foreign or domestic priorities. Rather, they relate to power and to wealth, to politics and to economics. Thus, bilateral trade dispute settlement involves foreign and domestic politics and economics.

A state's foreign policy is goal-directed activity.[33] States, explains Arnold Wolfers, aim to achieve with their

foreign policies two types of goals: possession goals and milieu goals.[34] Possession goals involve the enhancement or preservation of something to which the state attaches value, i.e., a possession. Examples of possession goals include territory and tariff preferences. Milieu goals involve a state's attempt to shape conditions beyond its national boundaries, i.e., its milieu. Examples of milieu goals include peace and support of international economic regimes.

Government trade negotiators have both possession and milieu goals. Possession goals of the trade negotiator include commercial competitiveness, full employment, economic growth, social stability, aggregate national income, price stability, adequate balance of international payments, resource mobility, equitable income distribution, and interest group support. Milieu goals of the trade negotiator include global welfare, free trade, fair trade, international trade regime maintenance, stability, predictability, peace, and friendly diplomatic relations.[35]

Government trade negotiators, however, typically cannot ahieve all of their goals. The goals are sometimes complementary, sometimes contradictory. Furthermore, the other protagonist may frustrate the achievement of some goals. Hence, dispute settlement agreements codify goal achievement trade-offs. Trade negotiators seek an optimal settlement agreement, i.e., an agreement that maximizes national goal attainment. The trade negotiator must assign values or weights to each national goal when pursuing a maximizing strategy. Interviews suggest that

trade negotiators assign values akin to "high," "medium," and "low" to their goals. However, these cognitive issues appear within the context of complicated institutional settings and political processes.

Robert Putnam points out that an international negotiation can be thought of as a two-level game.[36] State governments simultaneously pursue two negotiations: with each other and with domestic groups. Putnam calls the former "Level I" negotiations and the latter "Level II" negotiations. "The unusual complexity of this two-level game," he says, "is that moves that are rational for a player at one board (such as raising energy prices, conceding territory, or limiting auto imports) may be impolitic for that same player at the other board."[37]

In bilateral trade dispute settlement, each negotiating team is led by a chief negotiator who represents the views of the government head (president or prime minister). The negotiations are conducted by a team of representatives from executive branch agencies of these national governments. These agencies are bureaucracies and ought to be thought of that way. They are organizations: They are composed of many people trying to coordinate various governmental activities. Bilateral trade dispute settlement is but one of those activities.

Each government agency has a mission. The mission is defined by the goals of the agency and by the tasks which it is charged with carrying out.[38] The organization, explains James Q. Wilson, must be designed to fit the mission. The organization evolves over time, deliberately or undeliberately adapting to

changing goals, tasks, and environments. Too, the organization socializes those who work for it, shaping their views and behavior.[39] The mission delineates a policy area which the agency wants to control. According to Morton Halperin, an agency will struggle to get the autonomy and capabilities to carry out its mission and will resist any efforts to strip it of either its capabilities or its control.[40]

Nevertheless, because government agencies are composed of more than one person, more than one organizational goal, more than one organizational task and because, at any rate, there is always more than one way to get from point A to point B, bureaucracies do experience internal conflict over policy. Units within a particular agency have their own goals, tasks, constituencies and, therefore, interests. As a result, organizational mission does not always produce organizational unity. Furthermore, staff members may have different links with the environment which influence their behavior. For example, staff members who are professionals, such as attorneys or economists or accountants, may be influenced by the canons of, educational preparations provided by, and the rewards offered by their professions.[41]

The evidence of the case studies suggests that trade dispute settlement negotiating teams are composed of three types of government bureaucrats. These three bureaucratic types may be delineated by their missions and functions in their governments. As organizational theory suggests, their behavior patterns in bilateral trade dispute settlement follow their missions and

functions. The three types are

(1) the Commercialist--the regulator and promoter of industry and commerce;

(2) the Diplomat--the foreign affairs handler;

(3) the Trader--the representative to multilateral trade negotiations.

These bureaucratic types are not entirely congruent with any single government agency, though each tends to serve in a particular agency. Commmercialists, Diplomats, and Traders may be found in various government agencies. Indeed, the American Office of the US Trade Representative (which has no East Asian equivalent) is a microcosm: Commercialists, Diplomats, and Traders are found there.

The Commercialist is the regulator, promoter, and protector of a particular industry or industries, such as agriculture, steel, or electronics. With regard to bilateral trade dispute settlement, the Commercialists tend to protect and promote the interests of the industry which they oversee. Hence, the Commercialist prefers either trade protection or open markets depending upon the interests of the industry. The Commercialist resists policy change which contravenes the interests of the industry. The Commercialist has usually been educated as a market analyst. The Commercialist is heavily represented in agencies such as Agriculture, Trade and Industry/Commerce, but also is represented in Foreign Affairs/State.

The Diplomat seeks good bilateral relations with other states and a stable international system. The Diplomat, however, also believes that the state must live up to its international commitments. The Diplomat seeks cooperative resolutions to trade disputes. Ideally, the dispute should be resolved amicably: The overall bilateral relationship is more important than the particular trade problem of the day. The Diplomat is typically educated as a foreign affairs/country analyst or lawyer. Most Diplomats appear in Foreign Affairs/State.

The Trader[42] is the government representative to the GATT IGO, GATT-sponsored multilateral trade negotiations (MTNs), and other trade regime fora. The Traders seek to promote the commercial interests of their state through the multilateral institutions. The Traders seek bilateral trade dispute settlements which promote international trade regimes and their abilities to bargain multilaterally. Hence, the Trader prefers international trade regime compliant state trade policies. In a sense, the Trader is both Commercialist and Diplomat. The Trader has usually been educated in law, public policy, or economics. The Trader may be found in Foreign Affairs/State, in Trade and Industry/Commerce, and (due to the expanding scope of GATT negotiations) in other agencies.

In the cases under study here, it is the Americans who allege that an East Asian state is injuring its domestic commercial interests and/or violating commitments under an international trade regime. The negotiations aim at changing the East Asian trade policy so that the injury stops (or is at least

compensated) and so that the East Asian state complies or more nearly complies with the international trade regime.

The behavior patterns of the East Asian negotiating teams appears to be the following: The East Asian Commercialist wants no policy change which will threaten the market position of the industry. The East Asian Diplomat wants an amicable and cooperative resolution which promotes good bilateral and multilateral relations. The East Asian Traders want their national policy to promote the international trade regime.

Assuming that the dispute concerns a market and industry which is salient to at least some Commercialists in the US and in East Asia, each chief negotiator initially prefers the outcome favored by the Commercialist. The American chief negotiator wants to gain the support of a domestic industry; the East Asian chief negotiator does not want to lose the support of a domestic industry. In order to reach settlement agreement, the American chief negotiator must change the opposing chief negotiator's policy preferences. In order to do so, the American chief negotiator aims to enhance the political capability of and the salience of the issue to the Diplomats and/or the Traders. If the American chief negotiator succeeds, the East Asian chief negotiator will re-order his policy outcome preference. In order to do so, negotiation theorists Howard Raiffa, James Sebenius, Robert Tollison, and Thomas Willett recommend that the chief negotiator "squeeze out joint gains" or widen the "zone of agreement" through issue linkage and by introducing additional parties to the negotiation.[43]

In trade dispute settlement, the American chief negotiator employs two strategies to achieve this end: Threaten the East Asian state with economic sanction in the form of market loss. Demonstrate that the East Asian state trade policy violates an international trade regime. If the former strategy is pursued, if the American chief negotiator threatens the East Asian chief negotiator with market loss, then the Diplomats are strengthened, because the bilateral diplomatic relationship is threatened. The political capability of and the salience of the issue to the Diplomats are increased. Too, new parties have been introduced: Commercialists who oversee the sanction-threatened industry, previously uninvolved, are brought in to the fray. The issue is now salient to them. (The trick for the American chief negotiator is to select an industry in which its Commercialists are politically capable.) Hence, the political capability of the disputed-market Commercialists is reduced vis-a-vis the Diplomats and the sanction-threatened Commercialists.

For this reason, the strategy of threatening American power may lead to East Asian trade policy change. However, in the process, the action may have damaged bilateral diplomatic relations, since the threat of economic sanctions may be construed as bullying unbecoming of a friendly relationship. Furthermore, if the settlement outcome is international trade regime noncompliant, then the interests of the Traders have been weakened.

So, if the latter strategy can be pursued, i.e., if the American chief negotiator demonstrates to the East Asian chief

negotiator that their trade policy violates an international trade regime, then issue linkage has enhanced the salience to and political capability of some and introduced some others to the negotiation. The Diplomats' political capabilities and the salience to them has been enhanced because they want their country's foreign policy to live up to international commitments. To be labeled an international trade regime violator damages their international reputation. Too, the linkage of the trade dispute with international regimes introduces new parties: The political capability of and the salience to the Traders has been increased. Traders rely on reciprocity in multilateral trade fora; noncompliant behavior by their governments demands the spending of chips.

Linkage of the trade dispute with international regime compliance, however, does not influence the Commercialists. (Unless the linkage is to a market being negotiated in multilateral fora.) The Commercialists are typically unswayed by demonstrations of the international trade regime noncompliance of their trade policy and resist policy change. Nevertheless, the Traders and Diplomats may at this point be able to overcome Commercialist opposition to policy change.

The international trade regime noncompliance argument offers the East Asian chief negotiator something which the threat of American economic sanction does not--political cover. Political cover, a term of art among trade negotiators, is a benefit or rationale for settlement which the East Asian chief negotiator can offer his fellow team members and their affected constituent

industries and public. To concede to American power offers no political cover to East Asian state policymakers. However, international trade regime noncompliance is good political cover, for East Asian policymakers--including the Commercialists--can argue to their industry that their trade policy must change for the good of their international reputation, for the good of reciprocity in the international trade regime, and for the good of the international trade regime itself.

Political cover is a kind of negotiation concession and such concessions are an important part of building cooperative bilateral trade relationships.[44] Trade negotiators realize that, after the dispute of the day is resolved, the game continues to be played on another day. In the language of game theory, trade negotiators cooperate with one another because the game is iterated, not single play. Too, political cover brings to daily experience the game theorist's abstract explanation that the players "cooperate."

However, since settlement may *not* occur after the demonstration of international trade regime noncompliance or since the dispute many be an injury case, the threat of economic sanction may yet be necessary in order to achieve second order compliance. As a matter of strategy, threat of sanction which *follows* the demonstration of international trade regime noncompliance may be preferred. Indeed, the threat of economic sanction may be more legitimate in the eyes of the world trading community with the weight of the regime behind it.

Second order compliance with international trade regimes,

then, is a two-level game played by Commercialists, Diplomats, and Traders within the government bureaucracies of the Pacific Basin. In short, the logic of second order international regime compliance: The Commercialists concede to policy change only under threat of economic *sanction*. The Diplomats implore policy change in order to preserve their government's international *reputation*. The Traders endorse policy change so that they might demand similar *reciprocity* from other GATT contracting parties.

The logic of second order compliance with international trade regimes is that national policy change toward compliance occurs when the Level I negotiations weaken the Level II capabilities of the disputed-market Commercialists and strengthen the Level II capabilities of the sanction-threatened Commercialists, the Diplomats, and the Traders. In the next section I summarize the case studies and in the concluding section I address several implications of the logic of second compliance with international trade regimes.

Case Studies

Footwear cases: Most Japanese leather footwear products were made by an ethnic minority who lived together in areas known in Japan as the "Dowa districts." The Dowa people had traditionally been disadvantaged by discriminated against within Japanese society.[45] Hence, according to the Japanese government negotiators, they were poorly educated, dependent on leather production for their livelihoods, and not easily transferred to other occupations. For these reasons and despite their

inefficient production techniques, the Japanese Ministry of Finance restricted leather products and nonrubber footwear imports to near zero in order to protect the Dowa people. The Japanese Ministry of Foreign Affairs, which took the lead in the bilateral trade dispute settlement negotiations, conceded that their leather and footwear import policy violated GATT. Nevertheless, despite bilateral negotiations since the 1970s, the Japanese government persisted with its policy of protection.

USTR, aiming to "legalize" the dispute, combined the nonrubber footwear dispute with the on-going leather products dispute (the former a sub-set of the latter) and prepared a GATT case against the government of Japan. In April 1983, the Japanese government consented to the creation of a GATT dispute settlement panel.[46] The USTR lawyers successfully argued before the GATT panel and the panel held against Japan in May 1984. Indeed, one participant remarked, "The Japanese knew they were beaten; they didn't even put up a defense in GATT."[47] The panel noted its sympathy to the socio-economic problems of the Dowa people, but the Japanese government policies which restricted the importation of leather goods violated GATT Article XI and should be ended.[48]

Despite the GATT panel finding, Japanese negotiators refused to offer policy change. In November 1985, USTR readied a list of Japanese manufactured goods against which to retaliate and President Reagan publicly threatened sanctions.[49] A personal plea from Prime Minister Nakasone to President Reagan was necessary to avert the sanctions.[50] Two weeks later, the

Japanese government agreed to replace the quota on leather and footwear with a GATT compliant tariff.

The combination of the GATT finding and the threat of sanctions re-ordered the policy preference of the Japanese chief negotiator. The footwear Commercialists in the Finance Ministry and in other parts of the government opposed policy change, but the market sanction threat led MITI Commercialists, who represented the interests of Japanese manufacturers, to favor policy change.[51] The GATT panel finding strengthened the political capability of the Treaty Bureau of the Ministry of Foreign Affairs, the office charged with ensuring Japanese compliance with international law, which contended in the Level II negotiations that Japanese policy must comply with international law.[52] The GATT panel finding strengthened the political capability of the GATT Section of the Ministry of Foreign Affairs, the analysts of and negotiators at GATT and in the MTNs, which contended that Japanese GATT noncompliance damages its relations in GATT, thereby weakening the negotiating position of Japan within the GATT.[53]

Concerning the Korea aspect of the case, USTR negotiators held fruitful GATT consultations with Ministry of Foreign Affairs and customs office (Ministry of Finance) officials in February and July 1983.[54] Korean officials laid out their plans to bring their footwear import policies into compliance with the GATT Customs Valuation Code by February 1986. USTR expressed satisfaction with those plans and with the likelihood of Korean compliance. The only issue in contention then was the tariff

level. Since it was a level bound under GATT auspices, it did not represent a GATT violation. Nevertheless, Korean Diplomats agreed to significant tariff reductions and USTR terminated the investigation. The dispute was settled relatively easily by the Diplomats on the Korean side, for all parties knew that American footwear makers would not be competitive in the brutal Korean footwear market. Korean footwear Commercialists were not threatened much by policy change.

With regard to the Taiwan part of the dispute, USTR announced that it had concluded that, just as the Taiwanese Ministry of Finance customs officials had claimed, the Taiwanese footwear import licensing system was not restrictive. USTR negotiators did, however, seek tariff reductions.[55] They reached agreement when the Taiwanese negotiators offered to lower typical tariffs from 60-65% to 45-50%. USTR terminated the investigation in December 1983.[56] As in the Korea case, the Taiwanese Diplomats easily overcame the objections of the Commercialists. All concerned knew that American makers would still not be competitive in the aggressive Taiwanese shoe markets.

Japan cases: In the tobacco dispute, the Japanese conceded that Japan Tobacco Inc. did maintain a monopoly over domestic tobacco production, but contended that this practice was permitted under the 1953 US-Japan Treaty of Friendship, Commerce, and Navigation and under GATT. The Japanese stressed that US accusations had been made only a few months after major Japanese tobacco policy changes which had been "accomplished despite bitter resistance from affected domestic interests."[57] Indeed,

this was in the main true: Years of tobacco product negotiations had ended myriad GATT-noncompliant, restrictive policies. Only a tariff remained, but the effect of a high tariff in the cigarette business can be great.

The negotiations dragged throughout 1986 as Japanese negotiators from the Finance and Agriculture ministries refused to concede to the US demand of complete tariff elimination. Under the sanction threat of the 6 October 1986 deadline, a last-minute deal was struck as the Japanese agreed to eliminate the tariff.[58] American tobacco companies, which had 3.3% of the Japanese market in the first quarter of 1986,[59] tripled their gross sales in 1987 and captured a 15% market share by 1989.[60] The Diplomats and Traders in Japan had during the 1980s secured many tobacco policy changes over the objections of the tobacco Commercialists, but the last mile was traveled only when sanctions threatened the manufacturing Commercialists.

Regarding semiconductors, USTR negotiators discussed the case with the Japanese throughout the summer and fall of 1985 and winter 1986. MITI negotiators denied that the Japanese government had promoted its industry unfairly and maintained that US firms (including American FDI in Japan) possessed about 20%, not 10%, of the Japanese market.[61] USTR negotiators could not specify any GATT violations by the Japanese government. Though the dumping aspects of the dispute were proceeding through the regular Department of Commerce and International Trade Commission procedures (and without much Japanese dissent), the market access negotiations dragged without progress.[62]

An April 1986 Reagan-Nakasone meeting brought no resolution to the dispute. The statutorily imposed antidumping deadline of 31 July was quickly approaching and political pressure was mounting. On 21 May, the House of Representatives passed a resolution 408 to 5 recommending to the President impose sanctions if agreement was not soon found.[63] In June, the chief USTR negotiator warned the Japanese negotiators that sanction was imminent.[64] The threat achieved its desired effect: The (third) Semiconductor Arrangement was signed on 30 July.[65] However, market access provisions of the agreement were mere political ruse, since the Japanese Commercialists really conceded only to take some actions to help the American semiconductor industry do business in Japan.

Korea cases: Only days before the USTR announcement that it would investigate Korean insurance policies and practices, the Korean Ministry of Finance announced that it would gradually open the fire insurance market to foreign firms, though admitted that a detailed liberalization plan would not be announced for some months.[66]

About a month after the formal initiation by USTR, a delegation representing the Korean insurance industry--Finance Ministry officials, Korean firm executives, Washington attorneys--met in Washington with USTR and American industry representatives.[67] The Korean delegation urged a quick end to the investigation because their insurance markets were small and unprofitable. They maintained that too much competition would be "destructive" to the infant Korean insurance industry and that,

if USTR pushed them to open insurance markets further, more competition would come not only form American firms but from Japanese firms as well.

In a written submission, the Korean negotiating team argued that the Korean government had already taken extensive measures to open its merchandise markets despite domestic political opposition and foreign exchange needs to service its foreign debt. They emphasized that Korea remained a developing country which needed capital for investment. Korea's insurance industry supplied an important portion of the country's capital needs. They pointed to extensive foreign investment policy liberalization and cited evidence that American companies had profited by these policy changes. They noted that the Ministry of Finance had begun to liberalize its service sectors, including banking. However, they also asserted that further Korean service trade policy change should take place in the GATT MTN forum, not in USTR's Winder Building home.[68]

All of the Korean arguments were *ad hominem* policy defenses, for the Korean government had no legal defense for its policies. On the other hand, Korean rebuttal that service market concessions should be made in the multilateral GATT forum, not bilaterally, was arguably meritorous. Nevertheless, American insurance company desire to expand its Korean (and East Asian generally) operations and the charged milieu of the dispute made the demand for Korean trade policy change of high salience to the American negotiating team. The American negotiating team defended its action by pointing out that the Korean practices

violated bilateral national treatment obligations under the FCN treaty.

The Korean negotiating team on insurance was dominated by representatives of the Finance Ministry, with little role played by the Ministry of Foreign Affairs. Yet, behind the scenes, the Economic Planning Board, an economic policy planning staff reporting to the President, asserted control over the insurance dispute in 1986.[69] The EPB representatives, representing views of the Ministry of Trade and Industry, forced policy change on the recalcitrant Finance Ministry. The Korean negotiators agreed in July 1986 to grant licenses to sell all types of insurance to American insurance companies and to insure transparency of Ministry of Finance regulations regarding insurance.[70] The Korean policy change resulted from fear of American economic sanction against Korean manufactured goods.[71] The insurance Commercialists from the Ministry of Finance were overcome by the manufacturing Commercialists of the Economic Planning Board and the Ministry of Trade and Industry. I could find no evidence that Korean policymakers were motivated by the noncompliance of their policies with the bilateral FCN treaty. This is probably because the Diplomats of the Ministry of Foreign Affairs played only marginally in the policy process in the dispute. (Indeed, the Foreign Affairs Ministry has taken the lead in bilateral trade negotiations only since about 1989.[72])

It is also possible that Korean policymakers truly did not want to open service markets unilaterally but only as part of reciprocal concessions in the then forthcoming Uruguay Round MTN.

Though possible, all Korean interviewees emphasized to me that the Korean government had no GATT specialists (i.e., no Traders) during the mid-1980s and gave little consideration to GATT when making policy. (During the late 1980s, the Korean Ministry of Trade and Industry established a GATT office and in 1992 will increase the size of the office staff greatly.[73]) The references in the bilateral negotiations to the Uruguay Round service negotiations were apparently mainly the work of the Korean government's Washington trade lawyer.

Bilateral US-Korean negotiations over intellectual property rights had been going on since 1983. The Korean negotiating position was that they had not yet reached a level of economic development sufficient to make intellectual property protection a cost-effective government policy. Strong domestic opposition to enhanced intellectual property protection constrained the Korean government's flexibility in the negotiations.[74] The book pirating industry was a large producer and possessed an extensive marketing base throughout Korea. Furthermore, the Korean government noted sensitivity to the political threat posed by college students who would be seriously affected by rising textbook prices if pirating were curtailed.[75]

The pharmaceutical and agricultural chemical industries opposed intellectual property protection as well.[76] The large Korean conglomerates, the chaebol, took no visible position on the issue. But, it is possible that some chaebol leaders agreed with the economic development strategists in the government and in academia that Korea had to strengthen its intellectual

property policies if it was to remain internationally competitive in the long run, if not in the short run.[77]

In July 1986 and simultaneously with the insurance dispute, Korean and American trade negotiators settled the intellectual property dispute.[78] The agreement covered copyrights, patents, and trademarks. Regarding copyrights, the Korean government agreed to draft and submit to its legislature a comprehensive copyright bill and to "exert its best efforts to ensure that the legislation is enacted so as to become effective no later than July 1, 1987." The Koreans also agreed to accede to the Universal Copyright Convention and Geneva Phonogram Convention within 90 days of the effective date of the new copyright law. Regarding patents, the Korean government committed itself to amend its extant patent law regarding chemical and pharmaceutical products. It pledged to introduce the new bill to the legislature by the end of September 1986 and "exert its best efforts to secure enactment of the bill by the end of 1986." The Koreans also pledged to accede to the Budapest Treaty in 1987. With respect to trademarks, the Korean government noted that it had already adopted and implemented guidelines which prohibit domestic firms from registering for trademarks which are identical to or resemble those owned by foreign firms, "regardless of whether the foreign mark is `well-known' in Korea." It pledged to enforce the new rules strictly.

Though there were substantial problems with implementation and compliance,[79] the agreement resulted in several multilateral treaty accessions by Korea and in Korean domestic intellectual

property rights policy becoming substantially compliant with the international intellectual property rights regime. As a Korean government official remarked at the time of insurance and intellectual property agreements announcement: "Since there are few established rules in international trade covering service trade and protection of intellectual property, the issues... were extremely complex and technical when compared to the regime covering trade in goods."[80] Indeed, the Koreans apparently settled the intellectual property dispute for the much the same reasons as they settled the insurance dispute: the threat of economic sanction and concern for bilateral relations with the US generally. USTR had threatened to restrict Korean business access to the American footwear, tire, and electronics markets, thus introducing a powerful set of Commercialists into the game. The dispute enmity strengthened the hand of the Diplomats charged with preserving warm relations between Korea and its vital security, diplomatic, and economic partner. However, the Korean government also attempted to sell the IPR agreement at home by contending that the agreement would enhance Korean economic growth by encouraging the development of innovation-based industries.[81]

Regarding the beef dispute, the Korean government responded to the American Meat Institute's charges beginning in April 1988.[82] Nineteen eighty-eight was for both the United States and Korea a national election year--presidential elections in the former and legislative elections in the latter. The presidential elections propelled the Republican Administration to press for

more market liberalization everywhere, and in Korea and in agriculture especially. The legislative elections encouraged greater intransigence on trade liberalization by the Korean Administration, especially concerning agriculture markets. The Commercialists at Korea's Ministry of Agriculture, Forestry, and Fisheries admitted that they manipulated the supply and demand of beef on the Korean market for domestic policy reasons and that the manipulation included a ban on imported beef since May 1985. The Korean negotiating team, however, found legal justification for their actions with the GATT balance of payments exception. The Korean Traders argued that GATT had recognized since 1966 that Korea needed to be able to restrict imports for balance of payments reasons. They pointed out that "no official ruling" had been made by GATT in the interim which would contradict that position.[83] In addition, they emphasized that their cumulative foreign debt obligations had imposed a substantial drain on their monetary reserves. Hence, the balance of payments justification remained compelling in their view. The Koreans conceded, however, that "whether Korea's suspension of beef imports is legitimate or not may be an issue subject to further examination." They went on to recommend that "in light of the existing friendly relationship between our two countries it is more desirable to pursue a mutually satisfactory solution of the issue through the legal proceedings of the GATT."[84]

Indeed, the Korean Diplomats, Traders, and agriculture Commercialists had good reason to resist GATT involvement (which they did in the GATT Council for a couple of months[85]). In May

1989, a GATT panel issued a report which concluded that Korea's beef import policies violated the GATT Article XI prohibition against quantitative restraints and that Korea no longer merited the balance of payments exception. The Korean Traders, knowing all too well that this GATT judgment would strip it forever of the BOP exception, refused to allow the adoption of the panel report for several months in 1989.[86] But the salience of the issue to the American negotiating team did not diminish: In September 1989, USTR received a barrage of letters urging USTR to press the Koreans further to open their beef markets. Letters were submitted by, among others, the California-Arizona Citrus League, the California Cling Peach Advisory Board, the California Avocado Commission, the Western States Meat Association, the Blue Diamond Growers, the Welch's Company, and the National Cattlemen's Association. Clearly, beef was only the beginning. Finally, as USTR was readying a list of manufacturing products for sanction, a November 1989 settlement was signed.[87] Policy change necessary for settlement occurred on the Korean side because the linkage strategy of the American negotiator led Diplomats, Traders, and manufacturing Commercialists to press their government.

Taiwan case: The Taiwanese government was divided over the continuation of its rice support system. Land reform in the 1950s had resulted in small rice farms, farms too small to economically viable without government subsidies.[88] The Ministry of Finance pressed for government policies which would increase farm size and urged the phase out of the price support system.

The agriculture Commercialists at the Council (Ministry) of Agriculture, however, opposed farm size reduction and demanded continuation of the price support system.[89]

Washington attorneys for the Board of Foreign Trade of the Republic of China's Ministry of Economic Affairs filed with USTR in August 1983 a rebuttal document.[90] The Taiwanese government argued that, because its rice support program neither intended to nor resulted in increased rice exports, it could not be found to be an actionable subsidy under the GATT and the Subsidies Code. Taiwan maintained that the program had been established in 1974 to assure a steady supply of rice to domestic consumers, to meet government needs (including military supplies), and to provide temporary income support to a segment of the population which could not readily change occupations.

The Taiwanese negotiators contended that increased rice exports were in part attributable to changes in the tastes of the Taiwanese people, who increasingly favored wheat over rice--*American* wheat, they added. They noted that the amount of Taiwanese rice available for export was not excessive, since it amounted to only about 10% of the total rice harvest in Taiwan between 1977 and 1982.[91] The Taiwanese concluded that "a few thousand tons of old, poor quality Taiwan surplus rice" had not injured the Rice Millers' Association.[92] Furthermore, more rice sales in Taiwan by Americans would mean fewer sales in other agricultural markets. It was a veiled threat and a defensive linkage strategy which had effect.

During December 1983 and January 1984, the American Soybean

Association, the US Feed Grains Council, and the US Wheat Associates implored USTR to resolve the rice dispute with Taiwan quickly.[93] They pointed out that the Taiwanese were good customers of theirs and that they did not wish to lose sales because of the rice dispute.

In contradiction, 15 members of Congress pressed USTR to "seek and employ the necessary measures to have this settled to the benefit of our rice industry."[94] Senator David Pryor, a representative form rice-rich Arkansas and a member of the agriculture committee, pledged to US Trade Representative Bill Brock that Taiwan's "illegal" rice policies and practices must end or he would press for removing Taiwan's GSP benefits.[95]

Finally, in March 1984 the US and Taiwan reached an agreement to resolve the dispute and the Rice Millers withdrew their Section 301 complaint.[96] The Taiwanese government agreed to restrict its exports to 375,000 metric tons in 1984 and to decrease its exports each year until reaching 200,000 metric tons in 1988. Settlement, however, rested on a key American concession: Taiwan would continue to export rice to countries whose per capita income was at or below $795.00. This provision gave the Rice Millers what they wanted--to end Taiwanese dumping of subsidized rice on the large markets of Japan, Korea, and the European Community. On the other hand, the provision also offered some political cover to the Taiwanese government--the continued right to export subsidized rice. The negotiators found a clever solution to a difficult problem.

The chief Taiwanese negotiator was the Director-General of

the Coordination Council for North American Affairs. i.e., the de-facto ambassador from the de-facto embassy. The American threat to cut GSP tariff preferences for manufactured goods imports hit its mark with Commercialists at the Board of Foreign Trade. At this time there were no Traders in the Taiwanese government bureaucracy. Yet, the Taiwanese Diplomat was able to overcome the objections of the agriculture Commercialists and offer to them a deal which they did not like, but could live with.[97] (In the late 1980s, the Board of Foreign Trade of the Taiwanese Ministry of Economic Affairs established a GATT office and sent staff members to the United States to study American and GATT trade law at an American law school.[98] This new office was created, according to interviewees, in order to advise on bilateral trade dispute settlement issues and prepare for eventual GATT membership. Said a Taiwanese interviewee: "[The Board of Foreign Trade] knows how trade is played, so they encourage other government officials to open markets. It is very hard to teach about the world trading situation, about why liberalization is important for [Taiwan]."[99])

Case studies of the disputes between the United States and Japan, Korea, and Taiwan provide the evidence for the construction of the logic of second order international law compliance.

Conclusion

I have drawn from theories regarding international regimes, foreign policy, organization, and negotiation to propose a logic

of second order compliance with international regimes. I argue that second order compliance with international trade regimes is two-level game played by Commercialists, Diplomats, and Traders within the government bureaucracies of the Pacific Basin. I suggest that the Commercialists concede to policy change only under threat of economic *sanction*. The Diplomats implore policy change in order to preserve their government's international *reputation*. The Traders endorse policy change so that they might demand similar *reciprocity* from other regime members. The logic of second order compliance with international trade regimes is that national policy chagne toward compliance occurs when the Level I negotiations weaken the Level II capabilities of the disputed-market Commercialists and strengthen the Level II capabilities of the sanction-threatened Commercialists, the Diplomats, and the Traders.

The argument presented here does not appear to be limited geographically to East Asian states, for it flows from premises about how governments operate and how foreign policymakers behave. Nor does it seem to be limited only to trade policy behavior. It seems to be a general logic of second order compliance with international economic regimes. Too, the logic presented here encorporates an understanding of the more general phenomenon of how and why states come to settle trade disputes. In injury disputes, sanction or threat of sanction moves a state to settle. In regime compliance disputes (which assume injury as well), sanction, reputation, and reciprocity move a state to settle.

In other works, I construct arguments concerning the maintenance of, change of, and growth of international economic regimes. I argue that maintenance of and change of international economic regimes is partially explained by dispute settlement. Second order compliance is one of the necessary conditions for regime maintenance. In the present paper, then, I have proposed an understanding of the how and why of second order compliance with international trade regimes.

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[63]H.R. 4800, Congressional Record (21 may 1986).

[64]Prestowitz, Trading Places, 64.

[65]Prestowitz, Trading Places, 65.

[66]Far Eastern Economic Review (16 September 1985), 12.

[67]Memorandum date 17 October 1985 from Henry G. Parker, II, Chairman, International Insurance Advisory Council, public file #301-43.

[68]International Trade Reporter (26 March 1986).

[69]Interviews by author, #9036, 8 September 1990, #9130, 10 October 1991.

[70]USTR, Federal Register 51-29443; Journal of Commerce (22 July 1986), A1; International Trade Reporter (23 July 1986).

[71]Interview by author, #9036, 8 September 1990.

[72]Interview by author, #9001, 27 April 1990.

[73]Interview by author, #9132, 11 October 1991.

[74]R. Michael Gadbaw, "Republic of Korea" in Gadbaw and Timothy J. Richards (eds.), Intellectual Property Rights: Global Consensus, Global Conflict? (Boulder, CO: Westview Press, 1988), 273.

[75]International Intellectual Property Alliance, Trade Losses Due to Piracy and Other Market Access Barriers Affecting the US Copyright Industries (Washington, DC: International Intellectual Property Alliance, August 1985).

[76]Gadbaw, "Korea," 277.

[77]Gadbaw, "Korea," 280.

[78]International Trade Reporter (23 July 1986); USTR, Federal Register 51-29445; "Record of Understanding on Intellectual Property Rights" signed 28 August 1986 by Ambassador Kyung-Won Kim and Ambassador Clayton Yeutter.

[79]See analysis of the case in author, "Stategy and Compliance with Bilateral Trade Dispute Settlement Agrements."

[80]Far Eastern Economic Review (29 July 1986), 85.

[81]Interview by author, #9018, 27 April 1990.

[82]"Comments of the Government of the Republic of Korea on

the Issues Raised by the Petition filed by the American Meat Institute before the Office of the US Trade Representative" (Washington, DC: Embassy of the Republic of Korea, 22 April 1988).

[83]Korean Embassy, "Beef Petition Comments," 16.

[84]Korean Embassy, "Beef Petition Comments," 17.

[85]Interview by author, #9001, 27 April 1990.

[86]New York Times (13 June 1989), 31; Far Eastern Economic Review (29 June 1989).

[87]Interview by author, #9001, 27 April 1990.

[88]Far Eastern Economic Review (20 October 1983), 78-79.

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[90]Thomas H. McGowan, "Memorandum in Opposition to Acceptance of Section 301 Petition Regarding Rice" (Washington, DC: Kaplan, Russin & Vecchi, 10 August 1983).

[91]McGowan, "Rice Opposition Memo," 20.

[92]McGowan, "Rice Opposition Memo," 20.

[93]Letter circa December 1983 from John Baize of the American Soybean Association to Jeanne Archibald of USTR; letter dated 10 January 1984 from Darwin E. Stolte of the US Feed Grains Council to Chairman, Section 301 Committee, USTR; letter dated 12 January 1984 from Winston Wilson of the US Wheat Associates to Jeanne Archibald of USTR, public file #301-43, USTR, Washington, DC.

[94]Letter dated 23 January 1984 from John Breuz et al. to

Ambassador Bill Brock, public file #301-43, USTR, Washington, DC.

[95]Letter dated 27 January 1984 from Senator David Pryor to Ambassador Bill Brock, public file #301-43, USTR, Washington, DC.

[96]Letters dated 1 March 1984 between David Dean, Chairman of the Board and Managing Director, American Institute in Taiwan and Fredrick F. Chien, Representative, Coordination Council for North American Affairs; letter dated 9 March from Bart S. Fisher and Steven M. Schneebaum of Patton, Boggs & Blow (Washington, DC) to Jeanne Archibald, public file #301-43, USTR, Washington, DC; USTR, Federal Register 84-7636.

[97]Interview by author, #9006, 26 April 1990.

[98]Interview by author, #9128, 25 April 1990.

[99]Interview by author, #9112, 5 October 1991.

TABLE 1

American-Initiated Trade Disputes

in the Pacific Basin, 1955 - 1989

	Manufacturing	Services	Agriculture
Japan	cotton (1955) steel (1969) wool (1969) steel (1976) silk (1977) leather (1977) color TV (1977) baseball bats (1980) automobile (1980) footwear (1982) wood (1985) pharmaceuticals (1985) electronics (1985) semiconductors (1985) satellite (1989) super computer (1989) wood (1989)	telcom (1979) telecom (1985) construction (1988)	beef (1978) citrus (1978) cigar (1979) pipe (1978) tobacco (1985) agriculture 12 (1986) beef (1988) citrus (1988)
Korea	cotton (1963) color TV (1979) footwear (1982) steel wire rope (1983) intellectual prop (1985)	insurance (1979) insurance (1985)	beef (1988) cigarette (1988) wine (1988)
Taiwan	home appliances (1976) footwear (1982) automobile (a) (1986) automobile (b) (1986) machine tool (1986)	film (1983) insurance (1986)	rice (1983) beer, wine, tobacco (1986)

Table 2

Case Studies

state	market	disputed activity	dispute type	initiation & resolution dates
Japan	footwear	quota	rule	10-25-82 12-01-85
Japan	tobacco	tariff	rule	09-16-85 10-03-86
Japan	semiconductor	access*	injury	06-14-85 07-31-86
Korea	insurance	access	rule	09-16-85 07-21-86
Korea	Intell. prop.	protect	rule	11-04-85 07-21-86
Korea	footwear	customs	rule	10-25-82 03-31-84
Korea	beef	quota	rule	03-18-88 11-13-89
Taiwan	footwear	tariff	rule	10-25-82 03-31-84
Taiwan	rice	subsidy	injury	07-13-83 03-22-84

* Note: This study does not consider the dumping parts of this case.

FIGURE. Trade dispute typology